

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 0808071078–81093–01]

RIN 0648–AW72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 16 to the NE Multispecies Fishery Management Plan (FMP). Amendment 16 was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process in the FMP to update status determination criteria for all regulated NE multispecies or ocean pout stocks; to adopt rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; and to revise management measures, including significant revisions to the Sector management measures, necessary to end overfishing, rebuild overfished regulated NE multispecies and ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. Amendment 16 would also implement new requirements for establishing acceptable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed under the FMP, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Finally, this action would add Atlantic wolffish to the list of species managed by the FMP. This action is necessary to address the results of the most recent stock assessment that indicates that several additional NE multispecies regulated species are overfished and subject to overfishing, and that stocks currently classified as overfished require additional reductions in fishing mortality to rebuild by the end of their rebuilding periods.

DATES: Comments must be received by January 20, 2010. **ADDRESSES:** You may

submit comments, identified by 0648–AW72, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Fax:* (978) 281–9135.

- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Proposed Rule for NE Multispecies Amendment 16.”

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 16, its Regulatory Impact Review (RIR), and a draft of the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. NMFS prepared an Initial Regulatory Flexibility Act (IRFA) analysis, which is summarized in the Classification section of this proposed rule. The EIS/RIR/IRFA is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

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

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone: 978–281–9141, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:**Background**

The FMP specifies management measures for 15 species of NE

multispecies in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout, while large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, and redfish. Large-mesh species are further divided into 19 individual stocks, that, along with ocean pout are collectively referred to as groundfish. A major overhaul of the FMP occurred in 2004 with implementation of Amendment 13 and the establishment of rebuilding programs for all large-mesh stocks managed by the FMP, including specification of status determination criteria for each stock.

Amendment 13, which became effective May 1, 2004 (April 27, 2004; 69 FR 22906), established two different strategies for rebuilding (an adaptive strategy and a phased rebuilding strategy), and a rebuilding plan for each overfished stock was developed in accordance with one of the two strategies. Under the adaptive rebuilding strategy, the fishing mortality rate (F) was held at a level intended to produce maximum sustainable yield (F_{MSY}) from 2004 through 2008, and then subsequently reduced to the level required to rebuild by the selected end-date of the relevant rebuilding period for that stock. In contrast, under the phased rebuilding strategy, F was allowed to remain above F_{MSY} at the start of the rebuilding period in 2004, and then was to be reduced sequentially in 2006 and 2009. Eight stocks (Gulf of Maine (GOM) cod, Georges Bank (GB) haddock, GOM haddock, Southern New England (SNE)/Mid-Atlantic (MA) winter flounder, GB yellowtail flounder, redfish, windowpane flounder (southern stock), and ocean pout) are managed under the adaptive rebuilding strategy, while five stocks (GB cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, and white hake) are managed under the phased rebuilding strategy.

Amendment 13 also established a biennial adjustment process whereby the Council would review the FMP and make any changes to management measures necessary to achieve the goals and objectives of the FMP. This adjustment process provides for an update of the scientific information regarding the status of the stocks, and an evaluation of the effectiveness of the regulations. The biennial review scheduled to occur in 2008, with necessary changes to the FMP to be

implemented in 2009, included a peer-reviewed benchmark assessment and a review of the biological reference points (stock status determination criteria) for each stock. This planned assessment of the biological reference points (Groundfish Assessment Review Meeting, (GARM III)) was also part of the adaptive rebuilding strategy described above, which sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks. GARM III, completed in August 2008, included a series of meetings over the course of 1 year. GARM III evaluated the underlying data and models utilized for assessment of the NE multispecies regulated species and ocean pout stocks, evaluated the biological reference points, established new reference points, assessed the biomass and fishing mortality status of the NE multispecies regulated species and ocean pout stocks in 2007, and provided examples of the Fs that would be expected to rebuild overfished stocks.

GARM III concluded that 11 stocks were still subject to overfishing (*i.e.*, F was above F_{MSY}), and that 11 stocks were overfished (*i.e.*, biomass levels were less than one half of the biomass at MSY (B_{MSY})), with 9 stocks classified as both overfished and subject to overfishing. A final determination on the status of pollock could not be made until the fall 2008 survey data were available, as the status of this species is based on the 3-yr centered average of the fall biomass indices. Such data were available in January 2009, and indicated that pollock is overfished. GARM III also indicated that some stocks improved in status from the previous assessment (GARM II), with GOM haddock and GB haddock classified as rebuilt in 2000 and 2006, respectively, and GOM cod expected to be rebuilt by 2009.

The Council began development of Amendment 16 in 2006 with the intent of implementing any necessary revisions to management measures based upon the results of GARM III by the start of fishing year (FY) 2009 on May 1, 2009. On November 6, 2006, a notice of intent to prepare a supplemental EIS and hold scoping meetings designed to solicit public input on any revisions to management measures necessary to continue rebuilding overfished NE multispecies regulated species and ocean pout stocks was published in the **Federal Register** (November 6, 2006; 71 FR 64941). The Council continued to develop Amendment 16 for implementation in FY 2009 until a presentation by the NMFS Northeast Fisheries Science

Center (NEFSC) regarding preliminary estimates of 2006 stock size and F at the June 2008 Council meeting indicated that draft effort control measures under development for Amendment 16 were not targeting the correct stocks. Based on this information, the Council decided to wait until the receipt of the final GARM III assessment results in September 2008 to continue development of Amendment 16. The Council subsequently developed a revised schedule for development for Amendment 16, which postponed implementation of Amendment 16 until the start of FY 2010 on May 1, 2010. In addition, the Council voted on September 4, 2008, to request that NMFS implement an interim action for the duration of FY 2009 (May 1, 2009–April 30, 2010), and recommended a specific suite of management measures for the interim action. A proposed rule to implement interim management measures published on January 16, 2009 (74 FR 2959), with final interim measures published on April 13, 2009 (74 FR 17030) and effective on May 1, 2009.

Based upon the final results of GARM III, the Council adopted draft management measures and an associated draft EIS (DEIS) at its February 2009 meeting. A notice of availability for the DEIS, which analyzed the impacts of all of the measures under consideration in Amendment 16, was published on April 24, 2009 (74 FR 18705), with public comments accepted through June 8, 2009. Final measures for Amendment 16 were adopted by the Council at its June 2009 meeting, with revisions to the discard provisions adopted at its September 2009 meeting. A notice of availability for Amendment 16, including the FEIS, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published in the **Federal Register** on October 23, 2009 (74 FR 54773). The comment period on the Amendment 16 and its associated FEIS ends on December 22, 2009. In addition to the implementing measures proposed in this rule, Amendment 16 contains changes to status determination criteria and other aspects of the management program, such as an ABC control rule and potential sector contributions, that are not reflected in regulations, but that are summarized below.

Proposed Measures

Amendment 16 proposes a large number of changes to the management regime for the NE multispecies fishery, including revisions/additions to existing regulations. This proposed rule also

includes revisions to regulations that are not specifically identified in Amendment 16, but that are necessary to effectively implement the provisions in Amendment 16, or to correct errors in, or clarify, existing provisions. A description of the proposed management measures follows.

1. Incorporation of Atlantic Wolffish Into the FMP

Section 304(e) of the Magnuson-Stevens Act requires either the Council or the Secretary to develop a fishery management plan or proposed regulations to end overfishing and rebuild a stock within 2 years of notice that the fishery is overfished. Atlantic wolffish was recently determined to be overfished by the Data Poor Working Group, with notice provided to the Council in February 2009. Because this species is occasionally caught by both the commercial and recreational NE multispecies fisheries, Amendment 16 proposes to incorporate Atlantic wolffish into the FMP. Accordingly, the term “regulated species” would be revised to include large-mesh species, ocean pout, and Atlantic wolffish. Status determination criteria, a rebuilding plan, and management measures to rebuild this stock are also proposed in Amendment 16.

2. Status Determination Criteria

Amendment 16 proposes to update the status determination criteria for existing NE multispecies regulated species and ocean pout stocks based upon the best available scientific information regarding stock status resulting from GARM III. In addition, because Amendment 16 would add Atlantic wolffish to the FMP, biological reference points would be established for this species. Based upon the results of GARM III, biological reference points have been revised from those adopted in Amendment 13. Stock status determinations were updated relative to the revised reference points. In summary, the F at 40 percent of maximum spawning potential (F40% MSP) was used as a proxy for F_{MSY} for most of the age-based stocks. Spawning stock biomasses at maximum sustainable yield (SSB_{MSY}) were calculated using F40% MSP, with an assumption on the recruitment that should occur at SSB_{MSY} . Changes to the status determination criteria are more fully discussed in Section 4.2 of Amendment 16, and in Section 1 of the GARM III report. Table 1 lists the proposed revised status determination criteria, and numerical estimates of these parameters are listed in Table 2.

TABLE 1—DESCRIPTION OF THE PROPOSED REVISED STATUS DETERMINATION CRITERIA

Species	Stock	Biomass target (B_{target})	Minimum biomass threshold	Maximum fishing mortality threshold
Cod	GB	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Cod	GOM	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Haddock	GB	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Haddock	GOM	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Yellowtail flounder	GB	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Yellowtail flounder	SNE/MA	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Yellowtail flounder	CC/GOM	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
American plaice		$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Witch flounder		$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Winter flounder	GB	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Winter flounder	GOM	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Winter flounder	SNE	$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Redfish		$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F50% MSP.
White hake		$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.
Pollock		External	$1/2 B_{target}$	Relative F at replacement.
Windowpane flounder	Northern	External	$1/2 B_{target}$	Relative F at replacement.
Windowpane flounder	Southern	External	$1/2 B_{target}$	Relative F at replacement.
Ocean pout		External	$1/2 B_{target}$	Relative F at replacement.
Atlantic halibut		Internal	$1/2 B_{target}$	F _{0.1} .
Atlantic wolffish		$SSB_{MSY}:SSB/R$ (40% MSP)	$1/2 B_{target}$	F40% MSP.

TABLE 2—NUMERICAL ESTIMATES FOR THE PROPOSED UPDATED STATUS DETERMINATION CRITERIA

Species	Stock	Biomass target (B_{target}) in mt	Minimum biomass threshold ($1/2 B_{target}$) in mt	Maximum fishing mortality threshold (F_{MSY} or proxy)	MSY in mt
Cod	GB	148,084	74,042	0.25	31,159
Cod	GOM	58,248	29,124	0.24	10,014
Haddock	GB	153,329	76,664	0.35	33,604
Haddock	GOM	5,900	2,950	0.43	1,360
Yellowtail flounder	GB	43,200	21,600	0.25	9,400
Yellowtail flounder	SNE/MA	27,400	13,700	0.25	6,100
Yellowtail flounder	CC/GOM	7,790	3,895	0.24	1,720
American plaice		21,940	10,970	0.19	4,011
Witch flounder		11,447	5,724	0.20	2,352
Winter flounder	GB	16,000	8,000	0.26	3,500
Winter flounder	GOM	3,792	1,896	0.28	917
Winter flounder	SNE	38,761	19,380	0.25	9,742
Redfish		271,000	135,500	0.04	10,139
White hake		56,254	28,127	0.13	5,800
Pollock*		2.00 kg/tow	1.00 kg/tow	5.65 c/i	11,320
Windowpane flounder*	Northern	1.4 kg/tow	0.7 kg/tow	0.50 c/i	700
Windowpane flounder*	Southern	0.34 kg/tow	0.17 kg/tow	1.47 c/i	500
Ocean pout*		4.94 kg/tow	2.47 kg/tow	0.76 c/i	3,754
Atlantic halibut		49,000	24,500	0.07	3,500
Atlantic wolffish		1747–2202	400–500	<0.35	278–311

*Estimates of F_{MSY} or proxy for these stocks use an index-based method to evaluate stock status and are based on a moving average, calculated as described in GARM III. Values presented in this table for these stocks represent catch (landings plus discards in 1,000's mt) per survey index of relative biomass (kg/tow) for that stock.

3. Rebuilding Programs

According to GARM III, two NE multispecies stocks have achieved their target biomass levels and are no longer considered overfished; the GB haddock stock was rebuilt in 2006, while GOM haddock was rebuilt in 2000. However, GARM III, and the subsequent data available for pollock, also indicated that several other NE multispecies stocks are now overfished; these stocks are witch flounder, GB winter flounder, northern windowpane flounder, and pollock. As a result, the Council is proposing new

rebuilding programs for these stocks under Amendment 16, assuming the rebuilding programs will begin in FY 2010. For witch flounder and GB winter flounder, the proposed rebuilding programs would rebuild these stocks by 2017, with a 75-percent probability of success. The rebuilding programs proposed for pollock and northern windowpane flounder would rebuild these stocks by 2017, but because status determination criteria for these stocks are based upon survey indices, a probability of success cannot be calculated at this time.

Analysis by the Data Poor Working Group indicated that Atlantic wolffish is overfished. However, because the life history of this species is not well understood, there is considerable uncertainty in the evaluation of stock status and stock projections. As a result, it is not possible to determine a rebuilding period or a rebuilding F for this species at this time, although measures to reduce F for this stock are proposed under Amendment 16, as outlined below.

Amendment 13 established a phased rebuilding strategy for SNE/MA winter

flounder that would evaluate the rebuilding progress in 2008 and adjust the rebuilding F in 2009 to achieve rebuilding by 2014. Based upon GARM III data, projections indicate that this stock is unlikely to rebuild by 2014 in the absence of any fishing mortality, but would likely rebuild between FYs 2015 and 2016. Since this stock is caught as non-targeted catch in other large-mesh fisheries, small-mesh fisheries, and the scallop dredge fishery, the only way to achieve zero F would be to eliminate all fishing activity in the SNE/MA winter flounder stock area, including fisheries for scallops, summer flounder, and other non-groundfish species. This would entail closing several important fisheries from off Cape Cod, MA to the Maryland coast. Hundreds of millions of dollars in yield would be sacrificed for a relatively small change, if any, in the projected rebuilding period for this stock. The Council considers this unnecessary and impracticable, since, even without any fishing mortality, this stock could not be rebuilt within the Amendment 13 timelines (*i.e.*, by 2014) and is projected to be rebuilt between FYs 2015 and 2016. Instead, Amendment 16 proposes to prohibit possession and landings of SNE/MA winter flounder, which would result in achieving a F as close to zero as practicable. In addition, Amendment 16 would require all non-Sector vessels fishing within two restricted gear areas to use selective gear to minimize the catch of SNE/MA winter flounder and other stocks. Although the benefits of these restricted gear areas are uncertain and have not been used to contribute to the F reductions of the proposed action, any decrease in F associated with these requirements would only increase the probability that rebuilding under the proposed measures would occur between FYs 2015 and 2016. With the implementation of management measures proposed under Amendment 16, including the proposed measures that affect the catch of SNE/MA winter flounder, this stock will no longer be subject to overfishing. There is considerable scientific uncertainty associated with the assessment for this stock, as recruitment observed between 2004 and 2008 was less than half of that assumed when the rebuilding plan and associated management measures were developed under Amendment 13. This suggests that differences between

projected and observed recruitment patterns and other factors will influence when this stock is rebuilt. Projections of stock status under a F of zero are similar to those using a F of as close to zero as practicable, as proposed under this action, indicating that there is little difference between when this stock is expected to rebuild under either scenario (see Section 7.2.1.1.3.1 of the Amendment 16 FEIS). Therefore, to impose a complete closure of commercial and recreational fisheries in the SNE/MA winter flounder stock area and still not achieve the objectives of rebuilding this stock by 2014 is contrary to the objectives of the Magnuson-Stevens Act and would result in severe economic impacts without biological benefits. Further, section 304(e)(7) of the Magnuson-Stevens Act recognizes that an FMP may not always make adequate progress to achieving rebuilding objectives and allows time for revisions to be made to make adequate progress toward rebuilding overfished stocks. This action is thus designed to eliminate targeting of this stock and to reduce discards in other trawl fisheries in order to reduce F to the extent practicable, without delaying the projected rebuilding of this stock. As a result, the rebuilding target listed in Table 3 for this stock should be interpreted as "as close to zero as practicable," rather than zero.

Previous stock assessments for Atlantic halibut were insufficient to calculate a rebuilding F. As a result, although the stock was classified as overfished, no target F was calculated. GARM III included an analytic assessment for this species that was able to calculate a rebuilding F shown in Table 3 and an end date for rebuilding of 2055, based upon the biology of this species.

The GARM III review of GOM winter flounder indicated that it is highly likely that the stock is overfished. However, due to the high degree of uncertainty of the assessment, the GARM III review panel suggested that the assessment could not be used to provide management advice or stock projections. As a result, a formal rebuilding program has not been developed for this stock under Amendment 16, although rebuilding for this stock is expected to result from measures proposed under Amendment 16 to rebuild other stocks. This stock

will continue to be monitored and, should additional information lead to a determination that the stock is overfished, a formal rebuilding program would be developed in a subsequent action.

4. ABC Control Rule and Mortality Reductions Necessary To Achieve Rebuilding Targets

Management measures proposed in this action are designed to reduce F to the target F for each stock, as specified in Table 3. Two factors contribute to determining the target F under Amendment 16: The ABC control rule specified by the Council's Scientific and Statistical Committee (SSC), and the F necessary to rebuild overfished stocks within the rebuilding period (F_{rebuild}). The ABC control rule proposed by the SSC was adopted by the Council at its June 2009 meeting and would replace the MSY control rule in Amendment 13. The ABC control rule would specify that the ABC for each stock should be determined as the catch at 75 percent of F_{MSY} , and that, if the catch at 75 percent of F_{MSY} would not achieve the mandated rebuilding requirements, ABC should be based upon F_{rebuild} . For stocks that cannot be rebuilt within existing rebuilding periods, the ABC should be based upon incidental bycatch, including a reduction in the existing bycatch rate. Finally, for stocks with unknown status, ABC would be determined on a case-by-case basis by the SSC.

Because GARM III assessed the status of the stocks through 2007, to calculate F_{rebuild} it is necessary to estimate the F resulting from measures in place for 2008 and 2009. Catch data for FY 2008 are available, along with estimates of F resulting from measures implemented by the 2009 interim action. Projections were run to determine rebuilding F targets using an estimate of 2008 F based upon available catch data, as well as the assumptions regarding expected F resulting from interim measures in 2009. Table 3 lists the percentage change in F necessary to achieve the target F (either F_{rebuild} or the catch at 75 percent of F_{MSY}), as appropriate, from F estimated for FY 2008. Mortality reductions for several stocks are not available because the assessments for these stocks did not produce reliable estimates of F that could be used in projection models to estimate F_{rebuild} .

TABLE 3—SUMMARY OF REDUCTIONS IN F NECESSARY TO ACHIEVE THE TARGET F IN 2010 FOR EACH STOCK

Species	Stock	2007 F	Targeted F (either F _{rebuild} or 75 of F _{MSY})	F _{msy}	2008 F from 2008 Catch Data	Change in F necessary to achieve F _{rebuild} using catch and F 2008
Cod	GB	0.300	0.184	0.2466	0.410	-55
Cod	GOM	0.456	0.18	0.237	0.300	-40
Haddock	GB	0.230	0.26	0.350	0.079	229
Haddock	GOM	0.350	0.32	0.430	0.250	28
Yellowtail flounder	GB	0.289	0.109	0.254	0.130	-16
Yellowtail flounder	SNE/MA	0.413	0.072	0.254	0.120	-40
Yellowtail flounder	CC/GOM	0.414	0.18	0.239	0.289	-38
American plaice	GB/GOM	0.090	0.14	0.190	0.099	41
Witch flounder		0.290	0.15	0.200	0.296	-49
Winter flounder	GB	0.280	0.20	0.260	0.131	49
Winter flounder	GOM	0.417	N/A	0.283	0.317	N/A
Winter flounder	SNE/MA	0.649	0.000	0.248	0.265	-100
Redfish		0.005	0.03	0.038	0.008	275
White hake	GB/GOM	0.150	0.084	0.125	0.065	29
Pollock	GB/GOM	10.464	4.245	5.66	15.516	-73
Windowpane flounder	Northern	1.960	N/A	0.50	N/A	N/A
Windowpane flounder	Southern	1.850	N/A	1.47	N/A	N/A
Ocean Pout		0.380	N/A	0.760	N/A	N/A
Atlantic halibut		0.065	0.044	0.073	0.060	-27
Atlantic wolffish		N/A	N/A	N/A	N/A	N/A

5. ABC/ACL Specifications and Distribution Process

The recent reauthorization of the Magnuson-Stevens Act required fishery management councils to establish a mechanism for specifying ACLs for each managed fishery such that overfishing does not occur in the fishery, and measures to ensure accountability. NMFS revised the National Standard 1 Guidelines to assist Councils in complying with the new requirements (January 16, 2009; 74 FR 3178), which were used by the Council in developing both the ABC/ACL process and the associated AMs in Amendment 16.

ABC/ACL Specifications Process

According to the Magnuson-Stevens Act, ACLs developed by a Council for a particular fishery may not exceed the fishing level recommendations of the Council's SSC or other peer-review process. The Magnuson-Stevens Act requires that ACLs must take effect in FY 2010 for fisheries subject to overfishing, and in FY 2011 for all other fisheries. Because several stocks managed under the FMP are subject to overfishing, Amendment 16 proposes a process to specify ABCs and ACLs for the NE multispecies fishery for implementation in FY 2010.

Under Amendment 16, ABCs/ACLs would be developed as part of the biennial adjustment process established in the FMP (a complete description of the ABC/ACL specification process is in Section 4.2.1 of the Amendment 16 FEIS). The Groundfish Plan Development Team would develop

recommendations for setting an ABC, ACL, and overfishing level (OFL) for each stock for each of the next 3 years following the implementation of the biennial adjustment, or yearly for stocks managed by the U.S./Canada Resource Sharing Understanding (Understanding) (currently, GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock) through a specifications package. These recommendations would be based upon the ABC control rule, as described above; updated information regarding the status of each stock, including F_{rebuild} for overfished stocks; recommendations of the Transboundary Management Guidance Committee (TMGC) for appropriate catch levels for stocks managed by the Understanding; and any other guidance provided by the SSC. The ABCs developed through the process would be distributed among the various segments of the fishery that catch NE multispecies. These sub-ABCs would then be reduced to account for management uncertainty to derive how the overall ACL for each stock is divided into various sub-components of the fishery, as described further below. The PDT would develop an informal document that describes how these recommendations were developed, including estimates of scientific and management uncertainty considered by the PDT, whether different levels of management uncertainty were applied to different components of the fishery, and whether total allowable catches (TACs) have been exceeded during previous fishing years. The SSC would then approve the PDT's ABC

recommendations or provide alternative ABC recommendations, describing elements of scientific uncertainty used to develop its recommendations, and offer any other recommendations regarding ACLs or other relevant issues. The Council would then consider the recommendations of the SSC, PDT, and TMGC and adopt ABCs and ACLs for each stock. As required by the Magnuson-Stevens Act, the Council must adopt ACLs that are equal to or lower than the ABC recommended by the SSC, taking into account management uncertainty. The Council would adopt the ABC/ACL specifications and submit them to NMFS by December 1, for approval and implementation in a manner consistent with the Administrative Procedure Act.

The numeric ABCs and ACLs developed pursuant to this process are not codified in this proposed rule and will be specified in a separate future rulemaking. The Council is currently developing an ABC/ACL specifications package to be implemented concurrently with the provisions contained in this proposed rule for Amendment 16 management measures at the start of FY 2010 on May 1, 2010. The measures proposed in Amendment 16 are intended to achieve, but not exceed, the ABCs and ACLs established for FYs 2010–2012. The ABCs and ACLs for 2013 and beyond would be specified according to the process described above, unless otherwise modified through a future Council action.

ACL Distribution

As noted above, the PDT would recommend distributing the ABC among the various segments of the fishery that catch NE multispecies regulated species and ocean pout, and reducing such sub-ABCs to account for management uncertainty for each individual sub-component of the fishery that catch such stocks based upon the catch available to U.S. fishermen, as further described below and as described in detail in Section 4.2.1.3 of the Amendment 16 FEIS. These sub-components of the fishery include vessels operating in state waters that catch regulated species and ocean pout, but do not hold Federal NE multispecies permits; other non-specified sub-components of the fishery that may catch regulated species and ocean pout as bycatch when prosecuting other fisheries (*i.e.*, exempted fisheries and fisheries for exempted species); vessels participating in the Atlantic sea scallop fishery that catch yellowtail flounder stocks as bycatch; vessels participating in the Atlantic herring fishery that catch haddock as bycatch; and catch of regulated species and ocean pout by the commercial and recreational NE multispecies fisheries. Some sub-components of the fishery would not be subject to any automatic AMs under Amendment 16 and would, thus, be allocated sub-components of the ACL. The sub-components of the fishery that are subject to AMs would be allocated sub-ACLs for each stock of regulated species and ocean pout that they catch. These distributions, and the stocks that are allocated to the recreational fishery, could be revised through the framework adjustment process established in the existing regulations.

Catch by vessels operating in state waters that do not hold Federal NE multispecies permits is outside of the jurisdiction of the FMP, but is included in the overall ABC for NE multispecies regulated species and ocean pout stocks. As a result, such catch must be accounted for, but would not be monitored outside of the biennial adjustment process for assessment purposes. The estimates of such catch would be adjusted pursuant to the biennial adjustment process specified above. For GOM cod and GOM haddock, this state-waters catch would be deducted from the sub-ACL available to the commercial fishery (*i.e.*, vessels issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit). The sub-ACL available to recreational vessels would include catch of GOM cod and GOM haddock in both state waters and

Federal waters, and any associated recreational AMs would be triggered by the cumulative catch of such stocks by all recreational vessels.

The sub-components of the fishery that are not subject to AMs include vessels fishing in exempted fisheries that occur in Federal waters (*e.g.*, the northern shrimp exempted fishery and the Cultivator Shoal whiting fishery exemption) and vessels targeting exempted species (*e.g.*, the summer flounder fishery in SNE)—fisheries that are not allowed to land NE multispecies regulated species or ocean pout and that have demonstrated very low NE multispecies bycatch—as well as the Atlantic sea scallop fishery, which catches yellowtail flounder as bycatch. If catch from such fisheries exceeds the amount allocated, AMs would be developed and implemented in a separate future management action to prevent the overall ACL for each stock from being exceeded, pursuant to the biennial review or framework adjustment process established in the existing regulations.

The ACLs for all three stocks of yellowtail flounder would be reduced to account for projected yellowtail flounder bycatch in the Atlantic sea scallop fishery. The level of yellowtail flounder bycatch in the scallop fishery would vary from year-to-year, based upon scallop and NE multispecies abundance, the rotational management program specified for the scallop fishery, and other factors. At a minimum, the yellowtail flounder sub-component of the ACL allocated to the scallop fishery would be consistent with the incidental catch amounts specified for closed area access programs specified in the current regulations (*e.g.*, at least 10 percent of the GB yellowtail flounder ACL would be specified to account for closed area access programs on GB, when open under the rotational management program). Similar to the other non-specified sub-components of the ACL described above, with the exception of GB yellowtail flounder, yellowtail flounder bycatch in the scallop fishery would initially be treated as a sub-component of the ACL, rather than a sub-ACL, and, therefore, would not be subject to any specific AMs under Amendment 16. The existing regulations regarding the Understanding require that any overages of the TACs managed by the Understanding would be deducted from the available U.S. portion of the appropriate TAC during the following year. Therefore, any overages of the U.S. portion of the GB yellowtail flounder TAC, including those by the scallop fishery, would be deducted from the U.S. portion of the

GB yellowtail flounder TAC during the following year. The Council is currently developing Amendment 15 to the Atlantic Sea Scallop FMP, which is expected to develop AMs for the catch of yellowtail flounder in the scallop fishery. If such measures are implemented, the yellowtail flounder bycatch in the scallop fishery would then become classified as a sub-ACL controlled by an appropriate AM.

In 2006, Framework Adjustment 43 to the FMP (August 15, 2006; 71 FR 46871) specified that 0.2 percent of the GOM and GB haddock target TACs would be allocated to the Atlantic herring fishery to accommodate haddock bycatch. Amendment 16 would maintain this allocation, but update it to reflect that 0.2 percent of the GOM and GB haddock ACL would be allocated to the Atlantic herring fishery. This allocation would be considered a sub-ACL. The existing regulations already contain AMs in the form of elimination of the directed herring fishery in particular areas, and haddock possession restrictions once this sub-ACL is projected to be caught. Because the existing regulations combine catches from both stocks of haddock, this haddock sub-ACL allocated to the herring fishery is not currently monitored on a stock-specific basis.

Finally, the ACL for each NE multispecies regulated species and ocean pout stock would be allocated to the NE multispecies commercial and recreational fisheries. With the exception of GOM cod and GOM haddock, as noted below, the ACL for each NE multispecies regulated species and ocean pout stock would be allocated to the commercial NE multispecies fishery. This would be further divided between vessels participating in approved Sectors and those fishing under the provisions for the common pool (*i.e.*, those vessels not participating in an approved Sector), as described further in Item 14 of this preamble. An allocation for a particular stock would not be made to the recreational fishery if it is determined that, based upon available information, the ACLs for NE multispecies regulated species and ocean pout stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state-waters catch as described above, is less than 5 percent of the overall catch for a particular stock. If a stock is allocated to the recreational fishery, the distribution of the available ACLs for these stocks between the commercial and recreational fisheries would be determined based upon the average proportional catch of each component

for each stock during FYs 2001 through 2006. Based upon these criteria, only two NE multispecies stocks would be allocated to the recreational fishery at this time: GOM cod and GOM haddock.

6. AMs

As described in Item 5 of this preamble, Councils must establish measures that prevent overfishing and ensure accountability in each fishery. AMs are management controls that are intended to prevent ACLs from being exceeded, or to correct/mitigate overages if they occur. Amendment 16 would implement AMs for both the commercial and recreational fisheries, as described below, including separate AMs for Sector vessels, vessels fishing in the common pool, and private recreational and charter/party vessels. Under Amendment 16, if the overall ACL for a stock is exceeded, the AMs applicable to the NE multispecies fishery, including those specified for Sector, common pool, and recreational and charter/party vessels, would be triggered, as specified below.

Sector AMs

Since Sectors were first implemented in 2004 under Amendment 13, Sectors have provided an alternative to DAS and trip limits for managing the catch of particular stocks. Similarly, Amendment 16 would specify alternative AMs for common pool vessels and those participating in Sectors. Amendment 16 would prohibit Sector vessels from fishing in a particular stock area unless that Sector is allocated or acquires quota for all NE multispecies regulated species or ocean pout stocks allocated to Sectors and caught in that stock area. In addition, Amendment 16 would require that Sector vessels cease fishing in a particular stock area if the Sector exceeds its allocation of any NE multispecies regulated species or ocean pout stocks caught in a particular stock area. While Sectors could balance such overages through acquiring allocation from another Sector, any overages at the end of the FY would be deducted from that Sector's allocation during the subsequent FY. As described below for the AMs effective if the overall ACL for a particular stock is exceeded, the catch used to determine an individual Sector's overage would include catch by each Sector's vessels, as well as catch by other sub-components of the fishery. If either the catch of a particular stock by a Sector's vessels alone, or the catch of a particular stock by a Sector's vessels added to a Sector's portion of the overall ACL overage caught by other sub-components of the fishery exceeds the

amount of that stock's ACL allocated to an individual Sector, the amount of the overage would be deducted from that Sector's allocation for that stock during the following FY. If a Sector disbands following an overage, or does not have sufficient allocation to cover the overage, an appropriate DAS or Sector share penalty or fishing prohibition would apply to each individual participating vessel during the subsequent FY, as further described in Item 14 of this preamble. If a Sector exceeds its allocations multiple times or by a large amount, the Sector operations plan or monitoring program may be insufficient to control fishing effort and could justify disapproval of the Sector in future years. These measures are intended to ensure that Sectors avoid exceeding their allocations. If Sector allocations are exceeded, appropriate measures would be taken to either balance the overage or address it through penalties in the following FY.

Common Pool AMs

Common pool vessels would be subject to two types of AMs: A differential DAS counting AM during FYs 2010 and 2011, and a hard-TAC AM overlaid upon the DAS effort controls in FY 2012 and beyond. This transition from a DAS AM to a hard-TAC AM reflects the Council's intent to transition from an effort control fishery to one managed through hard TACs. This transition also would enable monitoring systems and service providers to prepare for the increase in infrastructure and personnel necessary to accommodate the influx of higher volumes of catch data and the need to monitor greater numbers of offloads, as further described below.

Under the proposed differential DAS counting AM, if the NMFS Regional Administrator projects that the sub-ACL available to common pool vessels for each NE multispecies regulated species or ocean pout stock would be exceeded or underharvested by the end of the FY, based upon catch data available through January of that year, a differential DAS counting factor would be applied to each Category A DAS used in the stock area for which the sub-ACL was exceeded or underharvested, during the following FY. The catch used in this projection would include catch by common pool vessels as well as a projection of the catch by other sub-components of the fishery. If either the catch of a particular stock by common pool vessels alone, or the catch of a particular stock by common pool vessels plus the common pool's portion of any catch from other sub-components of the fishery that cumulatively exceed the

overall ACL is projected to exceed the common pool's allocation for a particular stock, the differential DAS counting AM would be triggered for the following FY. This projection would be updated after the end of the FY to help determine if the catch by other sub-components of the fishery are accurately estimated for the purposes of determining whether the differential DAS counting AM is triggered. The areas in which differential DAS counting would apply are defined further in this proposed rule. Of particular note is the differential DAS counting area applicable to Atlantic wolffish. The Council added Atlantic wolffish to the FMP, but neither specifically exempted Atlantic wolffish from the differential DAS counting AM, nor specified the differential DAS counting areas applicable to this species when it adopted Amendment 16. An assessment of recent catches by Council staff during the development of the Amendment 16 FEIS indicated that this species is primarily landed from inshore waters of both the GOM and GB. Therefore, this proposed rule would impose differential DAS counting in the Inshore GOM and Inshore GB Differential DAS Counting Areas if the Atlantic wolffish ACL is projected to be caught.

The Amendment 16 DEIS indicates that the exact areas associated with this AM may be modified in the FEIS "to be consistent with the overall effort control program so that a complex mosaic of DAS counting areas is avoided as much as possible." The differential DAS counting areas initially proposed in the DEIS have, therefore, been revised based upon consultation with the Groundfish PDT and the Chairman of the Groundfish Oversight Committee. Consistent with the intent of Amendment 16, these areas have been modified to better reflect the broad stock reporting areas described in further detail in Item 8 of this preamble, and the existing boundaries of the U.S./Canada Management Area. Specifically, an Inshore GB Differential DAS Counting Area was created to reflect the Inshore GB Broad Stock Area (*i.e.*, statistical area 521) and the numerous stocks that are found within this area; the Inshore GOM Differential DAS Counting Area boundaries were moved north to intersect with the coastline of Maine, and west to create the Inshore GB Differential DAS Counting Area; the Offshore GOM Differential DAS Counting Area boundary was moved north to completely cover the coastline of Maine, and the southern boundary was moved north to create the Inshore

GB Differential DAS Counting Area; the Offshore GB Differential DAS Counting Area boundary was moved north and west to better match the boundaries of the U.S./Canada Management Area; and the SNE differential DAS counting area boundary was moved west to have the area entirely outside of the U.S./Canada Management Area. NMFS is particularly interested in soliciting public comments on the creation of an Inshore GB Differential DAS Area. As originally proposed in the Amendment 16 DEIS, the waters east of Cape Cod, including the shipping lanes known as "the Channel," were divided between the Inshore and Offshore GOM Differential DAS Counting Areas. Because this area overlaps with the GOM, GB, and SNE stock areas for certain species, and includes both deep and shallow water, none of the originally proposed differential DAS counting areas would be completely adequate to cover the full ranges of some species. Thus, this proposed rule would treat this area separately. Accordingly, if a stock is caught inside/outside of the Inshore GB Differential DAS Counting Area, multiple areas would be subject to differential DAS counting. For example, CC/GOM yellowtail flounder is caught in both the Inshore GOM and the Inshore GB Differential DAS Counting Areas. If catch by common pool vessels exceeds the CC/GOM yellowtail flounder sub-ACL for this fishery, both areas would be subject to differential DAS counting during the following FY.

The differential DAS counting factor that would apply would be based upon the projected proportion of the sub-ACL that is expected to be caught by common pool vessels plus the common pool's portion of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery, if appropriate, rounded to the nearest even tenth, as listed in Table 4. If it is projected that catch in a particular FY will exceed or underharvest the sub-ACLs for several NE multispecies regulated species or ocean pout stocks within a particular stock area, the Regional Administrator would apply the most restrictive differential DAS counting factor within that particular stock area. For example, if it were projected that common pool vessels will be responsible for catch that is 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator would apply a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Stock Area during the

following FY (*i.e.*, Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). If it is projected that common pool vessels will underharvest all stocks within a particular stock area by at least 10 percent and that the overall ACL for a particular stock is not exceeded by all sub-components of the fishery, the Regional Administrator would reduce the rate at which DAS are counted to allow the fishery to achieve the ACLs for all stocks within that area. For example, if the common pool catches 0.65 times the CC/GOM yellowtail flounder sub-ACL and 0.80 times the sub-ACL for all other stocks within the Inshore GOM Differential DAS Counting Area, the Regional Administrator would apply a differential DAS factor of 0.80 to all Category A DAS used only in the Inshore GOM Differential DAS Counting Area during the following FY (*i.e.*, Category A DAS would be charged at a rate of 19.2 hr for every 24 hr fished, or 0.80 times 24-hr DAS counting). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas (either to reduce or to increase effort), the Regional Administrator would adjust the ratio of Category A: Category B DAS to reduce/increase the number of Category A DAS available, based upon the amount of the overage or underage, rather than applying a differential DAS counting factor to all Category A DAS used in all stock areas.

Any differential DAS counting factor implemented in FY 2012 for any ACL overages in a particular stock area during FY 2011 would be applied against the DAS counting rate implemented in that stock area for FY 2011. While unlikely, it is possible that, even if the differential DAS counting AM is triggered in a particular stock area due to excessive catch of one or more ACLs in that stock area in FY 2010, the catch of stocks within that stock area could exceed ACLs during FY 2011, as well. If this were to happen, it would suggest that the differential DAS counting rate that was implemented as a result of excessive catch in FY 2010 was insufficient to prevent the ACLs specified for FY 2011 from being exceeded. Therefore, while Amendment 16 does not specifically address this possibility, it stands to reason that any differential DAS counting factor applied to DAS fished in a particular stock area during FY 2012 to account for the excessive catch in FY 2011 should be applied to the DAS rate charged during FY 2011, even if a differential DAS counting rate was implemented in that

stock area during FY 2011. For example, if a projection by the Regional Administrator concluded that 1.2 times the GOM cod ACL was caught during FY 2010, a differential DAS factor of 1.2 would be applied to any Category A DAS used in the Inshore GOM Stock Area during FY 2011 (*i.e.*, Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). However, if even this higher DAS counting rate were insufficient to prevent the GOM cod ACL from being exceeded again in FY 2011 and 1.5 times the GOM cod ACL was caught during FY 2011, a differential DAS factor of 1.5 would be applied to the DAS charging rate during FY 2011 (*i.e.*, Category A DAS would be charged at a rate of 43.2 hr for every 24 hr fished ($1.2 \times 1.5 \times 24$ -hr DAS charge)). This would more accurately reflect the likely reduction in effort needed to prevent the ACL from being exceeded, and increase the likelihood that catch during FY 2012 would not exceed the ACL in that stock area and result in the trimester TAC area closures being triggered.

This differential DAS counting AM would not be triggered if the Regional Administrator conducts an analysis of the mixed-stock exception in 50 CFR 600.310(m) and determines that the mixed-stock exception is applicable. Pursuant to a court order in the case of *Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez* (Case No. 06-cv-12110 (EFH) in the U.S. District Court, District of Massachusetts), NMFS conducted an analysis of the mixed-stock exception, under old and new guidelines on this subject, to determine if either provision was applicable to the development of Framework Adjustment 42 to the FMP. Based upon this analysis, NMFS concluded that the mixed-stock exception, under the old and new guidelines, was not a viable alternative for the Council or NMFS to consider or implement for overfished stocks addressed by Framework Adjustment 42 or for any future conservation or management measures related to overfished stocks. This analysis concluded that: (1) This provision creates an exception from the requirement to end overfishing, but does not eliminate the need to rebuild overfished stocks within rebuilding timeframes established consistent with the Magnuson-Stevens Act; (2) cannot be applied to overfished stocks pursuant to the National Standard 1 Guidelines; and (3) cannot be used to jeopardize the rebuilding programs of overfished stocks. Currently, at least 12 NE

multispecies regulated species or ocean pout stocks are overfished and 12 are subject to overfishing, with overfished stocks found in each of the differential DAS counting areas proposed under this AM. Because this AM is intended to prevent overfishing, applying the mixed-stock exception to avoid implementing differential DAS counting in any stock area due to an overage of the sub-ACL allocated to the common pool would likely lead to overfishing of already overfished stocks. Accordingly, NMFS has determined that the mixed-stock exception is neither applicable, nor justified under the proposed measures for this AM.

TABLE 4—DIFFERENTIAL DAS FACTOR APPLIED AS AN ACCOUNTABILITY MEASURE DURING FYS 2010/2011

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change.
1.0	No change.
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

Starting in FY 2012, common pool vessels would be subject to a hard-TAC AM. Under this AM, the sub-ACL available to common pool vessels for each NE multispecies regulated species or ocean pout stock would be apportioned into trimesters of 4 months duration, beginning at the start of the FY (*i.e.*, Trimester 1: May 1—August 31; Trimester 2: September 1—December 31; Trimester 3: January 1—April 30), as listed in Table 5. The distribution of these sub-ACLs into trimesters was based upon a preferred distribution of recent landing patterns, but would be

adjusted through the biennial adjustment process to reflect the landing patterns of the most recent 5-yr period available at the time of each adjustment. If a trimester TAC is exceeded/underharvested, the overage/underage would be applied to the following trimester, with the exception that any underage could not be applied to the following FY's trimester TACs. With the exception of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TAC for a NE multispecies regulated species or ocean pout stock will be caught, the Regional Administrator would close the area where the stock is predominantly caught to all NE multispecies common pool vessels using gear capable of catching that species, as listed in Table 6, for the remainder of that trimester. The areas proposed to be closed to particular gears are further described in this proposed rule, and are based upon the area that accounted for 90 percent of the catch of each stock according to available vessel trip report (VTR) data for calendar years 2006 through 2008. These areas differ slightly from those originally described in the Amendment 16 DEIS, as discussed further in Section 4.3.7.1.2 of the Amendment 16 FEIS. The Regional Administrator would be allowed to expand or narrow the closure areas based upon additional catch information, to reflect where each stock is actually caught. If the entire common pool sub-ACL for a particular stock is exceeded (*i.e.*, the common pool catch of that stock at the end of the FY exceeds all three trimester TACs for that stock combined, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch of that stock by vessels fishing in state waters outside of the FMP, exempted fisheries, or the scallop fishery), an amount equal to the overage would be deducted from the sub-ACL for that stock that is allocated to common pool vessels during the following year. Because a targeted fishery for windowpane flounder, ocean pout, and Atlantic halibut would be

eliminated by the restrictive trip limits proposed by this action (*i.e.*, a prohibition on the retention of these stocks, or, in the case of halibut, a one-fish-per-trip restriction), the catch of these stocks would be monitored for the purposes of deducting overages, but would not trigger an area closure. Although Amendment 16 would not close particular areas when these trimester TACs for these stocks are harvested, it does include a trip limit adjustment for these stocks. Once 60 percent of the trimester TAC for any of these stocks is projected to be caught, the Regional Administrator would have the authority to specify a trip limit to prevent the trimester TAC or sub-ACL allocated to the common pool vessels from being exceeded. Because retention of these stocks is either prohibited or restricted to one fish per trip, such adjustments would not affect catch of these stocks until possession is once again allowed when the stocks rebuild. Although the Council proposes to add Atlantic wolffish to the FMP under Amendment 16, and would prohibit the possession of this species, the Council did not specifically exempt this species from the trimester TAC AM. Accordingly, this action proposes to include an Atlantic wolffish trimester TAC distribution and area closure for trawl and gillnet gear based upon available catch data, as summarized in Tables 5 and 6. Because Amendment 16 did not specifically address how to handle Atlantic wolffish, NMFS is specifically seeking public comment on the proposed Atlantic wolffish trimester TAC and closure area. Finally, the white hake trip limit would be reduced to 500 lb (227 kg) per DAS, up to 2,000 lb (907.2 kg) per trip. This is based upon a concern that the ACL for white hake would be small, even when the stock is rebuilt. Therefore, by reducing the white hake trip limit, the likelihood that the trimester TAC would be exceeded would be reduced, thereby minimizing the chance that a stock area would be closed due to excessive landings of white hake.

TABLE 5—PORTION OF COMMON POOL ACLS APPORTIONED TO EACH TRIMESTER UNDER THE COMMON POOL TRIMESTER TAC AM

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM Cod	27	36	37
GB Cod	25	37	38
GOM Haddock	27	26	47
GB Haddock	27	33	40
CC/GOM Yellowtail flounder	35	35	30
GB Yellowtail flounder	19	30	52
SNE/MA Yellowtail flounder	21	37	42
GOM Winter flounder	37	38	25

TABLE 5—PORTION OF COMMON POOL ACLS APPORTIONED TO EACH TRIMESTER UNDER THE COMMON POOL TRIMESTER TAC AM—Continued

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GB Winter flounder	8	24	69
SNE/MA Winter flounder	36	50	14
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White hake	38	31	31
Northern Windowpane flounder	33	33	34
Southern Windowpane flounder	33	33	34
Ocean pout	33	33	34
Atlantic halibut	33	33	34
Atlantic wolffish	75	13	12

TABLE 6—GEAR/AREA PROHIBITIONS UNDER THE COMMON POOL TRIMESTER TAC AM

Species	Stock	Area/gear prohibited when TAC is caught	
		Statistical areas	Gear
Cod	GB	521,522,525,526,561	Trawl, gillnet, longline/hook.
	GOM	513,514,515	Trawl, gillnet, longline/hook.
Haddock	GB	521,522,561	Trawl, gillnet, longline/hook.
	GOM	512,513,514,515	Trawl, gillnet, longline/hook.
Yellowtail flounder	GB	522,525,561,562	Trawl, gillnet.
	SNE/MA	537,539,612,613	Trawl, gillnet.
	CC/GOM	514,521	Trawl, gillnet.
American plaice		512,513,514,515,521,522	Trawl.
Witch flounder		512,513,514,515,521,522	Trawl.
Winter flounder	GB	522,562	Trawl.
	GOM	514	Trawl, gillnet.
	SNE/MA	521,526,537,539,612,613	Trawl.
Redfish		513,514,515,521,522,561	Trawl.
White hake		511,512,513,514,515,521,522,	Trawl, gillnet, longline/hook.
		525,561,613,616	
Pollock		513,514,515,521,522,561	Gillnet, trawl, longline/hook. Trawl, gillnet.
Atlantic wolffish		513,514, 521,522	

To facilitate monitoring trimester TACs under the common pool trimester TAC AM, 20 percent of trips by common pool vessels would have their offloads monitored by an independent third-party service provider approved/certified by NMFS to provide such services. These service providers would be required to randomly deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. To ensure coverage is randomly deployed, common pool vessels may only use one dockside monitoring service provider per fishing year. The costs associated with monitoring vessel offloads would be the responsibility of individual vessels. Vessels would be required to submit trip-start and trip-end haul reports to facilitate the deployment of such dockside/roving monitors, as further described in Item 14 of this preamble.

Recreational AMs

For the recreational fishery, once recreational catch information is available for the previous FY (expected by July), the Regional Administrator would evaluate whether recreational catch exceeded the recreational allocation for GOM cod or GOM haddock. For FY 2010, recreational catch would be compared to the recreational ACL for each stock for FY 2010. For FY 2011, the average recreational catch for FYs 2010 and 2011 would be compared to the average recreational ACL for each stock during FYs 2010 and 2011. Beginning with FY 2012, the 3-year average recreational catch would be compared to the most recent 3-year average of the recreational ACL for each stock.

Because there is a high degree of uncertainty associated with the number of recreational anglers and the amount of recreational catch between fishing years, the Council determined that it would be difficult to design an appropriate recreational AM in advance.

In addition, the Council determined that there is a need to coordinate recreational measures with state management agencies represented on the Council in determining recreational AMs, as a large portion of recreational fishing activity occurs in state waters. Therefore, under Amendment 16, if it is determined that the recreational fishery has exceeded its allocation for GOM cod or haddock, NMFS would develop and implement the appropriate measures necessary to prevent the recreational fishery from exceeding the applicable sub-ACL in future years, in consultation with the Council. Appropriate AMs for the recreational fishery could include adjustments to fishing season, minimum fish size, or possession limits.

AMs if an Overall ACL for a Particular Stock Is Exceeded

As described above, several components of the fishery are allocated sub-ACLs for stocks managed by the FMP and are, therefore, subject to AMs. However, Amendment 16 also proposes

that AMs for the NE multispecies fishery must be sufficient to prevent overfishing on each stock as a whole. This means that, if catch by components of the fishery that are not subject to AMs at this time (*i.e.*, vessels fishing in state waters outside of the FMP, exempted fisheries, and the scallop fishery) exceed their allocations and the overall ACL for a particular stock is exceeded, the AMs applicable to the NE multispecies fishery described above, including those specified for Sector, common pool, and recreational and charter/party vessels, could be triggered to ensure that overfishing does not occur on the stock as a whole. Because catch data for components of the fishery that are not subject to AMs are not always available either within the FY, or at the end of the FY, NMFS would implement or adjust any AMs applicable to the NE multispecies fishery during the next FY, or as soon as practicable thereafter, once catch data for all such fisheries are available. If excessive catch by vessels fishing in state waters outside the FMP, exempted fisheries, or the scallop fishery exceeds these fisheries' individual allocations for a particular stock, but the overall ACL for a particular stock is not exceeded, then no AMs would be triggered in the NE multispecies fishery due to catch by such fisheries. However, if an individual component of the NE multispecies fishery exceeds its allocation of a particular stock, then the applicable AM for that component of the fishery would be triggered, even if the overall ACL for that stock is not exceeded.

If an overage of the overall ACL for a particular stock occurs, and there is an overage of the sub-component of the ACL allocated to vessels fishing in state waters outside the FMP, exempted fisheries, or the scallop fishery, the amount of the overage of the overall ACL would be divided among the entire NE multispecies fishery, including common pool vessels, approved Sectors, and private recreational and charter/party vessels, based upon each component's share of that stock's ACL available to the NE multispecies fishery. Each component's share of the ACL

overage for a particular stock would then be added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If it does, that component would automatically be subject to the applicable AM. The following is an example to illustrate this calculation. For FY 2010, suppose there is an overall ACL of 1,000 mt of CC/GOM yellowtail flounder allocated across all fisheries. Five percent of the 1,000 mt (50 mt) is allocated to vessels fishing in state waters outside the FMP, exempted fisheries, and the Atlantic sea scallop fishery, while the remaining 95 percent (950 mt) is allocated to the NE multispecies fishery. The 950 mt allocated to the NE multispecies fishery is further divided between common pool vessels (allocated 200 mt), Sector 1 (allocated 450 mt), and Sector 2 (allocated 300 mt). In FY 2010, vessels fishing in state waters outside the FMP, exempted fisheries, and the scallop fishery cumulatively catch 300 mt of CC/GOM yellowtail flounder, exceeding their allocation by 250 mt (*i.e.*, 300 mt caught – 50 mt allocated). However, components of the NE multispecies fishery each caught less than or equal to their allocations for this stock, with common pool vessels catching 150 mt, Sector 1 vessels catching 450 mt, and Sector 2 vessels catching 300 mt. Cumulatively, the overall ACL for CC/GOM yellowtail flounder was exceeded by 200 mt based upon the catch of all fisheries (see Table 7 below). To determine how to distribute the overage of the overall ACL among the components of the NE multispecies fishery, it is necessary to first determine each component's share of that stock's ACL that is available to the NE multispecies fishery by dividing each component's allocation for that stock (*i.e.*, 200 mt to common pool vessels, 450 mt to Sector 1 vessels, and 300 mt to Sector 2 vessels) by the total amount allocated to the NE multispecies fishery (200 mt + 450 mt + 300 mt = 950 mt). In this example, the common pool is

allocated 21 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (200 mt ÷ 950 mt), while Sector 1 is allocated 47 percent (450 mt ÷ 950 mt), and Sector 2 is allocated 32 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (300 mt ÷ 950 mt). Therefore, to determine whether the common pool and sector AMs would be triggered, 42 mt of the overage (21 percent times 200 mt overage) would be added to the actual common pool catch (150 mt), 94 mt of the overage (47 percent times the 200 mt overage) would be added to the actual catch by Sector 1 vessels (450 mt), and 64 mt of the overage (32 percent times the 200 mt overage) would be added to the actual catch by Sector 2 vessels of (300 mt). In this example, because vessels in both Sector 1 and Sector 2 caught their full allocation of CC/GOM yellowtail flounder, when the overage of the overall ACL was proportionally distributed among the components of the NE multispecies fishery, the total catch of CC/GOM yellowtail flounder by Sector 1 vessels exceeded its CC/GOM yellowtail flounder allocation by 94 mt (*i.e.*, 450 mt catch by Sector 1 vessels + 94 mt share of the overage = 544 mt, or a 94 mt overage of its allocation), while the total catch of CC/GOM yellowtail flounder by Sector 2 vessels exceeded its CC/GOM yellowtail flounder allocation by 64 mt (*i.e.*, 300 mt catch by Sector 2 vessels + 64 mt share of the overage = 364 mt, or a 64 mt overage of its allocation). Accordingly, the AMs for both sectors would be triggered, resulting in Sector 1's CC/GOM yellowtail flounder allocation being reduced by 94 mt, and Sector 2's CC/GOM yellowtail flounder allocation being reduced by 64 mt during FY 2011. However, when the common pool's share of the overage of the overall ACL (42 mt) was added to the common pool's catch of CC/GOM yellowtail flounder (150 mt), the total catch did not exceed the CC/GOM yellowtail flounder allocation to the common pool (42 mt + 150 mt < 200 mt). Therefore, the common pool would not be subject to the differential DAS counting AM in FY 2011 (see Table 7 below).

TABLE 7—EXAMPLE OF HOW AMS WOULD APPLY IF THE OVERALL ACL FOR A STOCK IS EXCEEDED BY OTHER SUB-COMPONENTS OF THE FISHERY

Component of the fishery	Share of ACL (%)	Amount of sub-ACL (mt)	Share of multis ACL (%)	Catch in FY 2010 (mt)	Overage (mt)	Distribution of exempted fisheries and scallop overage (mt)	Total catch plus exempted fisheries and scallop overage (mt)	Amount of sub-ACL exceeded after addition of overage (mt)
Sector 1	45	450	47	450	0	94	544	95
Sector 2	30	300	32	300	0	64	364	63
Common Pool	20	200	21	150	-50	42	192	-8
State Waters Fisheries, Exempted Fisheries, and the Scallop Fishery	5	50	NA	300	250	NA	NA	NA
Total	100	1,000	100	1,200	200	200	1,100	150

7. Issuance of Limited Access Multispecies and Atlantic Sea Scallop Permits

Currently, a vessel cannot be issued a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time, unless the scallop dredge vessel qualified for a limited access NE multispecies combination permit. In addition, vessels issued a limited access Atlantic sea scallop trawl permit and a limited access NE multispecies permit can not use scallop dredge gear unless it voluntarily relinquishes its limited access NE multispecies permit. Amendment 16 proposes to remove these restrictions and allow a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time. In addition, this change would allow the owner of a vessel currently issued a limited access Atlantic sea scallop trawl permit to convert to a dredge gear permit without relinquishing his/her limited access NE multispecies permit. This provision is intended to increase the flexibility of vessel operations by eliminating restrictions that limit participation in both the Atlantic sea scallop fishery and the NE multispecies fishery by the same vessel and, thereby, increase the potential return on investments in both fisheries.

8. Recordkeeping and Reporting Requirements

VTRs

Under the current regulations, all operators of vessels issued a Federal fishing permit, with the exception of vessels issued an American lobster permit, must submit a VTR within 15 days after the end of the reporting month. These VTRs specify gear used, area fished, and amount of each species

kept and discarded, as well as other pertinent information for each fishing trip. VTRs are used to apportion catch to stock areas for catch monitoring and stock assessment purposes. Current VTR submission requirements result in delays in receiving and processing VTRs, making them unusable for the timely monitoring of either Sector catch or ACLs at the stock level, both of which rely upon catch, area, and gear information contained in VTRs.

Neither Amendment 16, nor any other previous Council action in the FMP, specified the VTR submission requirements, but rather deferred specification of such requirements to NMFS. Because of the need for more real-time data to implement ABCs, ACLs, and Sector provisions under Amendment 16, NMFS is proposing to increase the reporting frequency for VTRs for all vessels issued a NE multispecies permit. The VTR submission requirements would change from requiring submission of VTRs within 15 days after the end of the reporting month to requiring that VTRs, including "did not fish reports," be submitted by midnight of the first Tuesday following the end of the reporting week (*i.e.*, 0001 hr local time Sunday through 2400 hr local time the following Saturday). The date when fish are offloaded would dictate the reporting week for which the VTR must be submitted to NMFS, and any fishing activity during a particular reporting week (*i.e.*, starting a trip, landing, or offloading catch) would constitute fishing during that reporting week, and would eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (*i.e.*, after a trip lasting 8 days), the VTR for that fishing

trip would need to be submitted by midnight Tuesday of the third week, but a negative report (*i.e.*, a "did not fish" report) would not be required for either week. These measures would make the VTR submission requirements consistent with dealer report submission requirements and would increase the accuracy and timeliness of catch data available for monitoring and assessment purposes under this action.

Area Declarations

Amendment 16 proposes to establish four broad stock areas that encompass multiple statistical areas for the purposes of providing more accurate and timely data to apportion catch to individual stock areas, including providing area information for stock apportionment if VTR data are missing or delayed. Operators of all vessels issued a limited access NE multispecies permit that are fishing for NE multispecies under a NE multispecies DAS, under the provisions of a small vessel category (Category C) or Handgear A permit, or on a Sector trip would be required to declare their intent to fish in one or more of these broad stock areas via their vessel monitoring system (VMS) prior to each trip on which NE multispecies may be landed. In addition, all vessels would be required to submit the VTR serial number associated with the first page of the VTR for that trip, as instructed by the Regional Administrator. The VTR serial number would be used to link VTRs with dealer reports and VMS data to increase the accuracy of data used for monitoring catch.

Trip-level Catch Reports

If the operator of a limited access NE multispecies vessel, including vessels issued a limited access Handgear A permit, declares his/her intent to fish in multiple broad stock areas on the same

trip, as described above, the operator would be required to submit a trip-level catch report to NMFS via VMS that details the amount of each NE multispecies regulated species or ocean pout species kept (in pounds, landed weight) from each broad stock area on that trip prior to crossing the VMS demarcation line upon the return to port, as instructed by NMFS. This report would be required for such trips unless the vessel is required to submit a daily VMS catch report when operating in one of the special management programs (SMPs), as described further below. These reports would be used to provide more timely data on catch apportionment to stock areas until VTR data become available.

Amendment 16 proposes that vessels fishing in multiple broad stock areas would be required to submit daily VMS catch reports. However, Amendment 16 also provides NMFS with the ability to specify other reporting procedures to reduce unnecessary duplication. Therefore, as noted above, NMFS is proposing to require trip-level VMS catch reports instead of daily catch reports to minimize the reporting burden on vessels without compromising data available to accurately monitor NE multispecies regulated species and ocean pout catch. In addition, Amendment 16 would authorize NMFS to exempt a vessel participating in an approved Sector from the trip-level VMS catch reports when declaring its intent to fish in multiple broad stock areas to reduce unnecessary duplication. At this time, NMFS has determined that these trip-level catch reports are necessary to accurately monitor NE multispecies regulated species and ocean pout catch by all NE multispecies vessels, including those that are fishing under an approved Sector operations plan. If further review of available catch monitoring data indicates that trip-level catch reports are no longer necessary to accurately monitor NE multispecies regulated species and ocean pout catch, and duplicate other available catch data, NMFS may exempt Sector vessels from such reporting requirements during subsequent FYs.

SMP Reporting Requirements

Amendment 16 would maintain the existing reporting requirements for vessels that participate in a SMP (*i.e.*, SAPs, the U.S./Canada Management Area, and the Regular B DAS Program), unless otherwise noted below for vessels participating in an approved Sector. All of these programs require vessel operators to submit a daily VMS catch report detailing the amount of

each species kept and discarded, the statistical area fished, the VTR serial number for that trip, and the date the fish were caught. In Framework Adjustment 42 (October 23, 2006; 71 FR 62156), the Council adopted, and NMFS approved, universal reporting requirements for SMPs to reduce complexity and increase data quality for the purposes of monitoring catch in these programs. As described above, Amendment 16 would also require all NE multispecies vessels to submit a trip-level catch report when fishing in multiple broad stock reporting areas. To maintain consistency with the Council's intent to streamline the reporting requirements and minimize the time and cost burden associated with such reporting requirements, NMFS proposes to revise the daily VMS catch report for SMPs to reflect the requirements outlined in the trip-level catch reports described above. This would eliminate the current requirement for vessel operators fishing in SMPs to report species discards and statistical area fished, but would require vessel operators to specify the VTR serial number or other universal trip ID specified by NMFS, the date fish were caught (applicable only for SMP trips), and the amount of each species kept in each broad stock reporting area.

Amendment 16 proposes that Sector vessels participating in SMPs would be required to comply with the SMP-specific reporting requirements, but would specifically provide the Regional Administrator with the authority to remove SMP-specific reporting requirements if it is determined that the reporting requirements are unnecessary. At this time, NMFS has determined that daily SMP-specific VMS catch reports for vessels participating in Sectors are unnecessary, because Sectors would be allocated ACE for most NE multispecies regulated species and ocean pout stocks and, therefore, would not be subject to any SMP-specific TACs or other restrictions on catch; would be responsible for ensuring that Sector allocations are not exceeded; and would provide sufficient information to monitor all Sector catch through the submission of weekly Sector catch reports described further in Item 14 of this preamble. Consistent with Amendment 16, NMFS is proposing to retain the authority to reinstate such reporting requirements if it is later determined that the weekly Sector catch reports are insufficient to adequately monitor catch by Sector vessels in SMPs. This exemption from the SMP reporting requirements for Sector vessels would not apply to vessels

participating in the Closed Area (CA) I Hook Gear Haddock SAP. This SAP includes an overall haddock TAC that is applicable to both Sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for Sector managers to provide daily catch reports by participating Sector vessels would be maintained.

Dealer Reporting and Record Retention Requirements

Because Amendment 16 would implement new requirements for dockside/roving monitors for common pool vessels beginning in FY 2012, and for Sector vessels beginning in FY 2010, as described in Items 6 and 14 of this preamble, respectively, the dealer reporting and record retention requirements currently specified in § 648.7(a) and (e), respectively, need to be revised to accommodate additional reporting requirements associated with these measures. Specifically, NMFS is proposing to require dealers to provide a copy of any dealer weigh-out documents or dealer receipts for a particular offloading event to dockside/roving monitor, allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor. In addition, this proposed rule would require vendors providing dockside/roving monitor services to retain and make available for review any records relating to fish offloaded and observed by dockside/roving monitors for 3 yr after the fish were first offloaded. This measure is intended to maintain consistency with existing record retention requirements and facilitate enforcement of measures proposed under Amendment 16.

Pre-Trip Observer Notification

To better monitor NE multispecies regulated species and ocean pout catch under Amendment 16, NMFS is likely to receive sufficient funding to increase observer coverage in the NE multispecies fishery for FY 2010 and, possibly, 2011. At this time, funding is likely available to observe up to 30 percent of common pool trips, and up to 38 percent of Sector trips. To ensure that NMFS can achieve targeted observer coverage levels, the NMFS Northeast Fisheries Observer Program (NEFOP) needs additional information to facilitate the deployment of observers on trips that would land NE multispecies regulated species and ocean pout. Therefore, based on the authority provided the Secretary to request additional information to

implement an FMP in sections 305(d) and 402(a) of the Magnuson-Stevens Act, NMFS is proposing to require that any vessel issued a limited access NE multispecies permit and fishing under a NE multispecies DAS or on a Sector trip provide NMFS with the vessel name, permit number, and Sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery. For trips lasting 48 hr or less, the vessel owner, operator, or manager would be able to make a weekly notification, rather than a separate notification prior to each trip. Such weekly notifications must occur by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or Sector trip during the following week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. NMFS would inform the vessel whether an observer has been assigned for that trip, or a waiver issued within 24 hr of notification. This pre-trip notification would fulfill the current and proposed observer notification requirements for trips into SMPs. However, if funding is no longer sufficient to provide high levels of observer coverage for the entire fishery, the Regional Administrator may eliminate this pre-trip notification requirement for all trips, as it would no longer be necessary to facilitate observer deployment for all NE multispecies vessels. If this occurs, the pre-trip observer notification requirements for trips into SMPs would remain in effect.

Public comment is sought specifically regarding: (1) Whether this 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 estimate; (2) ways to enhance the quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. In particular, NMFS is seeking comment on reporting requirements that were not specifically detailed in the Amendment 16 FEIS, but may be considered necessary to carry out Amendment 16 measures. These measures include the increased frequency of VTR submissions; pre-trip observer notification to facilitate

observer deployment; and hail reports required for dockside and at-sea monitoring requirements specified in Items 6 and 15 of this preamble, respectively. Send comments on these or any other aspects of the collection of information to (enter office name) at the **ADDRESSES** above and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

9. Effort Controls

Amendment 16 proposes a number of revisions to existing effort controls, including revisions to NE multispecies DAS allocations, NE multispecies DAS accrual provisions, gear restricted areas, and trip limits, as described in further detail below. These effort controls would apply to vessels fishing under the provisions of the common pool.

When the Council adopted Amendment 16, the effort controls selected were expected to meet the necessary mortality reductions for all stocks, with the exception of SNE/MA winter flounder and northern windowpane flounder, as estimated by the Groundfish PDT based upon earlier guidance by the SSC regarding ABCs. As described above, Amendment 16 proposes to implement measures that would eliminate targeting of SNE/MA winter flounder and reduce discards in other trawl fisheries to reduce F on SNE/MA as close to zero as practicable. A similar approach is proposed for northern windowpane flounder, but a $F_{rebuild}$ cannot be calculated due to uncertainty in the assessment for this stock and, therefore, the effort controls described below would reduce F to the extent practicable.

DAS Allocation

Amendment 16 would revise the way NE multispecies DAS allocated to both common pool and Sector vessels would be distributed between Category A and Category B DAS, as originally implemented under Amendment 13. Starting in FY 2010, common pool vessels would have their DAS allocations distributed as follows: Category A DAS would represent 27.5 percent of a vessel's Amendment 13 DAS baseline, Category B Regular DAS would represent 36.25 percent of the Amendment 13 DAS baseline, and Category B Reserve DAS would represent 36.25 percent of the Amendment 13 DAS baseline. For example, a vessel with an Amendment 13 DAS baseline of 88 DAS would be allocated 24.2 Category A DAS, 31.9 Category B Regular DAS, and 31.9 Category B Reserve DAS. This represents a 50-percent reduction from each vessel's 2006 DAS allocation, or an

approximately 32-percent reduction from each vessel's 2009 DAS allocation.

Amendment 16 would exempt Sector vessels from the DAS allocation reductions for common pool vessels because such vessels would be subject to hard TACs to control fishing effort. As a result, Amendment 16 would retain the existing 2009 DAS allocations for vessel's participating in a Sector for the purposes of participating in the monkfish fishery, a fishery that still requires the concurrent use of a NE multispecies DAS with a monkfish DAS for vessels issued a limited access Category C and D monkfish permit. If a vessel fishes in the common pool in one FY, but in an approved Sector during the next FY, its DAS allocation for each FY would reflect whether the vessel is fishing under the common pool, or participating in an approved Sector.

DAS Counting

Under Amendment 16, all NE multispecies DAS used by vessels fishing in the common pool would be counted in 24-hr increments, based upon the time called into the DAS program via VMS or the interactive voice response (IVR) system. For example, if a vessel fished 6 hr, it would be charged for 24 hr of DAS usage; a vessel that fished 25 hr would be charged for 48 hr of DAS usage. The existing differential DAS counting areas and minimum DAS charge for Day gillnet vessels (*i.e.*, the 3-15 DAS counting rule where Day gillnet vessels were charged 15 hr for any trip greater than 3 hr or less than or equal to 15 hr in duration, but actual time fished for any trip less than or equal to 3 hr or greater than 15 hr in duration) would be eliminated.

Although Amendment 16 would exempt vessels participating in a Sector from the requirement to use a NE multispecies DAS to land NE multispecies regulated species and ocean pout, vessels issued a limited access Category C or D monkfish permit would still be required to use a NE multispecies DAS to comply with the restrictions of the monkfish fishery. As a result, because Sector vessels would be exempt from the Amendment 16 NE multispecies DAS counting provisions for common pool vessels, Sector vessels issued a limited access Category C or D monkfish permit fishing under a monkfish DAS would be charged NE multispecies DAS to the nearest minute based upon the time called into the DAS program via VMS or the IVR call-in system. Similarly, Sector vessels fishing under the Day gillnet designation (*i.e.*, those vessels that return to port after setting their gillnets) would no longer be

subject to the existing NE multispecies Day gillnet DAS counting provisions, as described above for common pool DAS counting measures.

Restricted Gear Areas (RGAs)

Amendment 16 proposes two RGAs for common pool vessels. Both RGAs are intended to reduce the catch of flatfish species (predominantly SNE/MA winter flounder and SNE/MA yellowtail flounder) through the required use of selective gear in areas where these species are caught. Under Amendment 16, vessels fishing in either the Western GB RGA or the SNE RGA would be restricted to using the following gear: A haddock separator trawl, a Ruhle trawl, a rope trawl, longline/tub trawls, handgear, or sink gillnets. Tie-down gillnets would be allowed, provided the mesh is greater than or equal to 10 inches (25.4 cm). Gear other than those listed above would not be allowed on board when fishing within these RGAs. The Regional Administrator could approve the use of additional gear within these RGAs, provided the new gear meets the standards established for the approval of additional gear in SMPs. The existing gear performance standards would apply to gear used in these areas to ensure that selective gear is used properly (e.g., restrictive trip limits for flatfish and other bottom-oriented species, such as 500 lb (226.8 kg) of all flatfish species combined, and zero lobsters). Common pool vessels fishing in the RGAs would be required to declare into these areas via VMS, as instructed by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization (LOA) to fish in these RGAs. The minimum participation period for these LOAs would be 7 consecutive days, meaning that a vessel must agree to fish in these areas for a minimum of 7 consecutive days. If issued a LOA, a vessel must retain the LOA on board for the duration of the participation period. A vessel could fish inside and outside of these RGAs on the same trip, but would be subject to the most restrictive measures (gear, trip limits, etc.) for the areas fished for the entire trip. A vessel fishing outside of these areas could transit the RGAs, provided gear other than the selective gear specified above is properly stowed.

Both the areas and the gear required to be used in these areas are further defined in this proposed rule. NMFS based the proposed definition of the rope trawl upon the description of the net in the final report of the research project that designed and tested this net, referenced in the Amendment 16 FEIS,

and consultations with the industry gear experts, research scientists, and vessel operators that designed the net. NMFS is specifically seeking public comment on the description of the rope trawl. The coordinates proposed for the SNE Multispecies RGA have been slightly revised from those proposed in Amendment 16 to more accurately outline the proposed areas and reflect the area adopted by the Council, as depicted in Figure 4 of the Amendment 16 FEIS, as it intersects with the coastline of Martha's Vineyard, MA.

Trip Limits

In conjunction with the DAS restrictions described above, the following changes to trip limits are proposed:

GOM cod: The possession limit would be increased to 2,000 lb (907.2 kg) per DAS, up to 12,000 lb (5,443.2 kg) per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption (Category C permit).

GB cod: The possession limit would be increased to 2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption. The existing trip limit for GB cod caught within the Eastern U.S./Canada Area or the Eastern U.S./Canada Haddock SAP would remain the same, at 500 lb (226.8 kg) per DAS, up to 5,000 lb (2,268 kg) per trip; and 1,000 lb (453.6 kg) per trip, respectively. Consistent with existing regulations, a vessel would need to declare its intent to fish exclusively within the GB Regulated Mesh Area (RMA) via VMS to be exempt from the GOM cod limit of 12,000 lb (5,443.2 kg) per trip.

Cod limit for Handgear A vessels: The possession limit would increase to 750 lb (340.2 kg) per trip, consistent with the automatic possession limit adjustment provision implemented under Amendment 13.

Cod limit for Handgear B vessels: The possession limit would increase to 200 lb (90.7 kg) per trip, consistent with the automatic possession limit adjustment provision implemented under Amendment 13.

CC/GOM and SNE/MA yellowtail flounder: The possession limit would increase to 250 lb (113.4 kg) per DAS, up to 1,500 lb (680.4 kg) per trip.

GB yellowtail flounder: There would be no possession limit specified for this stock at the beginning of the FY. However, the Regional Administrator could implement a possession limit either prior to, or during, the FY to prevent the available GB yellowtail

flounder TAC specified for common pool vessels fishing in the U.S./Canada Management Area from being exceeded.

Atlantic halibut: The current trip limit of one fish per trip would be maintained.

SNE/MA winter flounder, windowpane flounder, ocean pout, and Atlantic wolffish: Landing of these stocks would be prohibited in any fishery.

In addition to the trip limits specified above, Amendment 16 proposes additional restrictions on the amount of fish that a vessel could land. Under Amendment 16, only one landing limit of regulated species could be landed in any 24-hr period by any vessel fishing under the common pool. If fishing in multiple stock areas, the most restrictive possession limit would apply to the entire trip. Because DAS used by common pool vessels would be counted in 24-hr increments, the existing cod running clock provision would be eliminated under Amendment 16. This provision allowed a vessel that fished only part of an additional DAS to land an additional day's worth of cod, provided the vessel declared the additional landings to NMFS so that up to an additional 24 hr of DAS could be charged for that trip.

GOM Haddock Sink Gillnet Pilot Program

Amendment 16 proposes to implement a pilot program that would allow common pool vessels to fish with 6-inch (15.24-cm) mesh stand-up sink gillnets (tie-down gillnets would be prohibited) in the GOM RMA between January 1 through April 30 of each year. Day gillnet vessels would not be able to fish with, possess, haul, or deploy more than 30 nets per trip, but Trip gillnet vessels would not be limited in the number of nets they could fish with, possess, haul, or deploy. Vessels participating in this program would be required to use Category A DAS for any fishing trip taken during the season specified for this program (i.e., any trip between January 1 and April 30), regardless of whether catch is landed (i.e., a Day gillnet vessel would be required to use Category A DAS to deploy gillnets). Participating vessels would be required to declare their intent to participate in this pilot program by October 1 of each year. The Regional Administrator would issue LOAs to participating vessels that must be carried on board during the season specified for this pilot program. In addition, vessels would be required to notify the NMFS Observer Program at least 48 hr prior to every trip under this pilot program to facilitate the

deployment of observers. This pilot program would be in place for FY 2010 through FY 2012, unless continued through a future Council action. The Regional Administrator could suspend participation in this pilot program by individual vessels or by all vessels if the program is determined to be inconsistent with the goals and objectives of the FMP.

As identified in a February 6, 2009, letter to the Council, NMFS considers this pilot program a SAP, as defined in Section 3.4.5.2 of the SEIS for Amendment 13, as it intends to facilitate the targeting of a healthy NE multispecies stocks in a manner that would otherwise be prohibited. In this case, the pilot program would target haddock by allowing vessels to use undersized mesh in the GOM RMA. Because NMFS considers this pilot program a SAP, the criteria adopted in Amendment 13 to approve a SAP should be applied. Among other things, to be approved, a SAP must not result in overfishing of any stock, or increase F on a stock of concern (defined as a stock subject to overfishing or that is overfished), and must reduce discards to the extent practicable on all species. Amendment 13 also indicates that a SAP should not undermine the achievement of the goals of the FMP, including efforts to rebuild overfished stocks, end overfishing, and minimize bycatch. NMFS is specifically seeking public comment regarding this Pilot Program and whether the SAP approval provisions should apply when deciding whether to approve this SAP under Amendment 16.

10. DAS Leasing and Transfer Programs

Amendment 16 includes several revisions to the DAS Leasing and Transfer Programs that are intended to eliminate unnecessary administrative procedures that would impede participation in these programs, as follows. Existing restrictions on leasing DAS between vessels participating in Sectors and those fishing in the common pool would be continued under Amendment 16. A similar restriction on DAS transferred under the DAS Transfer Program is proposed under Amendment 16, as further described in Item 14 of this preamble.

Eligibility

The DAS Leasing and Transfer Programs were first implemented under Amendment 13 to increase the economic efficiency of vessel operations by allowing vessels to acquire additional DAS, or lease unused DAS to another vessel. Amendment 13 prohibited permits held in confirmation

of permit history (CPH) from participating in these programs to slow the reactivation of fishing effort. Because permits in CPH can be reactivated at any time, the Amendment 13 prohibition created an administrative barrier to reactivation of such effort. Amendment 16 would eliminate this administrative barrier by allowing permits held in CPH to participate in the DAS Leasing and Transfer Programs without being activated by being placed onto a vessel. Because of continued effort controls proposed under Amendment 16, the concern that participation of permits in CPH would speed up the activation of effort is somewhat mitigated, while providing greater opportunities to increase the efficiency of vessel operations.

DAS Transfer Conservation Tax

In addition to increasing the flexibility and economic efficiency of fishing operations, the DAS Transfer Program was intended to provide long-term reduction in fishing effort by reducing active and inactive DAS from the fishery through the implementation of a conservation tax on DAS transferred under this program. However, no permits participated in this program until the DAS conservation tax was reduced from 40 percent to 20 percent on Category A and B DAS, in conjunction with other changes to the program, under Framework Adjustment 42 in FY 2006. While some vessel owners have consolidated DAS and permits under this program since FY 2006, in large part, the efficiency and conservation gains expected from this program have not materialized due to low participation in this program. Amendment 16 proposes to eliminate the DAS conservation tax entirely to increase participation in this program. Any DAS reduced due to the conservation tax applied to previously approved transfers would not be reinstated.

DAS Leasing Cap

When Amendment 13 first implemented the DAS Leasing Program, a cap was placed on the number of DAS a vessel could acquire to reduce the possibility that a vessel would accumulate excessive DAS. This cap was based upon the 2001 DAS allocation of the vessel acquiring DAS from another vessel. Because the concurrent implementation of the DAS Transfer Program allowed vessel owners to consolidate DAS allocations associated with each permit, it was realized that the DAS leasing cap could be circumvented by consolidating permits under the DAS Transfer

Program. In addition, with the continued reduction of DAS, including an additional 32-percent reduction in DAS allocations for common pool vessels under Amendment 16, the DAS leasing cap imposes a barrier that prevents vessels from acquiring sufficient DAS to remain economically viable. Therefore, Amendment 16 would eliminate the DAS leasing cap. There would be no limit on the number of DAS that a permit holder could lease from another permit holder.

11. Minimum Fish Size

Although the 2009 interim rule reduced the haddock minimum fish size from 19 inches (48.3 cm) to 18 inches (45.7 cm), the FMP still includes a minimum fish size of 19 inches (48.3 cm) for haddock and a minimum fish size of 36 inches (91.4 cm) for Atlantic halibut. Because of slower than expected growth rates, large amounts of undersized haddock are being discarded. Since both stocks of haddock are rebuilt, Amendment 16 proposes to reduce the minimum fish size to 18 inches (45.7 cm) for all NE multispecies vessels, including both commercial and recreational vessels, to reduce discards and increase landings of this healthy species. In addition, GARM III indicated that the median length at maturity for female halibut in the GOM is 41 inches (104.1 cm). Because this stock is overfished, Amendment 16 proposes to increase the minimum fish size for halibut to 41 inches (104.1 cm) for both commercial and recreational vessels to increase opportunities for halibut to spawn prior to capture, thereby increasing the likelihood that this stock will meet rebuilding objectives.

12. SMPs and SAPs

Amendment 16 proposes several changes to existing SAPs for both common pool vessels and those fishing in an approved Sector, as described in further detail below.

U.S./Canada Management Area

In 2006, Framework Adjustment 42 increased the flexibility of vessel operations in the Eastern U.S./Canada Area by allowing vessels fishing in the area to fish both inside and outside of the Eastern U.S./Canada Area on the same trip. As part of that provision, all catch of cod, haddock, and yellowtail flounder would count against the Eastern U.S./Canada TACs for GB cod and GB haddock, and the overall TAC for GB yellowtail flounder. This proposed rule would revise this provision to accommodate the allocation of these stocks to Sectors, as proposed in Amendment 16.

Incidental Catch TAC

In 2004, Framework Adjustment 40A (November 19, 2004; 69 FR 67780) developed incidental catch TACs to limit the catch of species of concern (*i.e.*, stocks that were overfished or subject to overfishing) when vessels were targeting healthier NE multispecies regulated species or ocean pout stocks under a Category B DAS in SMPs. In subsequent actions, incidental catch TACs were added for several species and adjustments were made in the size and distribution of these TACs to accommodate revised stock status and new SMPs, respectively. Amendment 16 continues to revise incidental catch TACs to accommodate the development of ACLs and the incorporation of pollock as a stock of concern. Proposed incidental catch TACs would be based upon the ACL available to the commercial common pool fishery, as only common pool vessels would be able to participate in these programs under a Category B DAS.

Under Amendment 16, the existing specification of incidental catch TACs for all stocks would remain the same, but a pollock incidental catch TAC would be specified based upon 2 percent of the ACL available to common pool vessels. This incidental catch TAC would be distributed to all SAPs, as follows: 50 percent to the Regular B DAS Program, 16 percent to the CA I Hook Gear Haddock SAP, and 34 percent to the Eastern U.S./Canada Haddock SAP. Consistent with existing SAP provisions, once the pollock incidental catch TAC is projected to be caught by common pool vessels, the use of Category B DAS in that particular SAP would be prohibited for the remainder of the season, as specified by the Regional Administrator.

Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP was implemented as a 2-year pilot program under Framework Adjustment 40A in 2004. Framework Adjustment 42 extended this SAP for an additional 2 years in 2006. The 2009 interim action extended this SAP throughout FY 2009. Amendment 16 would extend this SAP indefinitely. In addition, Amendment 16 would allow participating vessels to use codends with a minimum mesh size of 6 inches (15.24 cm) diamond or square mesh. All catch by Sector vessels would count against the Sector's allocation for each stock, including those specific to the Eastern U.S./Canada Area. Because Sectors would be restricted by their allocations for each stock, Sector vessels would not be restricted in the gear that could be used

when participating in this SAP. Sector vessels would be allowed to continue to fish in this Eastern U.S./Canada Area Haddock SAP for the entire season specified for this SAP as long as the Sector to which they belong has been allocated quota for all stocks caught in this SAP.

CA I Hook Gear Haddock SAP

The CA I Hook Gear Haddock SAP would be revised to expand both the area and the season of this SAP under Amendment 16. The season would be extended to run from May 1 through January 31. The seasonal split between Sector and common pool vessels implemented by Framework Adjustment 41 (September 14, 2005; 70 FR 54302) would be eliminated, meaning that both Sector vessels and common pool vessels would be able to fish under this SAP throughout the proposed season, provided the Sectors to which Sector vessels belong have been allocated quota for all stocks caught in this SAP. Accordingly, the division of the available GB haddock quota between Sector and common pool seasons would be eliminated as well. Once the available GB haddock quota specified for the SAP is caught, the SAP would be closed to all vessels, including Sector vessels. The SAP area would be extended to cover most of the northern portion of CA I, as described further in this proposed rule. All other requirements of this SAP would be unchanged by Amendment 16. These modifications are intended to facilitate the harvest of the available GB haddock resource.

When Framework Adjustment 41 was adopted by the Council, it included a provision that prohibited vessels participating in the SAP from using squid or mackerel for bait, or even possessing squid or mackerel on board the vessel during a trip into the SAP. These prohibitions on the use of particular bait were intended to reduce the catch rates of cod in this SAP. However, this provision was never included in the final rule implementing that action. Accordingly, this action would implement the prohibitions that should have been implemented as part of Framework Adjustment 41.

SNE/MA Winter Flounder SAP

The SNE/MA Winter Flounder SAP originally implemented under Amendment 13 would be eliminated under Amendment 16. This SAP was developed to reduce discards in the fluke fishery by allowing vessels targeting fluke west of 72° 30' W. long. using small mesh to retain up to 200 lb (90.7 kg) of SNE/MA winter flounder

per trip without using a NE multispecies DAS. Because F on SNE/MA winter flounder must be reduced to as close to zero as practicable, and because no vessels would be allowed to possess SNE/MA winter flounder under Amendment 16, continuation of this SAP would not be appropriate until improving stock conditions warrant its re-implementation.

CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder SAP was first implemented under Amendment 13 to facilitate the harvest of GB yellowtail flounder in CA II at a time when the resource was considered healthy. Since then, however, updated assessments have indicated that the stock has been determined to be overfished and subject to overfishing. Under Framework Adjustment 40B (June 1, 2005; 70 FR 31323), language was added to the regulations to allow the Regional Administrator to specify zero trips into this SAP (*i.e.*, close this SAP) if there was insufficient GB yellowtail flounder to support a fishery both inside and outside of CA II.

Catch of GB haddock has been well below target TAC levels for several years, particularly in light of several large yearclasses being recruited into the fishery. As a result, Amendment 16 proposes to revise the CA II Yellowtail Flounder SAP to facilitate the harvest of GB haddock within CA II, even when the CA II Yellowtail Flounder SAP is closed to targeting GB yellowtail flounder. This revised SAP would build upon the existing provisions of the CA II Yellowtail Flounder SAP by modifying the gear requirements and season when the area is open to targeting haddock. If and when the SAP is open to targeting yellowtail flounder, as currently defined in the regulations based upon the amount of GB yellowtail flounder available, the existing CA II Yellowtail Flounder SAP provisions apply. This includes the season (July 1 through December 31), individual vessel trip limits (one trip per vessel per month), cumulative fishery trip limits (320 trips per year, unless otherwise specified by the Regional Administrator), gear requirements (one of two types of flounder nets specified in the regulations, the haddock separator trawl, or the Ruhle trawl), GB yellowtail flounder trip limit (between 10,000–30,000 lb (4,536–13,608 kg) per trip), GB cod trip limit (1,000 lb (453.6 kg) per trip), and other provisions. When the SAP is not open to the targeting of GB yellowtail flounder, either because there is insufficient GB yellowtail flounder available to open the

SAP, or because the maximum number of trips has been taken, the SAP would be open to target GB haddock, provided the Eastern GB haddock ACL has not been caught by common pool vessels, or there is sufficient ACE for all stocks caught in the SAP for vessels participating in an approved Sector. If the SAP is open to target haddock, the following provisions would apply, unless otherwise noted below: Season (August 1 through January 31), gear requirements (a vessel would not be allowed to use a flounder net and would be required to use a haddock separator trawl, a Rühle trawl, or hook gear), trip limits (no haddock trip limit, and the existing trip limits for GB cod and GB yellowtail flounder), and the existing SAP DAS and discard provisions. All catches of GB haddock would apply to the Eastern GB haddock quotas allocated to either common pool or vessels participating in individual Sectors. Sector vessels would not be subject to the trip limits, limits to the number or frequency of trips (*i.e.*, the current restriction of 1 trip per month or the maximum 320 trips per year) or DAS restrictions specified for this SAP, but would be subject to the gear requirements for this SAP. Individual Sector vessels would be allowed to continue to fish in this modified CA II Yellowtail Flounder/Haddock SAP should it close to common pool vessels, as long as the applicable Sector has allocated quota remaining for all stocks caught in this SAP.

13. Recreational Measures

To ensure that management measures can be tailored to address the components of the fishery responsible if mortality targets are exceeded, the Council is proposing to allocate portions of the ACL for certain NE multispecies regulated species and ocean pout stocks to the recreational fishery, as specified above in Item 5 of this preamble. Based upon the criteria proposed to allocate NE multispecies regulated species and ocean pout stocks between the NE multispecies commercial/recreational fishery, this action would allocate portions of the GOM cod and GOM haddock ACLs to the recreational fishery. Based upon this allocation, to meet the target F for GOM cod, Amendment 16 proposes to extend the existing seasonal GOM cod prohibition for recreational vessels, including both private recreational and charter/party vessels for 2 weeks, to run from November 1 through April 15. The adjustment to the GOM cod prohibition was considered more effective than bag limits or size restrictions at reducing GOM cod catch by all recreational

vessels, while preserving a higher bag limit considered important for the charter/party industry. This allocation would not require any additional measures to achieve the target F for GOM haddock.

Amendment 16 proposes additional changes to recreational measures, including the elimination of the limit on the number of hooks that can be used, provisions for landing fillets, and the minimum size limits for haddock and Atlantic halibut. Amendment 7 to the FMP (May 31, 1996; 61 FR 27710) first implemented a limit of two hooks per line per angler as an effort control in the recreational fishery. Even with this restriction, discards by recreational fishermen are expected to increase as stocks rebuild. Amendment 16 would eliminate the limit of two hooks per line, but would maintain the limit of one line per angler. Recreational anglers prefer to land fillets, and some charter/party operations fillet and skin fish as a service to their customers. Amendment 16 would clarify that recreational anglers may land fillets, provided there is at least 2 square inches (5.08 square cm) of contiguous skin that allows for the ready identification of the fish species. Such fillets would be required to be from legal-sized fish, but the fillets themselves would not need to meet the minimum size requirements in the regulations. This provision is intended to facilitate existing practice in the recreational fishery without compromising efforts to enforce both size and possession limits in the fishery. Amendment 16 would also reduce the minimum size for haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) total length, indefinitely, and increase the minimum size for Atlantic halibut from 36 inches (91.4 cm) to 41 inches (104.1 cm) total length. The existing size restrictions for other stocks and the possession restrictions for all stocks would be maintained. Atlantic wolffish would be added to the FMP, with zero possession allowed for all recreational vessels.

14. Sector Measures

Amendment 16 builds upon the sector measures implemented under Amendment 13 and Framework Adjustment 42 by proposing additional sectors and revisions to many existing sector requirements, including sector allocation provisions, operations plan requirements, and monitoring and reporting requirements, as specified further below. In addition to the requirements described below, vessels participating in an approved Sector would be required to comply with the

Sector-specific AMs specified in Item 6 of this preamble, Sector reporting requirements described in Item 8 of this preamble, and Sector provisions specified for individual SMPs outlined in Item 12 of this preamble.

Sector Eligibility and Definition

Under the original Sector regulations specified by Amendment 13, permits held in CPH were prohibited from participating in a Sector. This prohibition appears to be merely an unnecessary administrative barrier to participation in Sectors, because permits currently held in CPH can be activated at any time by putting the permit onto a skiff through a vessel replacement. Amendment 16 would remove this prohibition and allow permits held in CPH to join Sectors. In addition, under Amendment 13, only vessels issued a NE multispecies DAS permit could join Sectors. However, because Amendment 16 proposes to rely upon hard TACs to control Sector effort rather than a combination of hard TACs and DAS, vessels issued a limited access NE multispecies Handgear A permit (a permit that is not subject to DAS effort controls) would be eligible to participate in Sectors. Amendment 16 proposes that vessels eligible to join Sectors must have been issued a limited access NE multispecies permit by April 30, 2008. This date was intended to identify permits that were eligible to join Sectors by the start of FY 2008 on May 1, 2008, in anticipation that Amendment 16 would be implemented by May 1, 2009. While April 30, 2008, is the last date a vessel could renew its FY 2007 permit, vessels issued permits as of May 1, 2008, more accurately reflect the Council's intent to identify permits that were eligible to join Sectors during FY 2008, as any permits that were not renewed as of April 30, 2008, would expire and would not be issued a permit as of May 1, 2008. Therefore, NMFS has revised the Sector eligibility criteria proposed in Amendment 16 to reflect that vessels issued limited access NE multispecies permits as of May 1, 2008, not April 30, 2008, are eligible to participate in Sectors under Amendment 16. Finally, consistent with the Council's Sector policy, Amendment 16 would specify a minimum number of participants required to form a Sector by proposing to define a Sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the Sector. By specifying that the three individuals must not have an ownership interest in one another, Amendment 16 attempts to address concerns that Sectors would be a means to circumvent the individual

transferable quota referendum required by the Magnuson-Stevens Act and minimizes the administrative burden associated with implementing a large number of very small Sectors.

Operations Plan Requirements

Amendment 13 specified a number of required elements that must be included in each Sector operations plan. Amendment 16 would add to those requirements to provide additional details regarding Sector reporting and monitoring provisions, as well as to better understand the composition and effort distribution of participating vessels so that the Council can better evaluate the impacts of Sectors. These additional operations plan requirements include information about coverage penalties if a Sector exceeds its allocation for any stock; detailed information about the Sector's independent third-party dockside/roving monitor service provider that meets NMFS standards to monitor Sector landings; detailed information about a monitoring program for discards; a list of all Federal and state permits held by vessels participating in the Sector; a list of specific ports where Sector members will land fish with specific exemptions provided for safety, weather, and other reasons; TAC thresholds and how the Sector would notify NMFS once the threshold has been reached; identification of potential redirection of effort as a result of Sector operations and any efforts to limit the adverse effects of such redirection of effort; and finally how NE multispecies regulated species or ocean pout would be avoided while participating in other fisheries that have a bycatch of NE multispecies regulated species and ocean pout if the Sector does not anticipate being allocated or acquiring an allocation of NE multispecies regulated species from another Sector. This last requirement is only required if the Sector anticipates operating in this manner. Sector operations plans would be required to be submitted by September 1 of each year to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next FY on May 1. Operations plans may address sector operations over either a one or a two-year period, provided the analysis is sufficient to cover the duration of the applicability of the operations plan. The Regional Administrator would review each Sector operations plan and associated analysis and approve or disapprove such operations, with implementation through publication of a rule in the **Federal Register**.

Universal Sector Exemptions

Amendment 13 specified that Sectors were not allowed exemptions from particular measures, including year-round closures, permitting restrictions, gear restrictions designed to reduce habitat impacts, and reporting requirements. Amendment 16 proposes to maintain those restrictions, but also to specify certain provisions from which all Sectors would be exempt. These "universal exemption" provisions include trip limits on stocks for which the Sector receives an allocation (*i.e.*, all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish); seasonal closed areas; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear (*i.e.*, the haddock separator trawl, the Ruhle trawl, or other approved gear) on GB, provided such vessels fish with a 6-inch (15.24-cm) mesh codend; and portions of the GOM Rolling Closure Areas (a full description of the portions of the GOM Rolling Closure Areas applicable to Sectors is further described in this proposed rule). These universal exemptions are intended to minimize a Sector's analytical and administrative burden associated with requesting such exemptions on a yearly basis. Sectors could still request and analyze additional exemptions as part of their yearly operations plans, but such exemptions would need to be approved by the Regional Administrator. The provisions applicable to a Sector, including any exemptions from existing regulations, would be specified in a LOA issued to Sectors by the Regional Administrator, which must be possessed on board participating vessels at all times to facilitate enforcement of Sector provisions.

Sector Allocations, Potential Sector Contribution (PSC), and Annual Catch Entitlement (ACE)

When Sectors were first implemented under Amendment 13, Sectors were only allocated a hard TAC for GB cod, and relied upon DAS to control effort for other stocks. Consistent with the Council's intent to transition from input controls to output controls, Amendment 16 would no longer allow Sectors to use DAS to control effort, relying instead on hard TACs to control Sector catch. Under Amendment 16, Sectors would be allocated fishery resources for all NE multispecies regulated species stocks, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder, and would not be allocated ocean pout.

With the exception of SNE/MA winter flounder, these stocks are not allocated to Sectors, because they are primarily bycatch species. Accordingly, vessels have very little landings history for these stocks that, when combined with small overall ACLs, would result in very small Sector allocations for each of these stocks, which would complicate and increase the cost of Sector monitoring and would likely lead to expansive closures once such small allocations are harvested. Instead, the Council has reduced incentives to target these particular stocks by proposing to prohibit possession of these stocks, with the exception of Atlantic halibut, where only one fish per trip would be allowed, consistent with existing regulations. Similar possession restrictions are proposed for common pool vessels, meaning that the ACLs for these stocks would be used primarily to accommodate bycatch in the NE multispecies fishery. Although SNE/MA winter flounder would not be allocated to Sectors at this time, if the status of SNE/MA winter flounder improves, this stock would be allocated in a manner similar to how other stocks would be allocated to Sectors, as described below.

Sector allocations would be in the form of an ACE for each stock, or the maximum amount of a particular stock that a Sector could catch—including both landings and discards—on a yearly basis. Each individual Sector's ACE for a particular stock would represent a share of that stock's ACL available to commercial NE multispecies vessels based upon the cumulative PSCs of vessels participating in each sector. A PSC represents an individual permit's share of the ACL for each NE multispecies regulated species or ocean pout stock based upon the individual permit's dealer landings available to NMFS (see below for further detail), including the landings histories for any permit histories consolidated onto one vessel prior to May 1, 2008, as part of the existing DAS Transfer Program provisions. These PSCs would remain with the limited access permit indefinitely, including upon replacement of a vessel, or consolidation with another limited access NE multispecies permit on another vessel. The ACE allocated to a Sector would be valid only for one FY and would be recalculated on a yearly basis based upon changes to Sector rosters. While Amendment 13 specifically restricted the size of an individual Sector allocation to no more than 20 percent of the yearly TAC for any NE multispecies regulated species or ocean pout stock, Amendment 16

would eliminate that restriction to further facilitate participation in Sectors.

The PSC for each NE multispecies regulated species or ocean pout stock would be based upon historic landings of each stock while operating under the restrictions of a limited access NE multispecies permit, including NE multispecies regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries. With the exception of GB cod, the PSC for each stock would be calculated by summing the dealer landings for each permit during FYs 1996 through 2006. This value would then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join Sectors to get the individual permit's share of the available commercial ACL for each stock. The landings history for each permit includes all landings that can be attributed to that permit. For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during FYs 1996 through 2003, before the adoption of the limited access Handgear A permit category in 2004. For GB cod, any vessel owner that indicated his/her intent to participate in one of the existing sectors (*i.e.*, the GB Cod Hook Sector or the GB Cod Fixed Gear Sector) by signing a preliminary roster for these sectors by March 1, 2008, would be allocated a GB cod PSC based upon documented landings histories of this stock between FYs 1996–2001, the years selected to determine the GB cod allocation for existing Sectors under Amendment 13. This March 1, 2008, date was selected because, at the time, the Council was intending to implement Amendment 16 by the start of FY 2009 on May 1, 2009, and needed to identify a fixed pool of vessels eligible to participate in Sectors so that PSCs could be calculated. A separate GB cod allocation for vessels intending to participate in one of the existing Sectors was intended to recognize the investment decisions made by such vessels, based upon the Sector allocation criteria established under Amendment 13 in 2004. The value of such investments may be compromised if different allocation criteria would have been selected under Amendment 16. With the one exception for GB cod, the allocation window of FYs 1996–2006 is intended to provide a large qualification window sufficient to smooth out the impacts that yearly changes to regulations may have had on an individual vessel's landings history. Each limited access NE multispecies

permit holder was sent a letter identifying that permit's PSC for each stock, as proposed under Amendment 16. A process to correct data used to calculate each permit's PSC for each stock was outlined in a May 1, 2009, letter to all limited access NE multispecies permit holders. This letter is available on the NMFS Northeast Regional Office Web site (<http://www.nero.noaa.gov>).

Each Sector allocated ACE for stocks managed under the terms of the U.S./Canada Understanding (*i.e.*, GB yellowtail flounder, GB cod, and GB haddock) would be allocated a specific portion of such ACEs that could only be harvested from the Eastern U.S./Canada Area. The ACE specified for the Eastern U.S./Canada Area portions of these stocks would be proportional to the Sector's allocation of the overall ACL available to commercial NE multispecies vessels for these stocks. For example, if a Sector is allocated 10 percent of the GB cod ACL available to commercial NE multispecies vessels, that Sector would also be allocated and allowed to harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to commercial NE multispecies vessels is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, this Sector would be allocated 100 mt of GB cod, of which 10 mt would be allocated to, and could be harvested from, the Eastern U.S./Canada Area.

A Sector would only be able to fish in a particular stock area if it is allocated, or acquires through transferring ACE from another Sector, ACE for all stocks allocated to sectors in that stock area. Catch for all allocated NE multispecies regulated species or ocean pout stocks, including both landings and discards, would count against a Sector's ACE for a particular stock. Sector vessels would be required to retain all legal-sized NE multispecies regulated species and ocean pout and could only discard undersized fish for all allocated stocks. Once a Sector's ACE for a particular stock is caught, a Sector would be required to cease fishing operations in that stock area until it could acquire additional ACE for that stock. If, in a particular FY a Sector exceeds its ACE for a particular stock after considering all ACE allocated to that Sector or acquired from another Sector, that Sector's ACE for that stock would be reduced by the amount of the overage in the following FY. If there is insufficient ACE allocated to a particular Sector to cover the overage, vessels participating in that Sector would not be allowed to fish in the

stock area for which the overage occurred unless and until that Sector acquires sufficient ACE from another Sector to cover the remaining overage (*i.e.*, the overage that exists after reducing the ACE for that stock to zero for the following FY). For example, if a Sector is allocated 10 mt of GB cod ACE, but catches 25 mt of GB cod during the previous FY, the GB cod ACE for the following FY would be reduced to zero and that Sector would be required to acquire at least 5 mt (*i.e.*, 15 mt overage – 10 mt ACE allocated = 5 mt overage remaining) of GB cod ACE in order to fish in the GB cod stock area during the following FY. If the Sector disbands, individual participating vessels would be subject to a reduction in PSC if participating in another Sector, or a reduction in allocated DAS if participating in the common pool, proportional to the individual vessel's share of the maximum overage that occurred. For example, if a Sector exceeds its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit in that particular Sector that enters the common pool during the subsequent FY would receive a 15-percent reduction in its Category A DAS allocation for that FY. If a Sector comprised of 10 permits/vessels exceeds its GB cod ACE by 10,000 lb (4,536 kg) during the previous FY, but later disbands, each permit in that Sector that joins another Sector during the subsequent FY would have its GB cod PSC temporarily reduced by 1,000 lb (453.6 kg) during that FY. A Sector could also specify additional penalties to participating vessels as part of its yearly operations plan. If the Sector does not exceed its ACE for any stock, but other vessels in the common pool or another Sector exceed their sub-ACLs or ACEs, respectively, the Sector's ACE in the following FY would not be reduced as a result of such overages by other groups. This is intended to ensure that groups responsible for exceeding their portion of the ACL for a particular stock do not negatively impact other groups.

If a Sector exceeds its ACE at the end of the FY, it could be held jointly and severally liable for such an overage and may be subject to a permanent reduction in the Sector's ACE (*i.e.*, a permanent reduction in individual vessel's PSCs) or a withdrawal of the approval of that Sector in addition to the penalties described above. Exceeding an ACE may be evidence of inadequate monitoring systems, poor compliance with an operations plan, or a failure to adhere to other regulatory requirements that could potentially result in administrative or enforcement action for these shortfalls,

even if the Sector is able to complete ACE transfers so that an ACE overage does not exist at the end of the FY. In addition to ACE overages, a Sector and its participants could be held jointly and severally liable for discarding legal-sized fish or misreporting catch (both landings and discards).

With the exception of GB yellowtail flounder, a Sector would be allowed to carry over up to 10 percent of unused ACE for each stock into the following FY, even if a Sector's roster has changed between those FYs. Any unused ACE allocated for Eastern GB stocks would contribute to the 10-percent carry-over allowance for each stock as a whole, but would not increase an individual Sector's allocation of Eastern GB stocks during the following year. In addition, a Sector would not be allowed to carry over any unused ACE for GB yellowtail flounder into the next FY. Although the carry-over provisions specific to these stocks are not specifically addressed in Amendment 16, they are necessary to effectively implement the provisions proposed under Amendment 16 due to the conflict between the proposed carry-over provision and the existing U.S./Canada Management Area requirements pursuant to the authority granted to the Secretary under section 305(d) of the Magnuson-Stevens Act. Because the U.S. portions of the TACs for GB yellowtail flounder and Eastern GB cod and Eastern GB haddock are specified on a yearly basis as part of the Understanding, allowing Sectors to carry over any of these stocks could result in U.S. harvest of these stocks exceeding the U.S. portions of these stocks for a particular FY if all vessels fully harvested the TACs specified to either Sectors or the common pool. This could result in a violation of the Understanding and the need to deduct such overages during the following year based upon existing regulations implementing the Understanding. Therefore, the slightly modified carry-over provisions are intended to minimize incentives for Sectors to catch their entire ACE in each FY, and is expected to reduce the likelihood that overages would occur.

ACE Trading

All or a portion of a Sector's ACE for any NE multispecies regulated species or ocean pout stock may be transferred to another Sector at any time during the FY, and up to 2 weeks into the following FY. ACE transfers would be approved by the Regional Administrator through the submission of an ACE transfer request form that details the amount of ACE transferred and any compensation exchanged. The Regional

Administrator would approve/disapprove such a transfer request based upon whether the Sector is compliant with applicable reporting requirements, including the weekly Sector catch report described below, and individual VTR requirements. Such transfers would only be valid for the FY requested on the transfer request form. To ensure that such ACE trading does not lead to overfishing, Amendment 16 proposes that NMFS would withhold 20 percent of each Sector's ACE for each stock for a period of 61 days (*i.e.*, through June 31) to accommodate any transfers of ACE late in the FY and to allow sufficient time for NMFS to evaluate Sector catch data to determine if an overage actually occurred.

DAS Transfer Requests by Sector Vessels

The DAS transfer program involves the permanent transfer of a vessel's NE multispecies DAS, along with any other limited access permits and associated fishing history. Because the fishing history of each permit affects the ACE allocated to each Sector, this action would allow a Sector vessel to transfer DAS and associated fishing history to another vessel participating in that vessel's Sector, but would prohibit a Sector vessel from transferring any DAS to or from common pool vessels or vessels participating in a different Sector. This is necessary to facilitate the administration of the DAS Transfer Program without affecting the ACE allocation of each Sector due to such transfers.

Sector Monitoring and Reporting Requirements

Amendment 16 would require Sectors to develop mechanisms to adequately monitor catch and discards by participating vessels. One of these mechanisms is an independent third-party dockside/roving monitoring program that would observe offloads by Sector vessels to ensure that landings are accurately reported. This dockside/roving monitoring program would be required starting in FY 2010, and would be funded by Sectors, unless otherwise specified by NMFS. Dockside monitors would observe offloadings directly to a dealer, while roving monitors would be used to monitor offloads to a truck for later delivery to a dealer. Such a program would need to employ a dockside/roving monitor service provider approved/certified by NMFS based upon specific provider and operational standards developed by the Gulf of Maine Research Institute and members of the fishing industry, in consultation with NMFS, as further

described in this proposed rule. During FY 2010, the offloads of 50 percent of trips by each Sector would be randomly observed, with 20 percent randomly observed in future years. In addition, because discards and area fished are critical elements in the monitoring of Sector catch, Sectors would be required to develop an adequate independent third-party at-sea/electronic monitoring program beginning in FY 2012. This program would be used to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring Sector ACE utilization. Coverage levels would be specified by NMFS on a yearly basis, based upon a list of participating vessels and gear types for each Sector. At a minimum, such coverage would need to be sufficient to ensure that the resulting estimate of discards meets the coefficient of variation specified in the Standardized Bycatch Reporting Methodology, but it is expected that coverage is likely to be higher than this minimum standard due to the need to adequately monitor catch (both landings and discards) and to minimize coverage bias in each Sector. Electronic monitoring could be used in lieu of actual at-sea monitors, provided the technology is deemed sufficient by NMFS for a specific gear type and area fished. At this time, NMFS has not deemed electronic monitoring technology sufficient for any gear or area fished. Existing NMFS-funded observer coverage would continue under Amendment 16. Accordingly, any at-sea monitoring coverage provided by an approved Sector at-sea monitoring program would be in addition to the coverage provided by the NMFS-funded observers. If a NMFS-funded observer and an industry-funded at-sea monitor are assigned to the same trip, the NMFS-funded observer would take precedence and the at-sea monitor would not be required to be deployed on that trip. This is intended to provide sufficient coverage, but minimize costs to industry. To facilitate deployment of dockside/roving and at-sea monitors and enforcement of these provisions, Amendment 16 would require vessels to submit trip-start and trip-end haul reports to the dockside/roving and at-sea/electronic monitoring service providers and to NMFS Office of Law Enforcement, unless otherwise specified in a Sector's operations plan, as further described in this proposed rule. The details for any dockside/roving and at-sea/electronic monitoring program must be specified in each Sector's annual operations plans.

Amendment 16 proposes that discards would be monitored through the use of a Sector-specific assumed discard rate, unless NMFS deems that there are sufficient observer or at-sea monitor data available to specify a Sector-specific in season discard estimate for each stock/gear combination specified in the FMP. Once sufficient data are available, the Sector-specific in season discard rate would apply to all trips taken by Sector vessels for the remainder of the FY, in lieu of the assumed discard rate. If a trip is observed by either an observer or at-sea monitor, the discards reported by the observer or at-sea monitor would be used to document discards for that particular trip instead of using an assumed discard rate, regardless of whether the Sector has developed an approved at-sea monitoring program for that FY.

The data and methodology used to calculate a Sector-specific assumed or in season discard rate is considered administrative measures necessary to administer the FMP and monitor Sector catch. As a result, the manner in which such rates are calculated may change on a yearly basis. For FY 2010, NMFS proposes to calculate the assumed discard rate based upon observed trips by Sector vessels during the previous FY, by stock and gear type, as specified in Section 4.2.3.5.3 of the Amendment 16 FEIS. If there are insufficient data to develop an assumed discard rate at this level, a fleet-wide stock and gear discard rate would be used instead. When calculating these discard rates, regulatory discards of legal-sized fish caused by trip limits would be excluded to represent anticipated behavior under Sectors. These assumed discard rates would be calculated as often as practicable, and would be used to add a discard estimate to each landing by a Sector vessel so that total catch can be determined for each stock for each trip. Based upon available funding, NMFS intends to increase the NMFS-funded observer coverage to include approximately 38 percent of Sector trips and 30 percent of common pool trips during FY 2010, and possibly future FYs.

Under Amendment 16, Sectors would be required to submit an annual report to NMFS by July 1 of each year that details information necessary to evaluate the biological, economic, and social impacts of Sectors. The report would be required to include harvest levels of all vessels for all federally managed species, enforcement actions, and other information needed to evaluate the performance of the sector. In addition, Sectors would be required

to submit weekly catch reports that detail Sector catch and discard for each stock allocated to that Sector, as instructed by the Regional Administrator. Under this proposed rule, NMFS would require that Sectors provide trip-level catch data, if requested, to facilitate the auditing of Sector catch data to ensure that data used by Sectors are consistent with those submitted to NMFS. This additional requirement is based upon the provision in Amendment 16 that would allow other requirements of Sector monitoring plans to be implemented, as directed by the Regional Administrator.

Authorization of Sectors

Amendment 16 would authorize 17 new Sectors and revise the provisions for 2 existing Sectors. These Sectors are described in Section 4.3.6 of the Amendment 16 FEIS and include the GB Cod Hook Gear Sector, GB Cod Fixed Gear Sector, Sustainable Harvest Sector, Port Clyde Community Groundfish Sector, Northeast Fishery Sectors I through XIII, Tristate Sector, and the Northeast Coastal Communities Sector. All operational aspects of these Sectors would be specified in their annual operations plans, as submitted to NMFS. Details of these operations plans will be published in the **Federal Register** prior to their approval.

15. VMS Requirement

In Framework Adjustment 42, the Council required all vessels fishing under a NE multispecies DAS to use VMS. This was considered necessary to effectively administer and enforce many of the area-specific measures proposed in that action. Although vessels participating in Sectors would no longer be required to use a NE multispecies DAS under Amendment 16, and vessels issued either a limited access NE multispecies Handgear A or Category C permit were never required to use VMS under Framework Adjustment 42, the FEIS neither explicitly requires Sector vessels to continue to use VMS, nor explicitly exempts Sector vessels and those issued either a Category C or Handgear A permit from using VMS. Because the area-specific measures implemented under Framework Adjustment 42 would continue to apply, and because Amendment 16 relies upon VMS as a medium to submit area declaration, hail reports, and catch information necessary to implement provisions proposed under Amendment 16, NMFS is proposing to revise the existing VMS regulations at § 648.10 to require that all vessels issued a limited access NE multispecies permit and

fishing under either the common pool measures, or under the restrictions and conditions of an approved Sector operations plan, use a VMS for each NE multispecies trip. Consistent with existing VMS regulations, upon taking either a common pool or a Sector trip, a vessel issued a limited access NE multispecies permit must maintain an operational VMS for the remainder of the fishing year.

16. Framework Items

Amendment 16 proposes that the following management measures could be adjusted through a framework action, in addition to those measures currently identified as framework measures in the FMP: Process for specifying and distributing ABCs and ACLs; trimester TAC distribution; Sector provisions, including authorized Sectors; PSC calculations; and any other provision implemented under the FMP.

17. Corrections

This proposed rule would also correct a number of inadvertent errors, omissions, and ambiguities in existing regulations in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP. The following proposed measures are listed in the order in which they appear in the regulations and indicate the genesis of the regulation and/or the cause of the regulatory error.

NE Multispecies Vessel Replacement Regulations

Most of the regulatory text regarding NE multispecies vessel replacements was implemented in 1996 by Amendment 7 to the FMP (61 FR 27709; May 31, 1996). On January 1, 2008, a final rule that added additional restrictions pertaining to vessel replacements became effective (72 FR 43188; August 3, 2007), but the applicability of requirements to vessels with a Handgear A permit may not have been clear. This action would clarify the pertinent regulatory language to make it clear that although the replacement vessel size restrictions do not apply to Handgear A vessels, the limitation on one vessel replacement per year does apply to these vessels.

The proposed action would also clarify the gillnet tag requirements referred to in the permit application requirements portion of the regulations. Framework Adjustment 40B eliminated the gillnet tag requirement for Trip gillnet vessels, but the pertinent regulatory text in the permit applications requirements was not modified. This rule would correct this oversight.

SNE/MA Yellowtail Flounder Trip Limit for the Atlantic Sea Scallop Access Program

The regulations implementing the Atlantic sea scallop access program contain an incorrect trip limit for SNE/MA yellowtail flounder for vessels fishing in the Nantucket Lightship Access Area of 250 lb (113.4 kg) per trip between June 15 and June 30 and up to 1,000 lb (453.6 kg) per trip. This incorrect trip limit corresponds to an outdated seasonal yellowtail flounder trip limit implemented under Amendment 13. Framework Adjustment 42 to the FMP modified the SNE/MA yellowtail flounder trip limit, but the scallop regulations were not revised at the time to reflect this change. This action would revise the Atlantic sea scallop access program regulations to cross reference the correct SNE/MA yellowtail flounder trip limit.

Regional Administrator Authority To Modify or Delete an Existing Exempted Fishery

The process specifying the addition or deletion of an exemption was first implemented in 1994 through an emergency rule (59 FR 63926; December 12, 1994) and subsequently implemented on a permanent basis by Framework Adjustment 9 (60 FR 19364; April 18, 1995). Under these regulations, the Regional Administrator had the authority not only to approve new exemptions, but also to modify or delete exemptions if they may jeopardize meeting fishing mortality objectives. Amendment 13 to the FMP modified this exemption to allow greater flexibility to the Council and NMFS, but inadvertently removed the language that explicitly provided authority to the Regional Administrator to modify or delete an existing exemption. This rule would add such language back in the regulations. This correction, which is consistent with Council intent, would allow greater flexibility to administer the exempted fishery program as NE multispecies regulated species or ocean pout stocks rebuild, while continuing to protect the NE multispecies regulated species or ocean pout stocks.

GOM Scallop Dredge Exemption Area

Framework Adjustment 21 (62 FR 8404; February 25, 1997) implemented the GOM Scallop Dredge Exemption Area. The existing regulatory text provides that limited access general category scallop vessels and limited access scallop vessels, not fishing under a scallop DAS, fishing in the GOM RMA "may" fish in the GOM Scallop Dredge

Exemption Area. This action would clarify that such vessels fishing in the GOM RMA must fish in the GOM Scallop Dredge Exemption Area and are prohibited from fishing in any other part of the GOM RMA. This action also would clarify that only dredge gear may be used to harvest scallops in the GOM Scallop Dredge Exemption Area.

SNE Scallop Dredge Exemption Area

Amendment 13 implemented the SNE Scallop Dredge Exemption Area. The existing regulatory text states that general category scallop vessels and limited access scallop vessels not fishing under a scallop DAS, fishing in the SNE RMA "may" fish in the SNE Scallop Dredge Exemption Area. This action would clarify that such vessels fishing in the SNE RMA must fish in the SNE Scallop Dredge Exemption Area and are prohibited from fishing in any other part of the SNE RMA. This action also would clarify that only dredge gear may be used to harvest scallops in the SNE Scallop Dredge Exemption Area. Lastly, the geographic area defined as the SNE Scallop Dredge Exemption Area currently extends west into the Mid-Atlantic Exemption Area (MAEA), which provides no benefit to fishers, as regulations specified for the MAEA do not include restrictions on scallop vessels such as exempted fisheries similar to other exemption areas. Therefore, the western border of the SNE Scallop Dredge Exemption Area would be corrected to coincide with the eastern border of the MAEA.

Reference to Midwater Trawl as Exempted Gear

To address bycatch of juvenile haddock in the herring fishery, Framework Adjustment 43 implemented an exempted fishery that allows midwater trawl gear to harvest herring. Concurrently this gear was no longer classified as exempted gear. This proposed action would remove an incorrect reference to midwater trawl gear as exempted gear in the GOM Rolling Closure Area regulations that was overlooked when Framework Adjustment 43 was implemented.

Revised Coordinates for Restricted Gear Area 1

Framework Adjustment 22 to the FMP and Framework Adjustment 4 to the American Lobster FMP (March 10, 1997; 62 FR 10747) closed four defined areas to vessels using certain gear types during certain times of the year. The final rule implementing these gear closures inadvertently omitted point 72 of the inshore boundary of Restricted Gear Area 1. This action would insert

Restricted Gear Area 1 point 72 to make the regulations consistent with Framework Adjustment 22 and the regulations implementing the American Lobster FMP.

Clarification of the DAS Leasing Program Regulations

Framework Adjustment 40B granted each limited access NE multispecies permit owner a one-time opportunity to downgrade its DAS Leasing Program baseline. The rationale was that, in some cases, vessels are actually smaller than the permit baseline attached to the vessel (due to replacement of a vessel with a smaller vessel) and downgrading the DAS Leasing Program baseline to the actual specifications of the vessel the permit is associated with, would facilitate use of the DAS Leasing Program for those vessels. A downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires, or the permit is transferred to another vessel via a vessel replacement or through a DAS transfer (unless the transferee vessel baseline is adopted).

The regulations implementing Framework Adjustment 40B failed to address the situation in which a DAS transfer results in a new DAS leasing baseline created for the resultant single permit associated with the vessel (*e.g.*, a vessel adopts the length overall from the transferor and the horsepower from the transferee vessel). This action proposes a clarification to the regulations that would allow a one-time DAS leasing baseline downgrade opportunity for NE multispecies vessels that result from a DAS transfer. This modification is consistent with the overall rationale for DAS Leasing Program baseline downgrades.

Clarification of DAS Transfer Program Regulations

Framework Adjustment 42 modified and clarified the DAS Transfer Program rules. Among these clarifications, Framework Adjustment 42 specified that "With respect to vessel baseline characteristics, the receiving vessel must adopt the smaller baseline of the two vessels, or if the receiving vessel has not previously upgraded, it may adopt the larger baseline of the two vessels. This would serve as the vessel's one-time upgrade." However, the regulations did not address whether or not the receiving vessel involved in a DAS transfer could elect to upgrade a particular specification (*e.g.*, length overall) as part of the DAS transfer transaction, and then upgrade another specification (*e.g.*, horsepower) through a subsequent action (either a vessel

replacement or another DAS transfer). This rule would clarify that the upgrade of any baseline specification under the DAS Transfer program precludes any future upgrades through subsequent transactions. Secondly, Framework Adjustment 42 removed a requirement that the transferor vessel forfeit all other permits (not required to be transferred), but did not modify all the pertinent regulatory text. This proposed rule would remove such text.

U.S./Canada Management Area Restrictions

Amendment 13 implemented the U.S./Canada Management Area regulations and provided the authority for the Regional Administrator to modify various management measures of the U.S./Canada Management Area to prevent over-harvesting of the Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder TACs, or to facilitate achieving the TACs for these stocks. The U.S./Canada Management Area regulations were subsequently modified by Framework Adjustment 40A and other actions. The regulations pertaining to the cod trip limit under the U.S./Canada provisions in § 648.85 do not include language that states when 100 percent of the cod TAC is harvested, the Eastern U.S./Canada Area will be closed, as adopted in Amendment 13. This closure provision is specified elsewhere in the regulations (e.g., § 648.85(a)(3)(iv)(E)), but inclusion of this provision in the context of the cod trip limit regulation would improve the understanding of this regulation.

Corrections to Stock Area Coordinates in the Regular B DAS Program

For the purpose of the Regular B DAS Program closures, stock areas were defined in Framework Adjustment 40A. The area defined for the CC/GOM and SNE/MA stocks of yellowtail flounder overlapped slightly and contained errors in the coordinates specified. This action would correct the coordinates CCGOM12, CCGOM13, and SNEMA5 through SNEMA16 to maintain consistency with the areas adopted under Framework Adjustment 42.

Eastern U.S./Canada Haddock SAP Gear Requirements

Framework Adjustment 40A implemented the Eastern U.S./Canada Haddock SAP Pilot Program. The final rule disallowed the use of the flatfish net in the SAP, but allowed the flatfish net to be properly stowed on board the vessel during such trips. At that time, vessels were not allowed to fish inside and outside of the Eastern U.S./Canada Area on the same trip. In 2006,

Framework Adjustment 42 modified the U.S./Canada restrictions to allow vessels to fish both inside and outside of the Eastern U.S./Canada Area on the same trip. Framework Adjustment 42 modified and renewed the SAP for a 2-year period, but did not change the stowage provision. A later rule that implemented gear performance standards (72 FR 72967; December 26, 2007) allowed other gear to be stowed when vessels were fishing in the Eastern U.S./Canada Area, but neglected to modify the regulations that pertain specifically to the Eastern U.S./Canada Haddock SAP to reflect this broader change. This action, therefore, would correct the regulations to allow the stowage of other types of gear when fishing in the Eastern U.S./Canada Haddock SAP, to be consistent with the overall rules for the Eastern U.S./Canada Area.

18. Transfer of ACE by NOAA-sponsored Permit Banks

NMFS is proposing that any state-operated permit bank sponsored by NOAA be considered a Sector for the exclusive purpose of transferring ACE to qualifying Sectors. NMFS is currently working with the Maine Department of Marine Resources on a Memorandum of Agreement that would establish a permit bank operated by the State of Maine and sponsored by NMFS. Allowing a permit bank to lease ACE to Sectors would facilitate the ability of the permit bank to minimize any adverse socio-economic impacts to fishing communities associated with catch-share programs.

Permit banks would be allocated ACE for a FY based on the PSCs of permits owned by the permit bank that are declared as ACE permits for that fishing year. Similar to the annual election decision of a permit holder to enroll his/her limited access NE multispecies permit in a sector or fish in the common pool, a permit bank would make an annual declaration for each permit as either an ACE permit or a DAS permit.

All or a portion of a permit bank's ACE for any NE multispecies stock would be eligible for transfer to a qualifying Sector at any time during the FY. Qualifying Sectors would be determined by the provisions of the Memorandum of Agreement between NMFS and the state operating the permit bank. Permit banks would only be authorized to act as the transferor in an ACE transfer and would be prohibited from acting as the transferee in an ACE transfer.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on the following proposed substantive measures: Description of the rope trawl, integration of wolffish into the trimester TAC AM and the proposal not to include a trimester TAC trip limit adjustment under this AM, as described in Item 6 of this preamble; potential disapproval of the GOM Haddock Gillnet Pilot Program, as described in Item 9 of this preamble; and NMFS's interpretation of the May 1, 2008, date to determine eligibility for Sector participation, as described in Item 14 of this preamble. NMFS is also specifically seeking public comment on several measures proposed in this action that are necessary to administer, enforce, and implement provisions adopted by the Council in Amendment 16. These measures include: (1) Increased frequency of VTR submissions; (2) pre-trip observer notification requirements; (3) description of the rope trawl for use in RGAs; (4) DAS allocation and charging provisions for Sector vessels; (5) operational standards for dockside and at-sea monitoring programs, including trip start and end haul reports; (6) details of Sector catch reports; (7) carry-over restrictions for unused ACE for transboundary stocks managed by the Understanding; (8) details for the AMs that would be triggered if the overall ACL for a stock is exceeded, (9) VMS requirement for Sector vessels; and (10) ACE trading provisions for permits in a NOAA-sponsored permit bank. While noting statutory constraints on its flexibility to add any new substantive measures, NMFS encourages the public to provide input on more effective, efficient, and less costly ways to implement the measures proposed under Amendment 16.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16 to the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Further, pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed this proposed rule as necessary and appropriate to implement Amendment 16.

The Council prepared a DEIS, which analyzed the impacts of all of the measures under consideration in

Amendment 16. A notice of availability of the DEIS was published on April 24, 2009 (74 FR 18705). In summary, the alternatives considered would reduce fishing mortality on most NE multispecies stocks, with impacts varying among stocks and alternatives considered. The alternatives considered in the DEIS would have met the biological objectives for most, but not all of the stocks managed by the FMP. The alternatives considered have since been revised to ensure that all alternatives achieve the biological objectives of this action, with the exceptions noted above. None of the alternatives considered are expected to have adverse impacts on EFH or protected species beyond those described by earlier actions. The economic impacts analyzed in the DEIS have been revised based on changes to the measures since the publication of the notice of availability and are summarized below in the discussion of the IRFA. Although there would likely be short-term negative economic and social impacts associated with this action, there would likely be positive long-term biological, economic, and social impacts as stocks rebuild and more sustainable fisheries and fishing communities are maintained.

This rule has been determined to be significant for purposes of E.O. 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA 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 this section in the preamble and in the SUMMARY. A summary of the analysis follows. In this analysis, the baseline (no-action alternative) is the set of measures that were in place during FY 2008 (*i.e.*, the measures implemented prior to the FY 2009 interim action). Tables and sections that are referenced in this IRFA refer to those contained in the FEIS developed for Amendment 16. A copy of this analysis is available from the Council (see **ADDRESSES**).

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed action would substantially change the provisions developed under Amendment 13 affecting Sector formation and effort controls for commercial fishing vessel owners that do not choose to join a sector. Among vessel owners that possess a permit to land regulated species or ocean pout, only limited access permit holders would be eligible

to join a Sector under Amendment 16, including those held in CPH. Vessel owners that possess only an open access permit would continue to be regulated through effort controls under the provisions of the common pool.

The proposed action would implement changes affecting any vessel holding a limited access NE multispecies permit, an open access handgear permit (Handgear B permit), and vessels that hold an open access charter/party permit. Based on FY 2007 data contained in Sections 6.2.3 and 6.2.5.5 of the Amendment 16 FEIS, the total number of small entities that may be affected would be 3,854 permit holders, including 1,530 limited access permit holders, 1,292 open access Handgear B permit holders, and 762 open access charter/party permits. Of the 1,292 vessels issued Handgear B permits, only 75 reported landing cod, suggesting that the number of such permits affected by this action may be substantially smaller than the number of vessels actually issued Handgear B permits. However, past fishing activity may not be an accurate predictor of future fishing activity, particularly because Amendment 16 would substantially increase cod possession limits for vessels issued Handgear B permits. During FY 2007, 128 of the 762 open access charter/party permit holders reported taking at least one for-hire trip, of which 74 reported keeping NE multispecies on one or more trips. An additional 29 limited access permit holders reported taking passengers for hire, of which 18 reported keeping NE multispecies on one or more for-hire trips. Thus, a total of 92 charter/party operators participated in the charter/party recreational NE multispecies fishery during FY 2007. As of September 1, 2009, 723 vessels elected to join a Sector during FY 2010, as determined through the submission of annual Sector operations plans. However, vessels may withdraw from Sectors until the beginning of FY 2010 on May 1, 2010. Therefore, because participation in Sectors is voluntary, the number of vessels that will actually participate in Sectors during FY 2010 and future years is likely to fluctuate based upon whether joining a Sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The Small Business Administration (SBA) size standard for commercial fishing entities (NAICS code 114111) is \$4 million in sales, while the size standard for charter/party operators (part of NAICS code 487210) is \$7 million in sales. Available data indicate that, based on 2005–2007 average

conditions, median gross sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million. Available data are not adequate to identify affiliated vessels, so each operating unit is considered a small entity for purposes of the RFA. For regulated charter/party operators, the median value of gross receipts from passengers was just over \$9,000, and did not exceed \$500,000 in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated charter/party operators are determined to be small entities under the RFA, and, accordingly, there are no differential impacts between large and small entities under this proposed rule.

Economic Impacts of the Proposed Action

Overall Measures

Revised Status Determination Criteria and Rebuilding Programs

Amendment 16 would revise the status determination criteria for each stock, implement new rebuilding programs for stocks newly classified as overfished, and update existing rebuilding programs. The revised status determination criteria would produce a MSY that is approximately 75 percent of the MSY of the existing status determination criteria. Accordingly, revenues associated with rebuilt stocks under Amendment 16 would be expected to be less than under the existing status determination criteria. However, the existing status determination criteria are no longer based upon the best available science and may not represent biomass or F levels that are sustainable. The new or revised rebuilding programs would result in reduced yield and, therefore, reduced revenue in the short term for some stocks, but should lead to higher yields and revenues than those expected from the no action alternative in the long term when stocks are rebuilt.

ABC/ACL Setting Process

Amendment 16 proposes a process by which ABCs/ACLs would be established for each stock. Based upon National Standard 1 Guidelines, this process would include setting ABCs and ACLs below the OFL for each stock to account for scientific and management uncertainty. This results in an opportunity cost to all vessels that catch NE multispecies in the form of reduced yield for each stock. In addition, this process would distribute the available ACLs among components of the fishery that catch NE multispecies, including both the directed commercial and

recreational fisheries, and fisheries that catch NE multispecies as bycatch. The allocation between commercial and recreational fisheries may prove to constrain catches of each of those user groups, especially if future catch rates differ from historical patterns. AMs would be specified for the directed fisheries, but most fisheries that catch minor amounts of NE multispecies as bycatch would not be subject to any AMs due to the high administrative cost and complexity associated with monitoring catch in these fisheries. However, because an overage in the total ACL for any stock would need to be made up by the component of the NE multispecies fishery that is subject to AMs, the directed fishery would be subject to reductions in catch and the associated economic impacts as a result of any AMs triggered by an overage in other fisheries.

Simultaneous Issuance of a Limited Access Atlantic Sea Scallop and a Limited Access NE

Multispecies Permit

This measure would enable vessel owners to make more efficient use of existing capital by allowing limited access scallop permit holders to acquire a limited access NE multispecies permit and vice-versa, resulting in higher profitability and lower costs associated with operating two separate vessels. Because the scallop fleet has access to more capital and is generally located in SNE, the proposed action could change the distribution of NE multispecies activity as well as the competitive position of NE multispecies vessels to focus fishing effort on GB and SNE stocks of NE multispecies. Based upon analysis included in Section 7.5.1.2.9 of Amendment 16, the major NE multispecies principal port states—Maine, New Hampshire, Massachusetts, and Rhode Island—are likely to experience a net loss in the number of NE multispecies permits by the acquisition of limited access NE multispecies permits by scallop vessel owners, as will New York, Connecticut, New Jersey, and Virginia could see a net increase in the number of NE multispecies permits.

Size Limits for Haddock and Atlantic Halibut

Amendment 16 would decrease the haddock minimum size limit to 18 inches (45.7 cm). Reducing the minimum size for haddock would allow the landing of some undersized fish that would otherwise be discarded, and increase fisheries revenues, provided gear selectivity does not change. If

selectivity or fishing patterns change to target these smaller fish, the increase in revenue caused by landing smaller fish would be offset by yield lost because those fish would not be harvested at older ages and sizes. The gains from this measure will likely fluctuate as year class size changes. When a large year class enters the fishery, as was the case with the 2003 year class in 2007 and 2008, this measure would have more of an impact on revenues than when average or below average year classes recruit to the fishery.

Amendment 16 would increase the minimum size limit for Atlantic halibut to 41 inches (104.1 cm) to reflect the median length at maturity for female halibut in the GOM and increase opportunities for additional halibut to spawn prior to capture. Available data indicate that revenue from landings of Atlantic halibut ranged from \$96,000 in CY 2004 to \$232,000 in CY 2007. However, the mean size of landed fish was 35.6 inches (90.5 cm), less than the current minimum size of 36 inches (91 cm). Therefore, assuming full compliance with the increased size limit, the proposed action would likely reduce revenue from landings of Atlantic halibut, but by an unknown amount.

Reporting Requirements

Amendment 16 proposes a series of new reporting requirements that would involve costs to vessels issued a NE multispecies permit and operating either under a NE multispecies DAS or on a Sector trip. These vessels would be required to declare the broad stock areas to be fished prior to each trip and, for vessels fishing in multiple broad stock areas, an estimate of landings of each species from each broad stock area prior to returning to port. These reports would be sent via VMS at a cost to industry of approximately \$0.764 per declaration, or approximately \$1,910 for all vessels each year. The vessels most affected by this provision include those that fish at least part of a trip in the Inshore GB Stock Area 2, an area just off the eastern shoreline of Cape Cod, MA—a smaller area that is often fished in during multi-area trips. In addition, these vessels would be required to provide a pre-trip notice via a call to the NMFS NEFOP to facilitate the deployment of observers, but this would not result in any additional costs to industry participants.

Measures Applicable to Commercial Vessels

Common Pool Measures

The Closed Area Model (CAM) was used to estimate both the biological and economic impacts of effort controls proposed under Amendment 16. This model has been successfully employed to estimate the impacts of previous actions. The details of the latest iteration of the CAM, including improvements made to the model since it was last used to evaluate the impacts of Framework Adjustment 42, are detailed in Appendix II of Amendment 16.

Since the number of vessels that would join a Sector was not known at the time the economic analysis contained in the Amendment 16 FEIS was completed, the economic impacts of the proposed action effort control measures reported in Section 7.5.11.1.3 were based on the assumption that no new Sectors were formed. Under this assumption, vessels operating under the common pool may be expected to experience total fishing revenue losses of 9.8 percent (\$15.4 million) relative to a 2005–2007 baseline. This impact is only slightly larger than the estimated reduction in revenue associated with the interim action measures (9.5 percent, or \$14.8 million) using the same 2005–2007 baseline. This means that the aggregate impact of the proposed action may have only slightly higher economic impacts beyond those expected to occur as a result of the 2009 interim action. However, since there are substantial differences between the 2009 interim action and the proposed action, the impacts may be expected to differ among participating vessels even though the aggregate estimated impacts were similar.

Estimated impacts for the proposed action suggest that the impact on fishing revenue may be expected to be larger on smaller vessels, in terms of length overall, compared to larger vessels. Similarly, impacts on gillnet vessels tended to be higher than impacts on trawl vessels. These tendencies may be a reflection of the differential impacts associated with Trip or Day gillnet boat status. That is, both Trip and Day boats are affected by the same DAS reduction. However, the 24-hr clock is likely to have a larger impact on Day boats, since most Day-boat trips are less than 24-hr in duration. In some respects, the 24-hr clock has economic effects that are similar to differential DAS counting, since the number of trips that may be taken given the same allocation of DAS is reduced. The extent to which the increased trip limit for GOM cod

mitigates this effect on Day boats is uncertain, however.

The proposed action would implement two restricted gear areas that would limit the use of fishing gear to gear that meet specified performance characteristics and would reduce bycatch of flatfish—winter flounder and yellowtail flounder in particular. The designated restricted gear areas correspond to the SNE/MA stock areas for these two species. Vessels that elect to fish in the common pool would be required to adopt specialized gear at an estimated cost of \$13,000 for a complete setup, or about \$750 per vessel to modify existing gear. Sector vessels would not be subject to the restricted gear area provisions.

Amendment 16 proposes to increase trip limits for cod and yellowtail flounder, but prohibit the retention of SNE/MA winter flounder, windowpane flounder, ocean pout, and Atlantic wolffish. The increased possession limit for cod may be expected to offer improved economic opportunities to all common pool vessels, but particularly to vessels currently issued a NE multispecies Handgear B permit, including the 75 vessels that have recently landed cod under this permit, and fishing businesses that may acquire such a permit in the future. The expected economic impacts of the collective suite of revisions to trip limits are captured in the cumulative analysis of common pool measures described above. Given recent landings trends, the proposed prohibition on the possession of Atlantic wolffish would reduce commercial fishing revenues, including revenues by both common pool and Sector vessels, by roughly \$100,000 to \$150,000 per calendar year. These lost revenues would not be replaced in the near future unless the stock rebuilds rapidly, which is not expected.

The principal common pool effort controls under the proposed action (*i.e.*, DAS reductions and 24-hr DAS counting) would apply to limited access vessels that are managed by DAS (*i.e.*, vessels issued a limited access NE multispecies Category A, D, E or F permit), but would not affect either Category C permits (small vessel exemption), or Handgear A vessels. While the DAS restrictions would not affect these vessels, they would benefit from the same increase in trip limits applicable to DAS vessels, including the change in trip limits for GOM cod and CC/GOM yellowtail flounder under common pool measures. The GOM cod possession limit would be increased from 300 lb (131.6 kg) to 750 lb (340.2 kg) per DAS, while the overall CC/GOM yellowtail flounder trip limit would

increase from 1,000 lb (453.6 kg) per trip to 1,500 lb (680.4 kg) per trip (the daily limit would be maintained at 250 lb (113.4 kg) per DAS). Additionally, since vessels with these permits are not regulated by DAS, they would not be subject to the proposed commercial common pool AMs. Given the economic considerations presented by the effort control measures, vessels with limited access Category C or Handgear A permits may be expected to have comparatively little PSC to bring to a Sector, and may be expected to have substantially improved economic opportunities under the common pool measures compared to the FY 2009 interim action. In fact, none of the 11 limited access Category C permit holders had elected to join a Sector as of September 1, 2009, and only 6 of the 130 Handgear A permit holders had elected to join a Sector. Of the remaining 522 limited access NE multispecies vessels that had not elected to join a Sector, 337 DAS permit holders had no Category A DAS, of which 164 had not qualified for a PSC for any stock. These vessels may still be able to participate in the NE multispecies fishery, but would only be able to do so through the DAS Leasing Program. Among the vessels that did not join a Sector and either had some PSC and/or had been allocated at least one Category A DAS, the reasons for electing to remain in the common pool are uncertain. Many of these vessels may have had low PSCs, may have not been accepted by any Sector, considered the cost of joining a Sector to be too high, or made a business decision in which the economic opportunities of fishing under effort controls to be superior to joining a Sector.

An evaluation of the number of Category A DAS that are necessary to cover annual fixed costs is described in Section 7.5.1.3.1.2 of Amendment 16. This analysis suggests that the total number of Category A DAS needed for all limited access permit holders that participated in the NE multispecies fishery to break even were estimated to be 34,078 DAS. However, many vessels cannot break even on their DAS allocations alone, and rely on the DAS Leasing Program to acquire the additional DAS needed to remain profitable. The proposed action would reduce Category A DAS by 50 percent and is expected to result in about 22,000 allocated Category A DAS. The two proposed changes to DAS charging measures (*i.e.*, 24-hr DAS counting and elimination of differential DAS counting) would have little impact on the break-even DAS needed for a vessel

that has been conducting fishing trips that are longer than 24 hr in duration, but may increase the break-even DAS needed for vessels that have been conducting fishing trips that are less than 24 hr in duration. While the trip limit changes may offset some of the need for additional DAS for vessels that fish in the GOM and GB, it is unlikely that the same benefits will occur in the SNE area due to the prohibition on the retention of SNE/MA winter flounder. Although carry-over DAS from the previous FY, and DAS available through the DAS Leasing Program, may potentially mitigate the potential shortage of available DAS, overall, there are not enough Category A DAS to cover annual fixed costs. However, for vessels that can access and participate in the CA I Hook Gear Haddock SAP, the Regular B DAS Program, the Eastern U.S./Canada Haddock SAP, and/or the modified CA II Yellowtail Flounder/Haddock SAP, there may be enough opportunities to use Category B DAS that the vessels can cover fixed costs.

DAS Leasing and Transfer Revisions

The DAS Leasing and Transfer Programs would be revised under Amendment 16 to facilitate participation in these programs by allowing permits in CPH to participate, eliminating the DAS conservation tax in the DAS Transfer Program, and by eliminating the cap on DAS that may be leased. Allowing permits in CPH to participate in this program would eliminate some of the administrative burden and costs associated with activating a permit, such as postage, documentation fees, etc. Eliminating the conservation tax for DAS transfers would likely encourage participation in this program. However, while eliminating the conservation tax may improve the financial gain to the owner through increased opportunities to fish (*i.e.*, more DAS or ACE) and reduced operation costs, such gains may not be sufficient to offset the financial loss associated with having to give up duplicate permits as part of this program. Note that this financial loss may be in terms of business equity rather than a loss in current fishing income or profitability since the value of retaining two vessels with a suite of permits may be larger than the value of a single vessel with the same number of DAS but fewer permits. Finally, by removing the DAS leasing cap, one vessel can fish all of those DAS, reducing the fixed costs of maintaining two vessels and increasing the efficiency of operating multiple vessels. Because the CAM has been revised to account for exchanges of DAS through

the DAS Leasing Program based upon previous individual vessel participation in the DAS Leasing Program, the ability of the DAS Leasing Program to help mitigate the economic impacts of proposed effort controls is incorporated into the overall economic impacts of common pool measures, as discussed above.

SMPs and SAPs

Amendment 16 would revise the existing SAPs to facilitate the targeting of healthy stocks of haddock, including the continuation of the Eastern U.S./Canada Haddock SAP, and would revise the provisions of the Regular B DAS Program to reduce catch of pollock in this program to rebuild this stock. Changes to the CA I Hook Gear Haddock SAP would provide greater access to the SAP among Sector and common pool vessels alike. The overall haddock TAC for this SAP would still limit the total economic gain and potential removals from the SAP, but since the TAC had not been reached in the past, these changes increase the likelihood that the full benefit from the SAP would be realized. Changes to the CA II Yellowtail Flounder/Haddock SAP would also increase economic return to participating vessels, as more of the available Eastern GB haddock TAC available to U.S. vessels would likely be harvested. However, given its distance from shore, vessels able to take advantage of this economic opportunity would be limited to larger vessels. There would be some costs incurred to participate in this SAP, as specific gear is required, but these costs are likely to be incurred anyway as the vessels that fish in this SAP probably have already obtained the gear to fish in the Eastern U.S./Canada Haddock SAP and the Eastern U.S./Canada Area.

The elimination of the SNE/MA Winter Flounder SAP under Amendment 16 would prohibit vessels fishing for summer flounder in western SNE from landing up to 200 lb (90.7 kg) of SNE/MA winter flounder without the use of a NE multispecies DAS. Based on historical data, it is likely that the revenue losses from this change will not exceed \$200,000 per year and are likely to be closer to \$150,000. Since this action also proposes to prohibit the possession of SNE/MA winter flounder, even if a vessel is allocated NE multispecies DAS, it may incur an opportunity cost by not being able to use those DAS to land SNE/MA winter flounder, but could gain back some losses by leasing those DAS to another vessel.

Common Pool AMs

For common pool vessels, a differential DAS counting AM would be implemented for FYs 2010 and 2011, while a trimester TAC AM with associated area closures and trip limit adjustments would be implemented for FY 2012 and beyond under the proposed action. Generally, increasing the differential DAS rate throughout the fishery as a result of an ACL overage would reduce the number of DAS available to the fishery and make it more difficult for NE multispecies fishing vessels to recover fixed costs. If the differential DAS rate is reduced because catches are below ACLs for all stocks, the opposite occurs: More DAS become available and revenues and profits would be expected to increase. Changes in differential DAS counting in one area and not another may result in effort shifts that not only modify the expected biological impacts of the measure, but that could alter the economic impacts. Increased fishing in areas that are not subject to differential DAS counting as a result of implementing differential DAS counting in other areas under this AM might result in higher landings of certain species of fish from these areas that depress prices for such stocks and reduce revenues for vessels fishing in these areas. Further, if the differential DAS AM is triggered by an ACL overage for a minor stock, yields for all stocks caught in the area would be reduced, even those that are healthy. Thus, vessels may be affected by differential DAS counting due to an overage for a stock that they may not even catch. Starting in FY 2012, the triggering of area closures and revisions to trip limits under the trimester TAC AM may disrupt the market and result in fluctuating prices. This system would also impose additional costs on common pool vessels, as they would be responsible for paying for dockside monitoring costs for 20 percent of common pool trips. Unlike Sectors, common pool vessels would remain subject to the inefficiencies of the effort control system and are limited in their ability to modify behavior to increase profits and absorb the increased reporting costs. Over the long-term, the implementation of effective AMs would be expected to contribute to rebuilding of NE multispecies stocks as biological objectives are achieved. This would be expected to increase the revenues for the commercial fishery and the recreational harvest as fishermen benefit from stock rebuilding. However, specific AMs could have different economic

impacts based upon the measures implemented at that time.

Sector Measures

The proposed action would allow any vessel owner that holds a limited access NE multispecies permit to join a Sector, or remain subject to the effort controls of the common pool, offering vessel owners greater flexibility in making business decisions. This means that the decision whether or not to join a Sector may be expected to be based on whether joining a Sector, or opting to stay in the common pool, offers the greater economic advantage. Since Sectors would be granted a set of universal exemptions and may request additional exemptions from other regulations, Sector vessels may be able to operate in a more economically efficient manner. For example, trawl vessels in Sectors are likely to increase catch rates and fish fewer days, reducing trip costs and increasing profitability. However, the economic benefits of Sector participation also depend on ACE allocations. Because Amendment 16 proposes to prohibit the possession of SNE/MA winter flounder, it would be difficult for sectors using trawl, and perhaps gillnet gear, to identify fishing techniques that can be used in the SNE/MA stock area without catching SNE/MA winter flounder—particularly if the vessels intend to target yellowtail flounder. For this reason, certain Sectors that intend to operate in this area may receive limited economic benefits from this action, and joining Sectors may actually limit fishing opportunities for vessels that operate in these areas.

Sectors would have to bear the administrative costs associated with administering and monitoring Sector operations, including costs associated with a Sector manager, dockside monitoring, and at-sea/electronic monitoring. The magnitude of the administrative costs for Sector formation and operation was estimated to range from \$60,000 to \$150,000 per Sector, and the potential cost for dockside and at-sea monitoring ranged from \$13,500 to \$27,000 per vessel. Although these estimates are uncertain, they serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. At least for FY 2010, the majority of these administrative costs would likely be subsidized by NMFS. Whether these subsidies, which include providing financial support for preparation of Sector EAs, dockside monitoring, and at-sea monitoring, will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining, or

continuing to participate in a Sector a more attractive economic alternative during FY 2010 than otherwise. However, since Sectors are self-selecting, some vessel owners may not be accepted into the Sector of their choice, or any Sector at all. Vessel owners with little or no PSC to contribute to a Sector's overall ACE may find it difficult to find a Sector that will accept them and may be forced to remain in the common pool.

The proposed action would allow ACE to be traded between Sectors to provide additional flexibility in the event that: (1) The initial portfolio of ACE for each Sector does not match the Sector's desired ACE portfolio, or (2) a Sector exceeds its ACE and needs additional ACE to cover the overage and continue fishing. The qualification criterion used to compute the PSC for each stock means that allocations of ACE may or may not be consistent with recent fishing patterns. While inter-Sector trading of ACE will allow Sectors to balance initial and desired quota allocations, this is not likely to be a costless transaction. Based on Sector rosters submitted to NMFS as of September 1, 2009, the potential shortfalls or surplus in ACE for any given Sector was evaluated for each Sector. For several Sectors, there was reasonable correspondence between recent landings and the Sectors' ACE. In other cases, Sectors either have substantial potential surplus or deficits, depending on the stock. Thus, some Sectors may need to rely upon ACE trading to ensure that sufficient ACE is available to maintain fishing operations, at least when compared to recent fishing activity, even though it is unclear whether recent fishing patterns by participating vessels would continue under Amendment 16.

The economic impacts of the proposed Sector measures cannot be reliably quantified, since any given Sector may be expected to operate in a different manner. A quantitative estimate of the economic impact of the proposed action effort control measures on fishing businesses were reported in Section 7.5.11.1.3 of Amendment 16. However, a more precise estimate of the economic impact of each Sector is expected to be included in the environmental assessment accompanying annual Sector operations plans submitted to NMFS for approval and implementation for FY 2010. Since joining a Sector is voluntary, the economic impact on individual small fishing businesses that choose to join a Sector may be expected to be less than that estimated for the common pool.

Measures Applicable to Recreational and Charter/Party Vessels

The proposed action would effectively continue most of the management measures implemented under the 2009 interim action, with the exception of the GB cod trip limit of 10 cod per person per day for charter/party vessels. For this reason, the proposed action would not have any economic impacts over and above what had previously been analyzed, but would likely have fewer economic impacts than the 2009 interim action due to the absence of a possession restriction on GB cod for charter/party vessels. The manner in which the realized economic impacts during FY 2009 and continuing into FY 2010 and beyond may differ from that discussed below cannot be assessed at this time because FY 2009 will not end until April 30, 2010. A full description of the economic impacts of proposed recreational measures is included in Section 7.5.1.3 of Amendment 16.

Available data indicate that about two-thirds of the 92 charter/party vessels that participated in the NE multispecies fishery during FY 2007 would not be adversely affected by the proposed action. These vessels did not take any trips in the GOM during April 1 to April 15 on which cod were retained, and did not report keeping any winter flounder in the SNE/MA stock area. The remaining 29 participating vessels were estimated to lose an average of \$10,393 in sales annually due to potential lost passengers as a result of the proposed measures for the recreational fishery.

The realized impact on charter/party vessels is uncertain, since impacts depend on angler response to any one of the proposed measures. These responses may be expected to have different impacts depending on where charter/party operators are located. The majority of charter/party operators from Maine, New Hampshire, and Massachusetts take trips exclusively in the GOM. Passenger demand in these three states would only be adversely affected by the 2-week extension of the closed season on GOM cod. While charter/party operators may be expected to try to shift trips that would otherwise have taken place during early April to later in the month, or into May, the ability to do so may be limited. At least some of the impacts of the extended closure may be offset by the reduction in the haddock size limit, as this action would increase the number of opportunities for charter/party passengers to keep more haddock. Since the majority of occasions where

haddock were kept occurred in the GOM, to the extent that charter/party demand is influenced by the chance to keep more fish, passenger demand may be expected to increase for GOM charter/party operators.

Unlike the charter/party passengers in the GOM, anglers taking charter/party trips may be affected by the prohibition on keeping SNE/MA winter flounder. Compared to angler response to the GOM cod closure, adverse angler response to this measure may be larger because it would affect all trips, not just trips during a particular season. The prohibition on retaining winter flounder may be particularly sensitive, since the winter flounder season is short and occurs during early spring when the availability of substitute species is limited. Angler trip demand is believed to be driven by expectations, and the extent to which those expectations may be constrained by regulation may be anticipated to influence demand. This measure is likely to have a larger impact on charter/party operators from Rhode Island to New Jersey. Since the number of trips that also landed haddock is likely to be comparatively small, reduced passenger demand for trips in the SNE/MA area may not be expected to be offset by the reduction in the haddock size limit.

In addition to the measures implemented by the 2009 interim action, the proposed action would remove the limit on the number of hooks, remove the prohibition on filleting fish at sea, establish a process for implementing AMs if a sub-ACL specified for the recreational fishery is exceeded, revise the minimum size limit for Atlantic halibut, and prohibit the retention of Atlantic wolffish. The removal of the hook limit and the prohibition on filleting fish at sea would provide some economic relief to charter/party operators, although the relative magnitude of this relief is uncertain. Removal of the limit on hooks would likely increase the probability of catching NE multispecies, resulting in higher catch rates. Higher catch rates may also increase the probability of catching a legal sized fish and the number of legal-sized fish that may be kept. This is particularly important in so-called meat fisheries where the opportunity of landing larger numbers of legal-sized fish for personal consumption is an important factor influencing participation in the fishery. Therefore, removal of the hook limit would enhance the value of a recreational fishing trip, even if the number of fishing trips does not change. The magnitude of these economic benefits is uncertain as economic

studies of the relationship between improved catch rates and improved recreational fishing values have yet to be conducted. However, the economic benefits of improved catch rates may be offset if the catch exceeds the ACLs specified for the recreational fishery and triggers AMs. Because any AMs would reduce the catch of cod and haddock by the recreational fishery (the only two stocks that would be allocated a recreational sub-ACL under Amendment 16), if AMs are triggered, the value of a recreational trip would be decreased, although the magnitude of that decrease would depend upon the AM implemented. Since the AMs proposed in this action would only be developed once an overage has occurred, the expected impacts of such AMs cannot be predicted in this action, but would be analyzed in the action to implement such AMs, once triggered. However, such AMs are likely to be based upon existing measures such as seasonal closures for GOM cod, and bag/size limits for both GOM cod and GOM haddock. Therefore, because these measures would reduce opportunities to catch these stocks, recreational AMs would likely decrease both the opportunity to catch fish in the recreational fishery and the value of recreational trips for these stocks. At-sea filleting of fish may be expected to increase the quality of services that charter/party operators may offer to their customer base. Whether this service increases the demand for charter/party trips is uncertain, but it would increase the overall value of the recreational fishing experience. The change in Atlantic halibut size limit may be expected to have negligible, if any, economic impacts on the recreational NE multispecies fishery, as recreational catch of Atlantic halibut is very low, with only two Atlantic halibut, of unknown size, estimated to be caught by charter/party vessels in any one FY. A prohibition on the retention of Atlantic wolffish would result in some reduction in economic value to recreational NE multispecies anglers, although the magnitude of this reduction is uncertain. Although the economic value for anglers that may target wolffish may be expected to be negative, these trips represent such a small proportion of total angler trips that the magnitude of total economic impact is likely to be small and unlikely to appreciably affect the demand for charter/party trips.

Frameworkable Measures

The Council has submitted, for approval, a number of measures that would be frameworkable. There are no

economic impacts from this measure. However, each future framework action would need to contain an analysis of economic impact when applicable.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The proposed action contains a number of measures that would provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated economic impacts associated with proposed measures. The major mitigating measures include revisions to the DAS Leasing and Transfer Programs; revisions to existing SAPs to facilitate the targeting of healthy stocks of haddock; revisions to Sector measures; and increased trip limits for certain stocks.

As noted above, changes to the DAS Leasing and Transfer Programs are intended to eliminate administrative obstacles that limited participation in these programs. This is likely to increase participation in these programs and increase the economic efficiency of vessel operations and increase the possibility that vessels fishing under a NE multispecies DAS, particularly common pool vessels, would be able to acquire sufficient DAS to meet annual operating expenses and remain economically viable despite additional effort controls in the NE multispecies fishery. These benefits would not accrue under the no action alternative for each of these measures, therefore the proposed action is preferable to the no action alternative to minimize the economic impacts of proposed measures.

Revisions to the existing SAPs would facilitate the harvest of haddock by continuing the Eastern U.S./Canada Haddock SAP, expanding both the season and area for the CA I Hook Gear Haddock SAP, and revising the existing CA II Yellowtail Flounder SAP to provide opportunities to access CA II to target haddock even when there is insufficient GB yellowtail flounder TAC to support a targeted fishery for GB yellowtail flounder both inside and outside the existing CA II Yellowtail Flounder SAP. These revisions would increase the likelihood that the fishery would harvest more of the abundant stocks of haddock, particularly on GB. Available TACs for GB haddock have been underharvested in recent years in part because of limited access to potentially higher concentrations of haddock within CA II. This proposed action would increase such access and likely lead to increased vessel revenue due to increased catch of available

haddock resources, which may at least help offset reductions in revenue expected from increased effort controls necessary to rebuild overfished stocks. Although some of the proposed effort reductions would convert Category A DAS to Category B DAS, this may increase incentives to fish more selectively within these SAPs to enable vessels to avoid stocks of concern and continue fishing under a Category B DAS, thereby maximizing the economic return on available Category A and B DAS. Therefore, when compared to the no action alternative for each of these revisions to existing SAPs, the proposed action would offer increased economic benefits in the form of greater access to, and revenue from, available haddock resources.

The proposed action would increase trip limits for several species, most notably GOM and GB cod, and CC/GOM and SNE/MA yellowtail flounder. These trip limits are intended to offset the substantial effort reductions in the form of reductions in Category A DAS and 24-hr DAS counting proposed under Amendment 16. Because of the commingled nature of the NE multispecies fishery, effort reductions necessary to meet the rebuilding objectives of one overfished stock often result in excessive effort reductions of other stocks. Therefore, the proposed revisions to trip limits are expected to narrow the gap between F reductions achieved and F reductions necessary for these stocks under this action. As a result, these trip limits would not only meet the biological objectives of this action based upon supporting analysis in Amendment 16, but would also increase revenue for common pool vessels. Therefore, the proposed action would result in fewer economic impacts than the no action alternative for the common pool and is the preferred alternative under Amendment 16.

Finally, several of the revisions to Sector measures could help mitigate the economic impacts of the proposed action. Under Amendment 16, all approved Sectors would be exempt from several provisions, including portions of the GOM Rolling Closure Areas, NE multispecies DAS restrictions, seasonal closure areas, trip limits on stocks allocated to Sectors, and the requirement to use 6.5-inch (16.51-cm) mesh when using selective trawl gear on GB with a 6-inch (15.24-cm) codend. All of these measures would help increase the operational efficiency of Sector vessels and would likely lead to increased revenue for participating vessels. Because Sector vessels would no longer be limited by DAS allocations and would instead be limited by their

available ACE, the economic incentive changes from maximizing the value of all species on a DAS to maximizing the value of the ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Based upon an evaluation of the economic performance of vessels participating in the current GB Cod Hook Sector, a Sector that has been in operation since FY 2004, the average revenue per individual Sector member nearly doubled between FY 2004 and 2008. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions or a self-selection effect is not known. Nevertheless, available information is suggestive that economic performance among Sector vessels may be expected to improve relative to continuing to remain under effort controls. In order to maximize the value of ACE available to Sectors, this proposed action would allow Sectors to trade ACE. ACE trading would also help ensure that Sectors have sufficient ACE available to continue operations in key stock areas and match individual Sector ACE portfolios with recent fishing activity by participating vessels or available fishing opportunities. In addition, vessels that declared their intent to participate in one of the existing Sectors would be allocated GB cod based upon landings history of this stock between FYs 1996 through 2001. This was meant to increase the stability of Sector allocations and preserve the value of existing Sector permits, particularly for those vessels that invested in permits with high landings histories of this stock during this period. The selection of Option 5 (using landings history between FY 1996 and 2001 for calculating the GB cod PSC) under the proposed action would increase the PSC available to such vessels by approximately 2 percent. This action would also provide the Regional Administrator with the authority to exempt Sector vessels from some of the proposed reporting requirements for multi-area trips or when participating in SMPs. This may reduce the operational costs by vessels, as they would not be required to submit daily or trip-level catch reports via VMS, reports that could cost as much as \$0.764 per submission. Finally, this action would authorize 17 new Sectors. Sectors allow participating vessels to pool harvesting resources and consolidate fishing effort onto fewer vessels to increase the flexibility and economic efficiency of fishing operations. Because Sectors are

self-selecting groups, they provide incentives to self-govern and assurance to participating vessels that Sector members would not face catch reductions as a result of overages by other Sectors or the common pool. Under the no action alternative, none of the above benefits associated with the proposed revised Sector would be realized. Therefore, the proposed action is preferable to the no action alternative for these measures. In addition, because the proposed action preserves the value of investments made to participate in the existing Sectors, all of the additional alternatives to PSC calculations (*i.e.*, Alternatives 2, 3, and 4) not selected by the Council under Amendment 16 would devalue such permits and reduce the GB PSC allocated to such permits by 2 percent.

Economic Impacts of Alternatives to the Proposed Action

Measures Applicable to Commercial Vessels

Overall Impacts

The no action alternative would not implement new rebuilding programs for overfished stocks or revise mortality targets for existing rebuilding programs. For some stocks, the existing Amendment 13 mortality targets are higher than the proposed revisions, but for others, the existing rebuilding targets are lower than those in the proposed action. Therefore, the no action alternative would produce both higher and lower landing streams for particular stocks in the short-term. In general, however, it would be expected that the no action alternative would lead to lower landing streams over the long-term. In addition, because the no action alternative would not implement rebuilding programs for five stocks newly classified as being overfished, landing streams for these stocks would likely be lower over the long-term because continued fishing at existing levels would not rebuild the stock. Accordingly, over the long-term, the no action alternative would result in fewer economic benefits from rebuilt stocks compared to the proposed action.

In addition to the proposed action, three other effort control alternatives for commercial vessels were considered. These alternatives included the no action alternative (Alternative 1), an alternative that relied on increased use of differential DAS (Alternative 2A), and another alternative (Alternative 4) that would have implemented a 40-percent reduction in DAS from DAS allocations in FY 2006 along with restricted gear areas. Alternatives 2A and 4 assumed that no additional Sectors would be

formed and that all vessels issued a limited access NE multispecies permit would operate under the effort controls of the common pool. A detailed comparison of estimated economic impacts between the proposed action and the non-selected alternatives may be found in Section 7.5.11.1.6 of Amendment 16.

Because the economic impact analysis for these alternatives assumed that no Sectors would be formed under Amendment 16, the small entities affected by these alternatives include all vessels issued a limited access NE multispecies permit or an open access NE multispecies Handgear B permit. In terms of total fishing revenue, the aggregate impact of the proposed action on such vessels is expected to be lower (a 9.8-percent reduction, or \$15.4 million) than the impacts of Alternative 2A (14.7-percent reduction, or \$23.1 million) and Alternative 4 (18.5-percent reduction, or \$29.2 million). However, the aggregate economic impact of the no action alternative (a 7.7-percent reduction, or \$12.2 million) would be lower than that expected from the proposed action. Similar patterns are observed when evaluating changes in revenue where regulated species and ocean pout were the predominant species landed. For example, the no action alternative would result in a 12.1-percent reduction (\$12.2 million) in NE multispecies revenue, Alternative 2A would result in a 22.9-percent reduction (\$23.1 million) in NE multispecies revenue, Alternative 4 would result in a 28.9-percent reduction (\$29.2 million) in NE multispecies revenue, but the proposed action would result in a 15.2-percent reduction (\$15.4 million) in NE multispecies revenue. Among the alternatives considered, Alternative 4 tended to have larger adverse impacts on fishing businesses across home port states and dependence on NE multispecies for total fishing income. Alternative 2A tended to have larger adverse impacts on vessels from Maine and Massachusetts, while the proposed action impacts were larger for vessels from New Hampshire as well as from SNE and MA states. However, due to differences in fishing strategies at the individual business level, one alternative may provide regulatory relief for some vessels, but may prove more burdensome for others. There was no one alternative that would have provided regulatory relief for all fishing businesses.

Section 7.5.1.3.1.2 of Amendment 16 discusses the number of DAS that are necessary to cover annual fixed costs for the range of alternatives considered in Amendment 16. According to this

analysis, the total number of Category A DAS needed for all limited access permit holders that participated in the NE multispecies fishery to break even were estimated to be 34,078 DAS. Under the no action alternative, approximately 36,000 Category A DAS would be available to limited access NE multispecies vessels due to the 18-percent DAS reduction scheduled for FY 2009 under Amendment 13. With no changes to existing trip limits, differential DAS counting, or other measures, this amount of DAS available would exceed the number of DAS necessary for the fleet to meet expenses. Alternative 2A would also result in 36,000 Category A DAS allocated to the fleet, but would apply differential DAS counting over broader geographic areas, would revise the rates applied in specific areas, implement restricted gear areas, and both increase and decrease the existing trip limits for several stocks. Although this alternative would increase trip limits for some stocks and, therefore, decrease the number of DAS necessary to meet expenses, it would also increase the rate at which DAS are used and increase the number of DAS necessary. Therefore, it is difficult to predict whether Alternative 2A would provide sufficient DAS to meet annual expenses. Alternative 4 would reduce allocated Category A DAS by 40 percent, to 26,400 Category A DAS, but would eliminate existing differential DAS counting areas. Although this alternative would include the same changes to trip limits as Alternative 2A, it is not likely that increased trip limits for some stocks would produce sufficient revenue to overcome overall reductions in DAS to meet annual expenses. Finally, the proposed action would result in approximately 22,000 DAS allocated to the fleet. While carry-over DAS may offset some of the reductions for these alternatives and the increased availability of Category B DAS may encourage participation in SMPs, it is unclear whether these factors would be sufficient to allow vessels to meet expenses or make a profit under each alternative.

Even though the no action alternative would result in the fewest economic impacts to affected vessels and likely provide sufficient DAS for vessels to meet annual expenses, the no action alternative would not achieve the reductions in F necessary to rebuild overfished stocks or achieve the biological objectives of the FMP and is, therefore, not consistent with applicable law. In contrast, the proposed action is consistent with applicable law because it would achieve the biological

objectives of the FMP, including implementing rebuilding plans for newly overfished stocks and reducing F for all stocks necessary to rebuild stocks within established rebuilding periods, while resulting in the fewest economic impacts to affected entities among the other alternatives considered. Over the long term, economic benefits from rebuilt stocks would mean that the proposed action would produce the most economic benefits to affected entities once stocks rebuild when compared to the alternatives considered in this action.

The no action alternative would not distribute available regulated species and ocean pout ACLs between the commercial and recreational fisheries. As a result, the catch from both fisheries would be used to determine whether additional measures are necessary in the future to ensure that stocks rebuild. Accordingly, if one group catches regulated species or ocean pout in excess of historical trends, the other group would likely be affected by any management measures that would be necessary to rebuild the stock. This would result in greater economic impacts than the proposed action, as the entire fishery would be subject to such measures rather than the group responsible for the overage.

Impacts of Alternative Common Pool Measures

In addition to the overall impacts listed above, there are additional economic impacts associated with other alternatives considered under Amendment 16 that apply only to common pool vessels. Regarding the DAS Leasing and Transfer Programs, the other alternatives would not have revised these programs to allow CPH vessels to participate in either program, would not temporarily or permanently remove the DAS conservation tax or the cap on DAS leasing, would impose a tax on DAS leased, or would refund any DAS lost to the application of a DAS conservation tax during DAS transfers in previous FYs. Therefore, with the exception of the alternative that would refund DAS lost due to the DAS conservation tax, these other alternatives would increase costs compared to the proposed action by reducing the DAS available to either program and making available DAS more expensive to acquire. In addition, permit holders would incur costs associated with activating permits in CPH to participate in these programs, or maintaining multiple vessels to fish a given number of DAS that could be fished on one vessel if not for the leasing cap. While one alternative to the

proposed action would have refunded any DAS lost due to the DAS conservation tax in the DAS Transfer Program, this would have only marginally increased the DAS available to such vessels by 81.52 Category A DAS, 148.23 Category B DAS, and 416.41 Category C DAS. Cumulatively, the Category A and B DAS lost to the conservation tax represented only 0.2 percent of the total number of the Category A and B DAS allocated to the entire fishery in FY 2007 (Category C DAS cannot be used by any vessel at this time). Refunding these DAS would result in additional DAS that could increase, although marginally, the amount of regulated species and ocean pout that would be harvested in future FYs. Because additional effort reductions are necessary under this action to rebuild several NE multispecies stocks, allowing additional effort into the fishery would compromise the rebuilding objectives of the FMP and result in fewer long-term economic benefits than the proposed action.

The no action alternative would not revise the CA I Hook Gear Haddock SAP or the CA II Yellowtail Flounder SAP to facilitate the harvest of haddock; would allow the Eastern U.S./Canada Haddock SAP to expire; would not include pollock as a stock of concern, or implement reduced trip limits and an incidental catch TAC for pollock in the Regular B DAS Program; would allow the SNE/MA Winter Flounder SAP to continue; and would not implement the GOM Haddock Gillnet Pilot Program. Combined, the no action alternative for the SAPs and the GOM Haddock Gillnet Pilot Program would result in increased economic impacts compared to the proposed action due to foregone opportunities to increase the catch of the abundant haddock resource. However, the no action alternative for the Regular B DAS Program would result in fewer short-term economic impacts than the proposed action, as vessels would be able to continue to target pollock using a Regular B DAS, but increased long-term economic impacts, as continued targeting of pollock would likely increase F on this species and delay economic benefits from a rebuilt species. Similar long-term impacts would also occur for SNE/MA winter flounder under the no action alternative, as it would continue the SNE/MA Winter Flounder SAP and the associated catch of this stock, despite the need to reduce F to as close to zero as practicable to rebuild this stock. Thus, the proposed action would result in fewer long-term economic impacts

than the no action alternatives for these measures.

The no action alternative would not reduce the haddock minimum size limit to 18 inches (45.7 cm) or increase the minimum size limit for Atlantic halibut to 41 inches (104.1 cm). This would result in reduced revenue due to haddock landings when large year classes enters the fishery, such as when the 2003 year class entered the fishery in 2007 and 2008, but would likely result in a small increase in fishing revenue compared to the proposed action due to catch of smaller halibut when compared to the proposed action. However, because the no action alternative could potentially delay rebuilding of Atlantic halibut, the proposed action would have greater overall long-term economic impacts to affected entities.

Under the no action alternative, most vessels would not be able to be issued both a limited access Atlantic sea scallop and a limited access NE multispecies permit at the same time (vessels issued a limited access NE multispecies combination permit—Category E permit—are already allowed to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit). This would restrict the flexibility of vessels to participate in more than one fishery and prevent the consolidation of fishing opportunities for two fisheries onto one vessel. As a result, there would be less effective use of capital assets than would occur if the restriction were lifted under the proposed action.

In contrast to the proposed action, the no action alternative would not implement AMs for common pool vessels. The no action alternative would likely result in fewer short-term economic impacts than the proposed action, as AMs would not be implemented. Failure to implement AMs would maintain or increase the catch of regulated species and ocean pout even after sub-ACLs allocated to the common pool have been caught. In addition, common pool vessels would not be responsible for costs associated with dockside monitoring, as required in FY 2012 and beyond under the proposed action. However, long-term economic impacts would likely be higher for the no-action alternative because AMs are intended to prevent overfishing and increase the probability that rebuilding objectives of the FMP are achieved. In addition, without AMs for the common pool fishery, Sector vessels or the recreational fishery may be subject to lower overall catch due if stocks fail to rebuild and lower ACLs are necessary as a result.

Impacts of Alternative Sector Measures

The economic impacts of the options considered for determining PSCs are described in detail in Section 7.5.1.2.3 of Amendment 16. The proposed action would calculate PSC based upon landings history between FYs 1996–2006 for all stocks (Option 1), except that the PSC for GB cod would be calculated based upon landings history between FYs 1996–2001 for vessels that had signed preliminary rosters for existing Sectors as of March 1, 2008 (Option 5). The other PSC alternatives include no action (landings history for the most recent 5-yr period), and options involving a combination of landings history between FYs 1996–2006 and a measure of capacity based upon vessel size and horsepower and/or allocated DAS (Options 2 through 4). The analysis of these options indicated that larger vessels would receive the most value from the PSC selected in the proposed action (*i.e.*, PSC Option 1), but that medium vessels would receive the most value from PSC Option 4, while small vessels would receive the most value from the no action PSC option. The impacts of the PSC options for vessel size class vary from stock-to-stock, based upon the size class of vessels that predominantly landed that stock. Also, the impacts vary based upon the areas fished by individual vessels. In general, vessels that fished in all areas would receive more PSC under the no action PSC option or Option 1. Permits that fished only in the GOM or on GB would receive the most PSC under Option 4, while vessels that fished exclusively in SNE would receive the most PSC under Options 3 or 4. Impacts of these alternatives by homeport state also vary based upon the distribution of various stocks among the PSC options considered. For example, Massachusetts vessels would have benefited the most from the no action alternative, but vessels from Maine and New Hampshire would have benefited the most from PSC Option 4. Vessels from more southerly states would receive more PSC from Option 3. In general, PSC options involving capacity (*i.e.*, Options 2 through 4) tended to shift allocations from vessels with higher landings history-based allocations to vessels with lower history-based allocations compared to the proposed action. When combined with Option 5, permits that were not committed to the existing two Sectors would have their GB cod PSC reduced by approximately 2.1 percent compared to their PSC if only Option 1 were adopted. However, these permits would lose the most GB cod PSC if Options 2,

3, or 4 were adopted with Option 5. Therefore, because the proposed action adopts Options 1 and 5, the vast majority of vessels would receive the most GB cod PSC out of the possible combinations of alternatives that the Council could have selected. Although the PSC options considered all have different effects on different vessels, Options 1 and 5 were selected to reflect current participation in the fishery based upon landings history (*i.e.*, including vessel capacity in the calculation of PSCs would shift allocation of ACLs from vessels that have actively participated in the fishery by landing regulated species and ocean pout to those that may not have participated as actively in the fishery), mitigate the regulatory changes and their impacts on individual vessels, and to preserve the value of permit investments made by vessel owners interested in participating in one of the existing Sectors.

The no action alternative would not implement provisions for trading ACE between Sectors or allow Sectors to carry forward unused ACE into the following FY. The inability to trade ACE would likely result in Sectors not fully harvesting allocated ACE, as Sector catch may not precisely mirror ACE allocations for each stock, sacrificing yield and associated fishing revenue. In contrast, the inability to carry forward unused ACE would produce incentives to fully harvest any ACE allocated, thereby also creating incentives to potentially illegally discard legal-sized fish to maximize catch of ACE allocations. In comparison with the proposed action, this would result in less efficient operations and likely short-term and long-term economic impacts due to lost yield and, possibly, delays in rebuilding stocks.

Compared to the proposed action, the no action alternative would have maintained existing Sector operations plan requirements, monitoring/reporting requirements, and provisions for SMPs. All of these measures would likely result in fewer costs to potential Sectors, as the proposed action would increase requirements for Sector operations plans; increase monitoring/reporting requirements for Sectors; and, with the exception of the CA I Hook Gear Haddock SAP, fail to specify which SMP provisions would apply to Sector vessels. The cost savings from avoiding the additional monitoring requirements of the proposed action are listed in the economic impacts of the proposed action above, but the savings from avoiding the additional reporting costs are less certain. Reporting costs include costs associated with additional VMS

catch reports to individual vessel owners. Depending on the individual vessel's contract with the VMS vendor, such costs may be covered by existing contracts. However, additional reporting costs associated with the proposed action would include a cost of approximately \$0.004 per character, plus approximately \$0.50 for each submission via VMS, or approximately \$0.764 per report. Thus, the no action alternative would result in equivalent savings compared to the proposed action, but the amount of such savings would depend upon the VMS contract to individual vessels. Although the no action alternative for these provisions would cost less than the proposed action, the proposed action was selected because these additional requirements are considered necessary to adequately monitor Sector catch on a real-time basis, understand and evaluate the likely impacts of Sector operations, and more consistently apply the principles behind Sector management (*i.e.*, to promote more flexible and efficient operations by self-selecting and self-governing groups of individual vessels) across all facets of vessel operations, including those in designated SMPs.

Measures Applicable to Recreational and Charter/Party Vessels

Two alternatives to the proposed action affect whether recreational anglers could land NE multispecies as fillets without the skin: Option 1 would allow fillets to be landed without skin, while the no action alternative (Option 3) would maintain the existing prohibition on landing fillets without skin. Option 1 would increase the economic value of recreational trips, particularly charter/party trips, as vessels could provide filleting and skinning as a service to customers. However, landing fish without skin would complicate enforcement and assessment of recreational catch, as species identification would be very difficult. This may, in turn, increase management uncertainty for the recreational fishery and lower ACLs as a result. This would likely result in increased economic impacts compared to either the proposed action or the no action alternative, which would require at least some skin to remain on fillets. The no action alternative may impact income for crew aboard charter/party vessels, as skinning fillets would continue to be prohibited until landing. The proposed action was selected as a compromise between the alternatives considered, as it would allow fillets to be landed with only a small portion of the skin intact to facilitate species

identification and enforcement of minimum fish sizes and trip limits.

Amendment 16 considered two other options for reducing GOM cod mortality in the recreational fishery: Option 1 would increase the minimum size limit to 26 inches (66 cm), while Option 2 would reduce the bag limit to six fish per trip. If recreational fishing value is based upon the opportunity to catch a fish, economic impacts associated with Option 1 would likely be less than that for either Option 2 or the proposed action, as both later options would reduce opportunities to fish. However, if the increased size limit of Option 1 reduces the possibility that cod could be retained, then the economic impacts could differ, as both Options 2 and the proposed action would maintain the existing size limits for GOM cod. However, the proposed action was selected because seasonal closures are the most effective means to reduce recreational catch and ensure that conservation objectives are achieved for this portion of the fishery.

The no action alternative would allow recreational vessels to possess and retain Atlantic wolffish. Based upon existing data, approximately 1,644 charter/party trips targeted this species during 2006–2007. Thus, the no action would maintain the value associated with these trips, resulting in fewer economic impacts than the proposed action that would prohibit the possession of this species by both commercial and recreational vessels. However, the proposed action would implement a rebuilding program for this species that includes a prohibition on landings by all vessels. While this would result in short-term economic losses to the recreational fishery, such measures are necessary to rebuild the stock and preserve future opportunities to harvest the species as it rebuilds.

Amendment 16 considered several alternatives to the proposed action regarding recreational fishery AMs. These alternatives included no AMs under the no action alternative, AMs developed exclusively by the Council under Option 1, and AMs developed exclusively by NMFS under Option 2. Because these alternatives involve processes for specifying AMs, but do not actually propose any specific AMs, the economic impacts associated with these alternatives are based upon the timing of when such AMs would be implemented and the actual AMs that would be implemented from these processes. For example, due to the length of the Council process and the timing of Council meetings, it is likely that any AMs developed under Option 1 would not be available until after

anglers begin reserving fishing trips during the early spring. This may affect whether customers will actually commit to a particular trip without knowing the applicable regulations. If this affects customer behavior, Option 1 would likely result in fewer charter/party trips, particularly if regulations are not finalized until later in the spring. Options 1 and 2 would result in some impact to the recreational fishery, but this impact is heavily dependent upon the AMs developed under those options. Changes in bag limits, minimum sizes, and shortened seasons typically reduce the catch and, therefore, value of recreational trips. Because changes to bag limits and minimum sizes are less effective at reducing recreational catch, these measures must generally be implemented for greater durations, resulting in greater adverse economic impacts than closures. However, economic impacts associated with reduced opportunities to catch one species may be offset by increased opportunities to catch another stock. As a result, Options 1 and 2 may not result in different economic impacts than the proposed action unless customer behavior is affected by when the regulations are available. Under the No Action alternative, AMs would not be adopted. While this avoids the economic impacts of AMs in the short term, this may make it less likely that mortality objectives are achieved and could result in more stringent measures in the future. The proposed action was selected because it represents a compromise between the other alternatives considered. Under the proposed action, NMFS would develop appropriate AMs in consultation with the Council. This would allow AMs to be implemented in the most expedient manner, thereby decreasing the possibility that AMs would be implemented too late to be effective during the FY following an overage. In addition, because the Council includes members of state resource management agencies, the agencies responsible for managing the vast majority of recreational fishing activity, consultation with the Council was considered necessary to implement AMs that would effectively reduce recreational catch.

Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule:

Reporting and Recordkeeping Requirements

The proposed measures under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping

requirements: (1) Sector operations plan and associated NEPA analysis, (2) dockside/at-sea monitoring service provider application, (3) dockside/at-sea monitoring service provider response to application disapproval, (4) data entry for Sector discard monitoring system, (5) Sector weekly catch report, (6) Sector annual report, (7) notification of expulsion from a Sector, (8) request to transfer ACE, (9) VMS installation, (10) VMS certification form, (11) VMS confirmation call, (12) automated VMS polling of vessel position, (13) VMS area and DAS declaration, (14) VMS trip-level catch reports, (15) request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, (16) request for a LOA to fish in a NE multispecies RGA, (17) VMS declaration to fish in a NE multispecies RGA, (18) pre-trip hail report to a dockside monitoring service provider, (19) trip-end hail report to a dockside monitoring service provider, (20) confirmation of dockside monitoring trip-end hail report, (21) dockside/roving service provider data entry, (22) dockside/roving or at-sea monitor deployment report, (23) dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, (24) dockside/roving or at-sea monitor report of harassment and other issues, (25) OLE debriefing of dockside/roving or at-sea monitors, (26) copy of dockside/roving or at-sea monitoring service provider contract upon request, (27) copy of dockside/roving or at-sea monitoring service provider information materials upon request, (28) observer program pre-trip notification, (29) daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, (30) daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, (31) daily VMS catch reports when fishing in the Regular B DAS Program, and (32) copy of the dealer weigh-out slip or dealer signature of the dockside monitor report.

The costs associated with the new and revised reporting and recordkeeping requirements specified in this action are detailed in the PRA analysis associated with Amendment 16. Some of these costs are minimal, consisting only of postage and copying costs. However, other costs are more substantial and are detailed for several of the more involved information collections below.

Any NE multispecies DAS vessel, including a vessel participating in a Sector, that intends to fish in any SMP, including the U.S./Canada Understanding and all SAPs, would be required to use VMS when participating in these programs. In addition, any Handgear A permit participating in a

Sector would be required to use VMS to comply with the declaration and reporting requirements associated with measures proposed under Amendment 16. Any vessel that does not currently possess a VMS must obtain one prior to fishing in a SAP, the U.S./Canada Management Area, or on a Sector trip. The cost of purchasing and installing VMS is currently estimated at \$3,600 per vessel, with operational costs estimated at approximately \$150 per month. Amendment 16 would require a vessel issued a limited access NE multispecies permit fishing in multiple broad stock areas to submit a trip-level catch report via VMS for such trips. These catch reports would cost approximately \$0.79 per report, for a total yearly cost of approximately \$15 for the 134 vessels that are expected to fish in multiple areas on the same trip, based upon historic data.

There are costs associated with several of the reporting and recordkeeping measures proposed for Sectors under this action. The development of a Sector operations plan and associated NEPA analysis is estimated to require approximately 4 months for each document, resulting in a cost of approximately \$150,000 to each Sector (*i.e.*, \$50,000 for the development of the operations plan, and \$100,000 for the development of an EA) on an annual basis. These costs are likely to decrease in future years, as subsequent operations plans and EAs could build upon the original documents. It is estimated that approximately \$2,500 per year would be required to purchase and enter data into a discard database for each Sector. Finally, the weekly Sector catch reports are expected to cost approximately \$5,200 to prepare and submit to NMFS, while the annual Sector report is expected to cost about \$304 per Sector to develop.

Amendment 16 would require dockside monitoring for Sector vessels beginning in FY 2010, while common pool vessels would be subject to dockside monitoring beginning in FY 2012. The pre-trip hail reporting requirements would cost approximately \$12 per vessel each year, assuming that such reports were made via VMS. Due to the more expansive information required for the trip-end hail reports, the yearly cost to each vessel would be approximately \$17, assuming that such reports were made via VMS. Costs to vessels receiving dockside/roving monitoring services proposed under Amendment 16 include \$10 per year for confirming pre-trip hail reports and \$13 to confirm trip-end hail reports and specify whether a particular trip would

be observed by a dockside monitor. Requirements to maintain and enter data into a dockside monitoring database would cost approximately \$4,225 per service provider annually, while submitting dockside monitoring data to NMFS would cost each service provider approximately \$36,000 per year. Similar costs to service providers are expected to notify Sector vessels of selection for at-sea/electronic monitoring coverage (\$3,125 per year) and to submit at-sea/electronic monitoring data to NMFS (\$36,000 per year).

Other Compliance Requirements

The only other compliance costs associated with this proposed rule are those associated with the gear requirements specified for the NE multispecies RGAs. Any NE multispecies vessel that elects to fish in the common pool would be required to utilize selective fishing gear when fishing in the NE multispecies RGAs. If a vessel does not already possess such selective gear, a new haddock separator trawl net, rope trawl, or Ruhle trawl is estimated to cost approximately \$13,000, or about \$750 to modify existing gear. Sector vessels would not be subject to the RGA measures or the costs associated with such selective gear.

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Sector operations plan and associated NEPA analysis, OMB# 0648-0202, (640 hr/response);
2. Dockside/at-sea monitoring service provider application, OMB# 0648-0202, (10 hr/response);
3. Dockside/at-sea monitoring service provider response to application disapproval, OMB# 0648-0202, (10 hr/response);
4. Data entry for sector discard monitoring system, OMB# 0648-0202, (3 min/response);
5. Sector weekly catch report, OMB# 0648-0202, (4 hr/response);
6. Sector annual report, OMB# 0648-0202, (12 hr/response);
7. Notification of expulsion from a Sector, OMB# 0648-0202, (30 min/response);
8. Request to transfer ACE, OMB# 0648-0202, (5 min/response);
9. VMS installation, OMB# 0648-0202, (1 hr/response);

10. VMS certification form, OMB# 0648-0202, (10 min/response);

11. VMS confirmation call, OMB# 0648-0202, (5 min/response);

12. Automated VMS polling of vessel position, OMB# 0648-0202, (5 sec/response);

13. VMS area and DAS declaration, OMB# 0648-0202, (5 min/response);

14. VMS trip-level catch reports, OMB# 0648-0212, (15 min/response);

15. Request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, OMB# 0648-0202, (5 min/response);

16. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648-0202, (5 min/response);

17. VMS declaration to fish in a NE multispecies RGA, OMB# 0648-0202, (5 min/response);

18. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648-0202, (2 min/response);

19. Trip-end hail report to a dockside monitoring service provider, OMB# 0648-0202, (15 min/response);

20. Confirmation of dockside monitoring trip-end hail report, OMB# 0648-0202, (2 min/response);

21. Dockside/roving service provider data entry, OMB# 0648-0202, (3 min/response);

22. Dockside/roving or at-sea monitor deployment report, OMB# 0648-0202, (10 min/response);

23. Dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, OMB# 0648-0202, (5 min/response);

24. Dockside/roving or at-sea monitor report of harassment and other issues, OMB# 0648-0202, (30 min/response);

25. OLE debriefing of dockside/roving or at-sea monitors, OMB# 0648-0202, (2 hr/response);

26. Copy of dockside/roving or at-sea monitoring service provider contract upon request, OMB# 0648-0202, (30 min/response);

27. Copy of dockside/roving or at-sea monitoring service provider information materials upon request, OMB# 0648-0202, (30 min/response);

28. Observer program pre-trip notification, OMB# 0648-0202, (2 min/response);

29. Daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, OMB# 0648-0212, (15 min/response);

30. Daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, OMB# 0648-0212, (15 min/response);

31. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648-0212, (15 min/response); and

32. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648-0212 (2 min/response).

Public comment is sought regarding: Whether this 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 estimate; 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 (enter office name) at the **ADDRESSES** above and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395-7285.

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

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 10, 2009.

Samuel D. Rauch, III,
Deputy Assistant Administrator, for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is 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, revise the definitions for “NE multispecies or multispecies,” “Regulated species,” and “Sector,” and add new definitions for “Annual catch entitlement (ACE),” “At-sea monitor,” “Common pool trip,” “Common pool vessel,” “Dockside/roving monitor,” “Electronic monitoring,” “Observer/sea sampler,” “Potential Sector contribution (PSC),” “Sector trip,” and “Sector vessel” in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Annual catch entitlement (ACE), with respect to the NE multispecies fishery,

means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual Sector based upon the cumulative fishing history attached to each permit participating in that Sector in a given year. This share may be adjusted due to penalties for exceeding the Sector’s ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly Sector operations plan. When a Sector’s share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that Sector, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that Sector during a particular fishing year.

At-sea monitor, with respect to the NE multispecies fishery, means any person responsible for observing, verifying, and reporting area fished, catch, and discards of all species by gear type for Sector trips as part of an approved Sector at-sea monitoring program.

* * * * *

Common pool trip, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit that lands regulated species or ocean pout.

Common pool vessel, with respect to the NE multispecies fishery, means any vessel issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit that is not a member of an approved Sector for a particular fishing year and that is not operating under the provisions of an approved Sector operations plan. Such vessels must use a NE multispecies DAS, or be fishing under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit, to land regulated species or ocean pout, and must comply with effort controls, trip limits, gear restricted areas, and other provisions specified in this part. Vessels fishing under the provisions of the common pool are also referred to as non-Sector vessels.

* * * * *

Dockside/roving monitor, with respect to the NE multispecies fishery, means any person responsible for observing/ verifying the offloads of all species by common pool or Sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed

weights, as reported by federally permitted dealers, pursuant to this part.
* * * * *

Electronic monitoring, with respect to the NE multispecies fishery, means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.
* * * * *

Northeast (NE) multispecies or multispecies means the following species:

- American plaice—*Hippoglossoides platessoides*.
- Atlantic cod—*Gadus morhua*.
- Atlantic halibut—*Hippoglossus hippoglossus*.
- Atlantic wolffish—*Anarhichas lupus*.
- Haddock—*Melanogrammus aeglefinus*.
- Ocean pout—*Macrozoarces americanus*.
- Offshore hake—*Merluccius albidus*.
- Pollock—*Pollachius virens*.
- Redfish—*Sebastes fasciatus*.
- Red hake—*Urophycis chuss*.
- Silver hake (whiting)—*Merluccius bilinearis*.
- White hake—*Urophycis tenuis*.
- Windowpane flounder—*Scophthalmus aquosus*.
- Winter flounder—*Pleuronectes americanus*.
- Witch flounder—*Glyptocephalus cynoglossus*.
- Yellowtail flounder—*Pleuronectes ferruginea*.

Observer/sea sampler means any person certified/approved by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program and Northeast At-sea Monitoring Program. Observer/sea samplers are also referred to as fisheries observers, fisheries observers/sea samplers, and NMFS-certified fisheries observers/sea samplers.
* * * * *

Potential Sector contribution (PSC), with respect to the NE multispecies fishery, means an individual vessel's share of the ACL for each stock of regulated species or ocean pout that is derived from the fishing history associated with the permit issued to that particular vessel for the purposes of participating in a Sector and contributing to that Sector's ACE for each stock allocated to Sectors under the NE Multispecies FMP.
* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, white hake, Atlantic halibut, and Atlantic wolffish. Regulated species is also referred to as regulated NE multispecies.
* * * * *

Sector, with respect to the NE multispecies fishery, means a group of persons holding limited access NE multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and that have been allocated a portion of the TACs of species managed under the NE Multispecies FMP to achieve objectives consistent with the applicable goals and objectives of the FMP. Each Sector must meet the Sector eligibility and minimum size requirements specified in § 648.87(a)(3) and (4) to be approved by NMFS.

Sector trip, with respect to the NE multispecies fishery, means any trip taken by a Sector vessel subject to the restrictions and conditions of an approved Sector operations plan, as specified in § 648.87(c), in which the vessel declared its intent to fish in the NE multispecies fishery pursuant to § 648.10.

Sector vessel, with respect to the NE multispecies fishery, means any vessel assigned a permit that is a member of an approved Sector for a particular fishing year and that is subject to the restrictions and conditions of an approved Sector operations plan, as specified in § 648.87.
* * * * *

3. In § 648.4, remove paragraph (a)(1)(i)(I)(3) and revise paragraphs (a)(1)(i)(E) and (c)(2)(iii)(A) to read as follows:

§ Vessel permits.

- (a) * * *
- (1) * * *
- (i) * * *

(E) *Replacement vessels*. An owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any

other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.
* * * * *

- (c) * * *
- (2) * * *
- (iii) * * *

(A) 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(j). A vessel owner electing a Day 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, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. 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 providing directions for obtaining valid 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 only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.
* * * * *

4. In § 648.7, revise paragraphs (b)(1)(i), (e), and (f)(2)(i); and add paragraphs (a)(4), (h), and (i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

- (a) * * *

(4) *Facilitation of a dockside/roving monitor report*. Any federally permitted dealer, or any individual acting in the capacity of a dealer, that purchases or receives fish from a vessel operating under the provisions of an approved Sector operations plan, as specified in § 648.87(c), or from a common pool vessel starting in fishing year 2012 must provide a copy of any weigh-out documents or dealer receipts for that particular offloading event to the

dockside/roving monitor and vessel and allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor that verifies the amount of each species offloaded, as instructed by the Regional Administrator.

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a week or month, a report stating so must be submitted for each week or month, as applicable, based upon whether any fishing activity occurred during a particular reporting week or month (*i.e.*, starting a trip, landing, or offloading catch will constitute fishing during a reporting week or month). If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (*i.e.*, less than 23 inches (58.42 cm), total length) or "large" (*i.e.*, 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(e) *Record retention*—(1) *Dealer records*. Any record, as defined in

§ 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and made available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business.

(2) *VTRs*. Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

(3) *Dockside/roving and at-sea monitor reports*. Any record, as defined in § 648.2, related to fish offloaded and observed by a dockside/roving or at-sea monitor, including any reports provided to NMFS, Sector managers, or another third-party service provider specified in paragraph (h) of this section, must be retained and made available for immediate review for a total of 3 years after the date the fish were first offloaded. Dockside/roving and at-sea monitor providers must retain the required records and reports at their principal place of business.

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies permit, fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (*i.e.*, starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and

offloads its catch on the following Thursday (*i.e.*, after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (*i.e.*, a "did not fish" report) would not be required for either week.

* * * * *

(h) *Dockside/roving monitor reports*. Any dockside/roving monitor assigned to observe the offload of a vessel on a Sector trip must record the amounts of all species offloaded and report such amounts to that particular vessel's Sector manager and a third-party service provider, if specified in the operations plan or the private contract between the dockside/roving monitor service provider and an individual Sector. Such reports must be made available to dealers for signature, as instructed by the Regional Administrator.

(i) *At-sea monitor/electronic monitoring reports*. Any at-sea monitor assigned to observe a Sector trip and any third-party service provider analyzing data from electronic monitoring equipment deployed on a Sector trip must submit reports on catch, discard, and other data elements specified by the Regional Administrator to NMFS, the Sector manager, and monitoring contractor, as instructed by the Regional Administrator.

5. In § 648.10, revise paragraphs (b)(4) and (e)(1)(v), and add paragraph (k) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(4) A vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a Sector trip; or a vessel issued a limited access NE multispecies small vessel category or Handgear A permit that fishes in multiple stock areas pursuant to paragraph (k)(2) of this section;

* * * * *

(e) * * *

(1) * * *

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or that catches regulated species or ocean pout while on a Sector trip, as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a NE

multispecies DAS or under the provisions of an approved Sector operations plan.

* * * * *

(k) *Area-specific reporting requirements for NE multispecies vessels.*—(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators.* In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common poor or Sector trip must declare its intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, and provide the VTR serial number for the first page of the VTR for that particular trip via VMS prior to leaving port at the start of a fishing trip, as instructed by the Regional Administrator.

(2) *Reporting requirements for NE multispecies vessel owners or operators fishing in more than one broad stock area per trip.* Unless otherwise provided in this paragraph (k)(2), the owner or operator of any vessel issued a NE multispecies limited access permit that has declared its intent to fish within multiple NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, on the same trip must submit a trip-level hail report via VMS detailing the amount of each regulated species retained (in pounds, landed weight) within each broad stock area prior to crossing the VMS demarcation line, as defined in § 648.10, upon its return to port following each fishing trip on which regulated species were caught, as instructed by the Regional Administrator. This reporting requirement is in addition to the reporting requirements specified in paragraph (k)(1) of this section and any other reporting requirements specified in this part. A vessel is exempt from the reporting requirements specified in this paragraph (k)(2) if it is fishing in a special management program, as specified in § 648.85, and is required to submit daily VMS catch reports consistent with the requirements of that program. The Regional Administrator may adjust the reporting frequency specified in this paragraph and may exempt vessels on a Sector trip from the reporting requirements specified in this paragraph (k)(2) if it is determined that such reporting requirements would duplicate those specified in § 648.87(b).

(3) *NE multispecies broad stock areas.* For the purposes of the area-specific reporting requirements listed in paragraphs (k)(1) and (2) of this section, the NE multispecies broad stock areas

are defined in paragraphs (k)(3)(i) through (iv) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Stock Area 1.* The GOM Stock Area 1 is defined by straight lines connecting the following points in the order stated:

GOM STOCK AREA 1

Point	N. Latitude	W. Longitude
G1	(1)	(1)
G2	43°58'	67°22'
G3	42°53.1'	67°44.4'
G4	42°31'	67°28.1'
CI13	42°22'	67°20'
G6	42°20'	67°20'
G10	42°20'	70°00'
G9	42°00'	(2)

¹ Intersection of the shoreline and the U.S.-Canada maritime boundary.

² Intersection of the Cape Cod, MA, coastline and 42° 00' N. lat.

(ii) *Inshore GB Stock Area 2.* The Inshore GB Stock Area 2 is defined by straight lines connecting the following points in the order stated:

INSHORE GB STOCK AREA 2

Point	N. Latitude	W. Longitude
G9	42°00'	(1)
G10	42°20'	70°00'
IGB1	42°20'	68°50'
IGB2	41°00'	68°50'
IGB3	41°00'	69°30'
IGB4	41°10'	69°30'
IGB5	41°10'	69°50'
IGB6	41°20'	69°50'
IGB7	41°20'	70°00'
G12	(2)	70°00'

¹ The intersection of the Cape Cod, MA, coastline and 42° 00' N. lat.

² South-facing shoreline of Cape Cod, MA.

(iii) *Offshore GB Stock Area 3.* The Offshore GB Stock Area 3 is defined by straight lines connecting the following points in the order stated:

OFFSHORE GB STOCK AREA 3

Point	N. Latitude	W. Longitude
IGB1	42°20'	68°50'
CI13	42°20'	67°20'
SNE1	42°22'	67°20'
SNE2	40°27'	65°43'
SNE3	39°00'	(1)
SNE4	39°00'	69°00'
SNE5	39°50'	69°00'
IGB1	39°50'	68°50'
IGB1	42°20'	68°50'

¹ The U.S.-Canada maritime boundary as it intersects with the EEZ.

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. Latitude	W. Longitude
G12	(1)	70°00'
IGB7	41°20'	70°00'
IGB6	41°20'	69°50'
IGB5	41°10'	69°50'
IGB4	41°10'	69°30'
IGB3	41°00'	69°30'
IGB2	41°00'	68°50'
SNE4	39°50'	68°50'
SNE3	39°50'	69°00'
SNE2	(2)	69°00'

¹ South-facing shoreline of Cape Cod, MA.

² The U.S.-Canada maritime boundary as it intersects with the EEZ.

6. In § 648.11, add paragraphs (j) and (k) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(j) In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved Sector at-sea monitoring program specified in § 648.87(b)(1)(v) for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

(k) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (*i.e.*, vessel manager or Sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a Sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and Sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for

observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or Sector trip during the following week and provide the date, time, port of departure, area to be fished, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish in an area with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the operator, owner, or manager of the vessel.

7. In § 648.14,

a. Revise the introductory text to paragraph (k)(12)(iii);

b. Revise paragraphs (e)(1), (k)(3)(i), (k)(5)(vi)(B), (k)(6)(ii)(A)(1), (k)(7)(i)(B), (k)(9)(iv)(B), (k)(11)(i)(A)(2), (k)(11)(ii), (k)(11)(iii)(D), (k)(11)(iv)(A), (k)(11)(v)(A), (k)(11)(vi), (k)(12)(iii)(A) through (E), (k)(12)(vi)(D), (k)(12)(vi)(G), (k)(12)(vi)(I), (k)(12)(vii)(A)(1) and (2), (k)(12)(viii), (k)(13)(i)(A), (k)(13)(ii)(A) through (C), and (k)(14);

c. Remove and reserve paragraph (k)(9)(i), (k)(9)(ii)(G) and (I), (k)(11)(v)(B)(1), (k)(12)(iv), and (k)(13)(ii)(D)(3); and

d. Add paragraphs (d)(3), (k)(2)(iii), (k)(7)(i)(C)(4), (k)(9)(ii)(M), (k)(9)(iii)(E) and (F), (k)(12)(iii)(F), (k)(12)(ix), (k)(13)(ii)(I) and (J), (k)(16)(vi) through (viii), (k)(18), and (k)(19) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(d) * * *

(3) Fail to comply with the appropriate VMS reporting requirements, as specified in § 648.10.

* * * * *

(e) * * *

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g); or any dockside/roving monitor conducting his or her duties, including those duties authorized in § 648.82(n)(2) or § 648.87(b)(1)(v)(B)(1).

* * * * *

(k) * * *

(2) * * *

(iii) Fail to comply with the pre-trip notification requirements of the NE multispecies observer program specified in § 648.11(k).

(3) * * *

(i) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a Sector trip and such species are exempt from such possession limits in accordance with an approved Sector operations plan, as specified in § 648.87(c).

* * * * *

(5) * * *

(vi) * * *

(B) Possess, land, or fish for regulated species or ocean pout, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a LAGC permit, unless the vessel and the dredge gear conform with

the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for, possesses, or lands NE multispecies exclusively in state waters.

* * * * *

(6) * * *

(ii) * * *

(A) * * *

(1) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS or on a Sector trip with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(4), (a)(3)(iv)(C), (a)(4)(iv)(B)(3), (b)(2)(iv)(B)(3), and (c)(2)(v)(B)(3), or fail to produce immediately, or cause to be produced immediately, gillnet tags when requested by an authorized officer.

* * * * *

(7) * * *

(i) * * *

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), (f)(2)(vi), or as authorized under § 648.85.

(C) * * *

(4) Fail to comply with the restrictions on fishing and gear specified in § 648.81(n) for the NE multispecies restricted gear areas.

* * * * *

(9) * * *

(ii) * * *

(M) Lease NE multispecies DAS to or from a common pool vessel if either the Lessor or the Lessee vessel is a Sector vessel.

(iii) * * *

(E) Transfer NE multispecies DAS to or from a common pool vessel if either the Transferor or the Transferee vessel is a Sector vessel.

(F) Transfer NE multispecies DAS to or from a Sector vessel if either the Transferor or the Transferee vessel is enrolled in a different Sector for that particular fishing year.

(iv) * * *

(B) For any common pool or Sector vessel, fail to comply with the gillnet requirements and restrictions specified in § 648.82(j), unless otherwise exempted pursuant to § 648.87.

* * * * *

(11) * * *

(i) * * *

(A) * * *

(2) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless

further restricted under § 648.85(b) or exempted under § 648.87.

* * * * *

(ii) *Gear requirements for all persons.* If fishing with trawl gear under a NE multispecies DAS or on a Sector trip in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(iii) and (b)(6)(iv)(J)(1), unless using other gear authorized under § 648.85(b)(6) or (8).

(iii) * * *

(D) If fishing under a NE multispecies DAS or on a Sector trip in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), but not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

* * * * *

(iv) * * *

(A) If fishing under a NE multispecies DAS or on a Sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

* * * * *

(v) * * *

(A) *All persons.* If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8) on the same trip, fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(3)(xi) and (b)(8)(v)(I), or the minimum Category A DAS requirement specified in § 648.85(b)(3)(xii) and (b)(8)(v)(J).

* * * * *

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a Sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(8).

(12) * * *

(iii) *Closed Area II Yellowtail Flounder/Haddock SAP restrictions for all persons.* (A) If fishing under the Closed Area II Yellowtail Flounder/Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies or ocean pout from the area specified in § 648.85(b)(3)(ii), unless in compliance with § 648.85(b)(3)(i) through (xiii).

(B) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v) or § 648.85(b)(8)(v)(D).

(C) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder/Haddock SAP outside of the season specified in § 648.85(b)(3)(iii).

(D) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the number of trips specified in § 648.85(b)(3)(vi) or (vii).

(E) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(F) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), fail to comply with the gear requirements specified in § 648.85(b)(3)(x).

* * * * *

(vi) * * *

(D) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable DAS use restrictions specified in § 648.85(b)(7)(iv)(A) and (b)(7)(vi)(A).

* * * * *

(G) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(A) or (b)(7)(vi)(B).

* * * * *

(I) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable reporting requirement specified in § 648.85(b)(7)(v)(C) or (b)(7)(vi)(D).

(vii) * * *

(A) * * *

(1) If fishing under a NE multispecies DAS or on a Sector trip in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with § 648.85(b)(8)(v).

(2) *VMS and declaration requirements.* (i) If fishing under a NE multispecies DAS or on a Sector trip in the Eastern U.S./Canada Haddock SAP in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(ii) If fishing under a NE multispecies DAS or on a Sector trip, fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

* * * * *

(viii) Discard legal-sized NE regulated multispecies or ocean pout while fishing under a Special Access Program, as described in § 648.85(b)(3)(xi), (b)(6)(iv)(E), (b)(7)(iv)(H), or (b)(8)(v)(I), unless otherwise required pursuant to possession prohibitions specified in § 648.86 or § 648.87.

(ix) *GOM Haddock Sink Gillnet Pilot Program.* (A) Fail to comply with the mesh size, net restriction, DAS use restriction, or notification requirements specified in § 648.85(b)(9), unless otherwise exempted pursuant to § 648.87.

(B) Fail to possess on board a letter of authorization issued by the Regional Administrator when participating in the GOM Haddock Sink Gillnet Pilot Program, as required by § 648.85(b)(9)(v)(C).

(C) Fish for, harvest, possess, or land regulated species or ocean pout while operating under the GOM Haddock Sink Gillnet Pilot Program pursuant to § 648.85(b)(9) after the program has been closed pursuant to § 648.85(b)(9)(viii).

(13) * * *

(i) * * *

(A) Under § 648.85 or § 648.86, fail to offload a sufficient amount of regulated species or ocean pout subject to a daily possession limit at the end of a fishing trip, as required by § 648.86(i).

(ii) * * *

(A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), and (l); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), and (l); § 648.81(n), § 648.82(b)(5) and (6), § 648.85, or § 648.88 if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

(C) Fish for, possess at any time during a trip, or land regulated NE multispecies or ocean pout specified in § 648.86 after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by § 648.82(b)(5), § 648.87, or § 648.89, or allowed pursuant to § 648.85(b)(6) or § 648.88.

* * * * *

(I) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, land regulated species or ocean pout more than once within any 24-hr period.

(J) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, fail to comply with the most restrictive trip limits applicable when fishing in multiple areas, as specified in § 648.85 or § 648.86.

(14) *Sector requirements.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit and fishing on a Sector trip to do any of the following:

(i) Fail to abide by the restrictions specified in § 648.87(b)(1).

(ii) Catch regulated species or ocean pout in excess of ACE allocated or transferred to that Sector pursuant to § 648.87(b)(1)(i) and (viii), respectively.

(iii) Fish in a particular stock area, the Eastern U.S./Canada Area, or a SAP if the Sector has not been allocated, does not acquire, or otherwise has insufficient ACE remaining/available for all stocks caught in that area, or fail to operate in a manner that would not catch stocks for which the Sector has not been allocated ACE, as described in an approved Sector operations plan pursuant to § 648.87(b)(2)(xiv), as prohibited in § 648.87(b)(1)(ii);

(iv) Violate the provisions of an approved Sector operations plan or letter of authorization issued by the Regional Administrator, as required by § 648.87(b)(1)(iv) and (b)(2).

(v) Fail to remain in the Sector for the remainder of the fishing year, as required by § 648.87(b)(1).

(vi) Unless otherwise required to use a NE multispecies DAS to participate in another fishery, fish in the NE multispecies DAS program in a given fishing year or, for common pool vessels, fish in an approved Sector in a given fishing year.

(vii) If a vessel is removed from a Sector for violating the Sector rules, fish under the NE multispecies regulations for common pool vessels.

(viii) Discard legal-sized regulated species or ocean pout allocated to Sectors pursuant to § 648.87(b)(1)(i), as prohibited by § 648.87(b)(1)(v).

(ix) Fail to comply with the reporting requirements specified in § 648.87(b)(1)(v) or (vi).

(x) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as prohibited by § 648.87(b)(5)(i)(C).

(xi) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry

either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(6)(iii)(A).

(xii) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(6)(iv)(A).

* * * * *

(16) * * *
(vi) *Size limits.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout that are smaller than the minimum fish sizes specified in § 648.89(b)(1) and (b)(3).

(vii) *Identification.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout without at least 2 square inches (5.1 square cm) of contiguous skin that allows for the ready identification of the species of fish upon landing.

(viii) *Atlantic wolffish.* If fishing under the recreational or charter/party regulations, possess Atlantic wolffish.

* * * * *

(18) *Trimester TAC AM—(i) Vessel and operator permit holders.* (A) Fish for, harvest, possess, or land regulated species or ocean pout in or from the closed areas specified in § 648.82(n)(2)(ii) once such areas are closed pursuant to § 648.82(n)(2)(i).

(B) Fail to comply with the reporting/recordkeeping requirements specified in § 648.87(b)(5).

(C) Employ a dockside/roving monitor service provider that is not approved/certified by NMFS, as specified in § 648.82(n)(2)(iv)(B).

(19) *Dockside/roving and at-sea/electronic monitoring service providers.* It is unlawful for any dockside/roving and at-sea/electronic monitoring service provider, including individual dockside/roving or at-sea monitors, to do any of the following:

(i) Fail to comply with the operational requirements, including the recordkeeping and reporting requirements, specified in § 648.87(b)(5) or (6).

(ii) Provide false or inaccurate information regarding area fished; species identification; or amount of each species kept, discarded, or landed.

* * * * *

8. In § 648.60, revise the introductory text to paragraph (a)(5)(ii) and revise paragraph (a)(5)(ii)(C)(2) to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(a) * * *

(5) * * *

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* Subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a NE multispecies permit as specified in § 648.4(a)(1), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b) through (d), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

* * * * *

(C) * * *

(2) *SNE/MA yellowtail flounder possession limit.* Such vessels fishing within the Nantucket Lightship Access Area described in § 648.59(d) may fish for, possess, and land yellowtail flounder up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels may not fish for, possess, or land more than the possession limit of yellowtail flounder as specified in § 648.86(g), provided the Regional Administrator has not issued a notice that the scallop fishery portion of the yellowtail flounder TAC as specified in § 648.85(c)(i) has been harvested.

* * * * *

9. In § 648.80, revise the introductory text to paragraphs (a)(4)(iv), (a)(11), (b)(2)(iv), (b)(11), and (c)(2)(v); and revise paragraphs (a)(3)(i), (a)(3)(iv)(A)(1), (a)(3)(iv)(B)(1) and (2), (a)(3)(vi), (a)(4)(i), (a)(4)(iv)(A), (a)(4)(iv)(B)(1), (a)(8)(i), (a)(11)(i)(B), (b)(2)(i), (b)(2)(iv)(A), (b)(2)(iv)(B)(1), (b)(2)(vi), (b)(11)(i), (c)(2)(i), (c)(2)(v)(A), (c)(2)(v)(B)(1), and (h)(2) to read as follows:

§ 648.80 *NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.*

* * * * *

(a) * * *

(3) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section and § 648.85(b)(6), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net,

except a midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a Sector trip in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) * * *
(A) * * *

(1) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and § 648.85(b)(9), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtains an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing in the NE multispecies DAS program or on a Sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(B) * * *

(1) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and § 648.85(b)(9), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under the NE multispecies DAS program or on a Sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of

which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

* * * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a Sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(4) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, this paragraph (a)(4)(i), § 648.85(b)(6) and (8), and § 648.87(c)(2)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a Sector trip in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in

paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraphs (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a Sector trip in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

* * * * *

(8) * * *

(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i) of this section, and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch

standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. The Regional Administrator may modify or delete an existing exemption if he/she determines that the catch of regulated species is equal to or greater than 5 percent, by weight of total catch, or another pertinent approved amount, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

* * * * *

(11) *GOM Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Regulated Mesh Area specified in paragraph (a)(1) of this section, when not under a NE multispecies DAS, providing the vessel fishes in the GOM Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. Latitude	W. Longitude
SM1	41°35'	70°00'
SM2	41°35'	69°40'
SM3	42°49.5'	69°40'
SM4	43°12'	69°00'
SM5	43°41'	68°00'

GOM SCALLOP DREDGE EXEMPTION AREA—Continued

Point	N. Latitude	W. Longitude
SM6	43°58'	67°22'
SM7	(1)	(1)

¹ Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) * * *

(B) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area under the exemption specified in this paragraph (a)(11) must fish with dredge gear. The combined dredge width in use by, or in possession on board, may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls*. Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and § 648.85(b)(6), and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a Sector trip in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Gillnet vessels*. For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a Sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels*. A Trip gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(1) *Number of nets*. A Day gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

* * * * *

(vi) *Other restrictions and exemptions*. A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a Sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(11) *SNE Scallop Dredge Exemption Area*. Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE RMA when not under a NE multispecies DAS, provided the vessel fishes in the SNE Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south and east by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
Sc1	(1)	72°30'
Sc2	40°00'	72°30'
Sc3	40°00'	71°40'
Sc4	39°50'	71°40'
Sc5	39°50'	70°00'
Sc6	(2)	70°00'
Sc7	(3)	70°00'
Sc8	(4)	70°00'

¹ South facing shoreline of Long Island, NY.
² South facing shoreline of Nantucket, MA.
³ North facing shoreline of Nantucket, MA.
⁴ South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
Sc9	41°00'	(1)
Sc10	41°00'	71°40'
Sc11	(2)	71°40'

¹ East facing shoreline of the south fork of Long Island, NY.
² South facing shoreline of RI.

* * * * *

(c) * * *
 (2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a Sector trip in the MA Regulated Mesh Area (§ 648.104(a)), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE

multispecies DAS program or on a Sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a Sector trip and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

* * * * *

(h) * * *

(2) Limited access scallop vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species or ocean pout, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS, but are prohibited from using scallop dredge gear on such trips.

* * * * *

10. In § 648.81, revise the introductory text for paragraph (f)(2)(ii); revise paragraphs (b)(2)(iii) and (j)(1); and add paragraphs (f)(2)(vi), (g)(2)(iv) and (v), and (n) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, or in the Midwater Trawl Gear Exempted Fishery as specified under 648.80(d), and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer

than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

* * * * *

(vi) That are fishing on a Sector trip, provided such vessels comply with the following restricted areas referred to as the Sector Rolling Closure Areas:

(A) *Sector Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA I
 [March 1–March 31]

Point	N. Latitude	W. Longitude
GM3	42°00'	(1)
GM5	42°00'	68°30'
GM6	42°30'	68°30'
GM23	42°30'	70°00'

¹ Cape Cod, MA shoreline on the Atlantic Ocean.

(B) *Sector Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA II
 [April 1–April 30]

Point	N. Latitude	W. Longitude
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
SGM1	42°00'	70°00'
SGM2	43°00'	70°00'
SGM3	43°00'	(4)

¹ MA shoreline.
² Cape Cod, MA shoreline on Cape Cod Bay.
³ Cape Cod, MA shoreline on the Atlantic Ocean.
⁴ NH shoreline.

(C) *Sector Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA III
 [May 1–May 31]

Point	N. Latitude	W. Longitude
SGM4	42°30'	(1)

**SECTOR ROLLING CLOSURE AREA III—
Continued**
(May 1–May 31)

Point	N. Latitude	W. Longitude
SGM5	42°30'	70°00'
SGM6	43°00'	70°00'
SGM7	43°00'	69°30'
SGM8	43°30'	69°30'
GM18	43°30'	(2)

¹ MA shoreline.
² NH shoreline.

(D) *Sector Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA IV
(June 1–June 30)

Point	N. Latitude	W. Longitude
SGM9	43°00'	(1)
SGM6	43°00'	70°00'
SGM10	43°30'	70°00'
SGM11	43°30'	69°00'
GM22	(2)	69°00'

¹ MA shoreline.
² ME shoreline.

(E) *Sector Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA V
(October 1–November 30)

Point	N. Latitude	W. Longitude
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(1)

¹ MA shoreline.
² Cape Cod, MA shoreline on Cape Cod Bay.
³ Cape Cod, MA shoreline on the Atlantic Ocean.

(g) * * *
(2) * * *

(iv) That are fishing in the CA I Hook Gear Haddock Access Area pursuant to § 648.85(b)(7).

(v) That are fishing under the restrictions and conditions of an

approved Sector operations plan, as specified in § 648.87(c).

* * * * *

(j) * * *

(1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
-------	-------------	--------------

Inshore boundary

to 120		
69	40°07.9'	68°36.0'
70	40°07.2'	68°38.4'
71	40°06.9'	68°46.5'
72	40°08.7'	68°49.6'
73	40°08.1'	68°51.0'
74	40°05.7'	68°52.4'
75	40°03.6'	68°57.2'
76	40°03.65'	69°00.0'
77	40°04.35'	69°00.5'
78	40°05.2'	69°00.5'
79	40°05.3'	69°01.1'
80	40°08.9'	69°01.75'
81	40°11.0'	69°03.8'
82	40°11.6'	69°05.4'
83	40°10.25'	69°04.4'
84	40°09.75'	69°04.15'
85	40°08.45'	69°03.6'
86	40°05.65'	69°03.55'
87	40°04.1'	69°03.9'
88	40°02.65'	69°05.6'
89	40°02.00'	69°08.35'
90	40°02.65'	69°11.15'
91	40°00.05'	69°14.6'
92	39°57.8'	69°20.35'
93	39°56.65'	69°24.4'
94	39°56.1'	69°26.35'
95	39°56.55'	69°34.1'
96	39°57.85'	69°35.5'
97	40°00.65'	69°36.5'
98	40°00.9'	69°37.3'
99	39°59.15'	69°37.3'
100	39°58.8'	69°38.45'
102	39°56.2'	69°40.2'
103	39°55.75'	69°41.4'
104	39°56.7'	69°53.6'
105	39°57.55'	69°54.05'
106	39°57.4'	69°55.9'
107	39°56.9'	69°57.45'
108	39°58.25'	70°03.0'
110	39°59.2'	70°04.9'
111	40°00.7'	70°08.7'
112	40°03.75'	70°10.15'
115	40°05.2'	70°10.9'
116	40°02.45'	70°14.1'
119	40°02.75'	70°16.1'
to 181		

Offshore boundary

to 69		
120	40°06.4'	68°35.8'
121	40°05.25'	68°39.3'
122	40°05.4'	68°44.5'
123	40°06.0'	68°46.5'
124	40°07.4'	68°49.6'
125	40°05.55'	68°49.8'
126	40°03.9'	68°51.7'
127	40°02.25'	68°55.4'
128	40°02.6'	69°00.0'
129	40°02.75'	69°00.75'
130	40°04.2'	69°01.75'

Point	N. Latitude	W. Longitude
131	40°06.15'	69°01.95'
132	40°07.25'	69°02.0'
133	40°08.5'	69°02.25'
134	40°09.2'	69°02.95'
135	40°09.75'	69°03.3'
136	40°09.55'	69°03.85'
137	40°08.4'	69°03.4'
138	40°07.2'	69°03.3'
139	40°06.0'	69°03.1'
140	40°05.4'	69°03.05'
141	40°04.8'	69°03.05'
142	40°03.55'	69°03.55'
143	40°01.9'	69°03.95'
144	40°01.0'	69°04.4'
146	39°59.9'	69°06.25'
147	40°00.6'	69°10.05'
148	39°59.25'	69°11.15'
149	39°57.45'	69°16.05'
150	39°56.1'	69°20.1'
151	39°54.6'	69°25.65'
152	39°54.65'	69°26.9'
153	39°54.8'	69°30.95'
154	39°54.35'	69°33.4'
155	39°55.0'	69°34.9'
156	39°56.55'	69°36.0'
157	39°57.95'	69°36.45'
158	39°58.75'	69°36.3'
159	39°58.8'	69°36.95'
160	39°57.95'	69°38.1'
161	39°54.5'	69°38.25'
162	39°53.6'	69°46.5'
163	39°54.7'	69°50.0'
164	39°55.25'	69°51.4'
165	39°55.2'	69°53.1'
166	39°54.85'	69°53.9'
167	39°55.7'	69°54.9'
168	39°56.15'	69°55.35'
169	39°56.05'	69°56.25'
170	39°55.3'	69°57.1'
171	39°54.8'	69°58.6'
172	39°56.05'	70°00.65'
173	39°55.3'	70°02.95'
174	39°56.9'	70°11.3'
175	39°58.9'	70°11.5'
176	39°59.6'	70°11.1'
177	40°01.35'	70°11.2'
178	40°02.6'	70°12.0'
179	40°00.4'	70°12.3'
180	39°59.75'	70°13.05'
181	39°59.3'	70°14.0'
to 119		

* * * * *

(n) *NE Multispecies Restricted Gear Areas.* With the exception of a vessel on a Sector trip, any vessel issued a limited access NE multispecies permit that is fishing any part of a trip in one or both of the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section must comply with all applicable restrictions specified in this paragraph (n). If such a vessel fishes inside/outside of these areas on the same trip, the most restrictive measures for the areas fished apply, including, but not limited to, gear restrictions and trip limits.

(1) *Western GB Multispecies Restricted Gear Area.* The Western GB Multispecies Restricted Gear Area is

defined as the area bounded by straight lines connecting the following points in the order stated:

**WESTERN GB MULTISPECIES
RESTRICTED GEAR AREA**

Point	N. Latitude	W. Longitude
G8	42°00'	69°30'
GM5	42°00'	68°30'
MRGA1	41°00'	68°30'
YTA5	41°00'	69°30'
G8	42°00'	69°30'

(2) *SNE Multispecies Restricted Gear Area.* The SNE Multispecies Restricted Gear Area is defined as the area bounded by straight lines connecting the following points in the order stated:

**SNE MULTISPECIES RESTRICTED GEAR
AREA**

Point	N. Latitude	W. Longitude
MRAG1	41°30'	(1)
MRGA2	41°30'	70°30'
MRGA3	(2)	70°30'
MRGA4	(3)	70°30'
MRGA5	40°00'	70°30'
MRGA6	40°00'	71°30'
MRGA7	40°30'	71°30'
SNEMA3	40°30'	72°00'
MRGA8	(4)	72°00'
MRGA9	(5)	72°00'
MRGA10	(6)	72°00'
MRAG1	(1)	70°30'

¹ East-facing shoreline of RI.

² North-facing shoreline of Martha's Vineyard, MA.

³ South-facing shoreline of Martha's Vineyard, MA.

⁴ South-facing shoreline of Long Island, NY.

⁵ North-facing shoreline of Long Island, NY.

⁶ South-facing shoreline of CT.

(3) *Gear restrictions.* Unless otherwise authorized pursuant to paragraph (n)(3)(iv) of this section, a limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section may only use one or more of the gear types listed in paragraphs (n)(3)(i) through (iii) of this section. No other type of fishing gear may be on board the vessel when fishing in the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section.

(i) *Trawl gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using trawl gear may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); or a rope separator trawl, as specified in paragraph (n)(3)(i)(A) of this section.

(A) *Rope separator trawl.* A rope separator trawl is defined as a four-seam

bottom trawl net (*i.e.*, a net with a top and bottom panel and two side panels) modified to include both a horizontal separator panel and an escape opening in the bottom belly of the net below the separator panel, as further specified in paragraphs (n)(3)(i)(A)(1) through (3) of this section.

(1) *Mesh size.* Unless otherwise specified in this paragraph (n)(3)(i)(A)(1), the minimum mesh size applied throughout the body and extension of a rope separator trawl must be 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof. Mesh in the bottom belly of the net must be 13-inch (33-cm) diamond mesh. Unless otherwise specified in this part, the codend mesh size must be consistent with mesh size requirements specified in § 648.80. The mesh size of a particular section of the rope separator trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(2) *Separator panel.* The separator panel must consist of parallel lines made of fiber rope, the ends of which are attached to each side of the net starting at the forward edge of the square of the net and running aft toward the extension of the net. The leading rope must be attached to the side panel at a point at least $\frac{1}{3}$ of the number of meshes of the side panel above the lower gore, and the panel of ropes shall slope downward toward the extension of the net. For example, if the side panel of the net is 42 meshes tall, the leading rope must be attached at least 14 meshes above the lower gore. The forward $\frac{2}{3}$ of the separator ropes that comprise the separator panel must be no farther than 26 inches (66 cm) apart, with the after $\frac{1}{3}$ of the separator ropes that comprise the separator panel being no farther than 13 inches (33 cm) apart. The ends of the aftermost rope shall be attached to the bottom belly at a point $\frac{1}{6}$ of the number of meshes of the after end of the bottom belly below the lower gore. The separator ropes should be of sufficient length not to impinge upon the overall shape of the net without being too long to compromise the selectivity of the net. The separator ropes may not be manipulated in any way that would inhibit the selectivity of the net by causing the separator ropes to dip toward the bottom belly of the net and obscure the escape opening, as defined in paragraph (n)(3)(i)(A)(3) of this section.

(3) *Escape opening.* The escape opening must be positioned in the

bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (n)(3)(i)(A)(2) of this section. Longitudinal lines may be used to maintain the shape of the escape opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

(B) [Reserved]

(ii) *Gillnet gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using gillnet gear may only use roundfish gillnets or flatfish gillnets consistent with the gear requirements in § 648.80, provided the mesh size of the flatfish gillnet gear is greater than or equal to 10 inches (25.4 cm) throughout the entire net.

(iii) *Hook gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using hook gear may only use longline gear, tub trawls, or handgear.

(iv) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the NE Multispecies Restricted Gear Areas in accordance with the standards and requirements specified in § 648.85(b)(6)(iv)(J)(2).

(4) *VMS declaration.* In addition to any other declaration requirements specified in this part, the operator of a limited access NE multispecies vessel intending to fish, or fishing, in one or both of the NE Multispecies Restricted Gear Areas, as specified in paragraphs (n)(1) and (2) of this section must declare into one or both of these areas via VMS, as instructed by the Regional Administrator, prior to departure from port. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish outside of the NE Multispecies Restricted Gear Areas for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(5) *Trip limits.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section must comply with the trip limits specified in § 648.86, unless further restricted by the following trip limits:

(i) If fishing exclusively under a NE multispecies DAS or under both a NE multispecies DAS and a monkfish DAS with gear other than gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; 500 lb (227 kg) of monkfish

(whole weight), unless also subject to the monkfish possession restrictions in § 648.94(b)(3); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.

(ii) If fishing under both a NE multispecies DAS and a monkfish DAS with gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; the applicable monkfish possession limits specified in § 648.94(b); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.

(6) *Transiting*. A limited access NE multispecies vessel that is not subject to the restrictions of this paragraph (n) may transit the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section, provided any gear that is not authorized under paragraph (n)(3) of this section is stowed and not available for immediate use in accordance with § 648.23(b).

11. In § 648.82:

(a) Revise the introductory text to paragraphs (b)(6), (d)(1), (d)(2)(i)(B), (d)(2)(ii)(B), (j), (j)(1), and (k)(4)(xi);

(b) Revise paragraphs (d)(1)(iii), (d)(2)(i)(B)(3), (d)(2)(ii)(B)(3), (e)(1), (e)(3), (g), (h), (j)(1)(ii) and (iii), (j)(2), (k)(2)(ii), (k)(4)(i), (k)(4)(v), (k)(4)(x), (k)(4)(xi)(B), (l)(1)(ii), (l)(1)(iv), (l)(1)(vi) through (viii), and (l)(2)(i);

(c) Remove and reserve paragraphs (c)(2), (e)(2), and (k)(4)(iv);

(d) Remove paragraphs (d)(4) and (l)(1)(ix); and

(e) Add paragraphs (d)(1)(iv), (d)(2)(i)(B)(4), (d)(2)(ii)(B)(4), (k)(4)(xi)(C), and (n) to read as follows:

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

* * * * *

(b) * * *

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 750 lb (340.2 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout as specified in § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b). For example, if the GOM cod trip limit specified in § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(d) * * *

(1) *Category A DAS*. Calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iv) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land stocks of regulated species or ocean pout, in accordance with all of the conditions and restrictions of this part.

* * * * *

(iii) For fishing year 2009 (May 1, 2009, through April 30, 2010), Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(iv) Starting in fishing year 2010 (beginning May 1, 2010), Category A DAS are defined as follows:

(A) For a vessel fishing under the provisions of the common pool, as defined in this part, Category A DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section, or reduced pursuant to § 648.87(b)(1)(iii).

(B) For a Sector vessel, Category A DAS allocated for use when fishing in other fisheries that require the concurrent use of a NE multispecies DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(2) * * *

(i) * * *

(B) *Calculation*. Regular B DAS are calculated as follows:

* * * * *

(3) For fishing year 2009 (May 1, 2009, through April 30, 2010), Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(4) Starting in fishing year 2010 (beginning May 1, 2010), Regular B DAS are defined as follows:

(i) For a common pool vessel, Regular B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(ii) For a Sector vessel, Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(ii) * * *

(B) *Calculation*. Reserve B DAS are calculated as follows:

* * * * *

(3) For fishing year 2009 (May 1, 2009, through April 30, 2010), Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(4) Starting in fishing year 2010 (beginning May 1, 2010), Reserve B DAS are defined as follows:

(i) For a common pool vessel, Reserve B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(ii) For a Sector vessel, Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

* * * * *

(e) * * *

(1) When a vessel is participating in the NE multispecies DAS program, as required by the regulations in this part, NE multispecies DAS shall accrue as specified in paragraphs (e)(1)(i) and (ii) of this section and shall be based upon the time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10. For the purpose of calculating trip limits specified in this part, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally.

(i) *Common pool vessels*. For a common pool vessels, Category A shall accrue in 24-hr increments, unless otherwise required under paragraph (n) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for 25 hr would be charged 48 hr of Category A DAS instead of 25 hr.

(ii) *Sector vessels*. For the purposes of complying with the restrictions of other fisheries that require the use of a NE multispecies DAS, a vessel on a Sector trip shall accrue DAS to the nearest minute and shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10.

* * * * *

(3) *Regular B DAS Program 24-hr clock*. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that

left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

* * * * *

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified in paragraphs (b)(5) or (b)(6) of this section, respectively, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a Sector must declare that the vessel will not fish with gear capable of catching NE multispecies (*i.e.*, gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program; declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j) of this section; and declaration of its 20-day period out of the NE multispecies DAS program, or, for a Sector vessel that the vessel will not fish with gear capable of catching NE multispecies, using the notification requirements specified in § 648.10.

(j) *Gillnet restrictions.* A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS, under the provisions of the small vessel permit category, or on a Sector trip with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* Unless otherwise exempted in this part, a Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS, the provisions of a small vessel permit category, or on a Sector trip is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, as appropriate, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, a Day gillnet vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section shall be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies, ocean pout, or non-exempt species harvested with gillnet gear and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b) while

fishing under a NE multispecies DAS, the provisions of the small vessel category permit, or on a Sector trip from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise exempt pursuant to § 648.87.

(B) Any such vessel shall declare its required time periods through the notification procedures specified in § 648.10(j)(2).

(C) During each period of time declared out, any such vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a Sector trip, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS shall accrue DAS as follows:

(1) A Day gillnet vessel on a common pool trip is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(2) A Day gillnet vessel on a Sector trip is subject to the DAS accrual provisions of paragraph (e)(1)(ii) of this section.

* * * * *

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a Sector trip, a Trip gillnet vessel is required to remove all gillnet gear from the water before returning to port upon the completion of a fishing trip and calling out of a NE multispecies DAS, as applicable, under § 648.10(e)(5) or (h)(5), respectively. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized by § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) * * *
(2) * * *

(ii) Subject to the conditions and requirements of this part, DAS

associated with a confirmation of permit history may be leased to another vessel without placing the permit on an active vessel.

* * * * *

(4) * * *

(i) *Confirmation of permit history.*

Pursuant to paragraph (k)(2)(ii) of this section, DAS associated with a confirmation of permit history may be leased.

* * * * *

(v) *History of leased DAS use.* The history of leased DAS use shall be presumed to remain with the Lessor vessel. In the case of multiple leases to one vessel, the history of leased DAS use shall be presumed to remain with the Lessor in the order in which such leases were approved by NMFS. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS.

* * * * *

(x) *Leasing by vessels fishing under a Sector allocation.* A Sector vessel may not lease DAS to or from common pool vessels, but may lease DAS to or from another Sector vessel during the fishing year in which the vessel is a member of a Sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* Unless otherwise specified in paragraph (k)(4)(xi)(B) and (C) of this section, for the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

* * * * *

(B) *Applicability of the one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision.

(C) *Duration of the one-time DAS Leasing Program baseline downgrade.* Unless otherwise specified in this paragraph (k)(4)(xi)(C) of this section, the downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer.

With the exception of vessels combining DAS Leasing Program baselines from two different vessels through the DAS Transfer Program as outlined in paragraph (k)(4)(xi)(C)(2) of this section, once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit.

(1) *Vessel replacement.* If the permit is transferred to another vessel via a vessel replacement, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade.

(2) *DAS Transfer Program.* For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid. For vessels involved in a DAS Transfer Program transaction where a combination of the transferor and transferee vessel baselines is adopted resulting in a new vessel baseline, any previous DAS Leasing Program baseline downgrade for either the transferor or transferee vessel will be voided and the transferee vessel would have an additional opportunity to downgrade its combined DAS Leasing Program baseline.

(1) * * *

(1) * * *

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded either its size (including LOA, GRT, and NT) or HP under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A subsequent

upgrade to another specification through a subsequent action (either a vessel replacement or DAS transfer) is not permissible. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

* * * * *

(iv) *DAS conservation tax.* Starting in fishing year 2010, any NE multispecies DAS transferred to another vessel under the DAS Transfer Program pursuant to paragraph (l) of this section are not subject to a DAS conservation tax specified in this paragraph (l)(1)(iv). Any DAS transferred under the DAS Transfer Program prior to fishing year 2010 that were reduced due to the DAS conservation tax specified in this paragraph (l)(1)(iv) may not be reinstated to the permit associated with the transferor vessel.

* * * * *

(vi) *Confirmation of permit history.* NE multispecies DAS associated with a Confirmation of Permit History may be transferred.

(vii) *Transfer by Sector vessels.* A Sector vessel may not transfer DAS to or from vessels that are fishing under the provisions of the common pool or another Sector, but may transfer DAS to or from another vessel participating in that vessel's Sector during the fishing year in which the vessel is a member of a particular Sector.

(viii) Unless otherwise restricted by this part, a vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

* * * * *

(2) * * *

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

(n) *NE multispecies common pool accountability measure (AM).* Common pool vessels are subject to the following AMs, in addition to the DAS accrual

provisions specified in paragraph (e) of this section and other measures specified in this part.

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4). This projection shall be updated once available information regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's share of the overage of the overall ACL for that stock shall be added to the catch of each stock of regulated species or ocean pout by common pool vessels pursuant to § 648.90(a)(5). If the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24-hr fished – 1.2×24 -hr DAS

counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Stock Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area $\times 1.2 = 14.4$ hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be

applied to the DAS accrual rate applied during fishing year 2012 (*i.e.*, the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished – $1.2 \times 1.5 \times 24$ -hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

(i) *Differential DAS counting areas.* The following differential DAS counting areas shall be used for the purposes of implementing the differential DAS counting AM specified in paragraph (n)(1) of this section:

(A) *Inshore GOM Differential DAS Area.* The Inshore GOM Differential DAS Area applies to the following stocks of regulated species: White hake, pollock, GOM cod, GOM haddock, CC/GOM yellowtail flounder, GOM winter flounder, and Atlantic wolffish. The Inshore GOM Differential DAS Area is defined as the area bounded on the west by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

INSHORE GOM DIFFERENTIAL DAS AREA

Point	N. Latitude	W. Longitude
INGOM1	(¹)	69°30'
INGOM2	43°00'	69°30'
INGOM3	43°00'	70°00'
INGOM4	(²)	70°00'

¹ Intersection with ME shoreline.

² North-facing shoreline of Cape Cod, MA.

(B) *Offshore GOM Differential DAS Area.* The Offshore GOM Differential DAS Area applies to the following stocks of regulated species: GOM haddock, white hake, pollock, redfish, witch flounder, American plaice, and Atlantic halibut. The Offshore GOM Differential DAS Area is defined as the area bounded on the north by the shoreline of Maine, bounded on the east by the U.S./Canadian maritime boundary, and bounded on the south and west by straight lines connecting the following points in the order stated:

OFFSHORE GOM DIFFERENTIAL DAS AREA

Point	N. Latitude	W. Longitude
CI13	42°22'	67°20'
OFFGOM1	42°20'	67°20'
OFFGOM2	42°20'	70°00'
OFFGOM5	43°00'	70°00'
INGOM2	43°00'	69°30'
INGOM1	(1)	69°30'

¹ Intersection with ME shoreline.

(C) *Inshore GB Differential DAS Area.* The Inshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, white hake, Atlantic halibut, redfish, pollock, CC/GOM yellowtail flounder, GB cod, GB haddock, SNE/MA winter flounder, and Atlantic wolffish. The Inshore GB Differential DAS Area is defined as the area bounded by straight lines connecting the following points in the order stated:

INSHORE GB DIFFERENTIAL DAS AREA

Point	N. Latitude	W. Longitude
G9	42°00'	(1)
G10	42°20'	70°00'
IGB1	42°20'	68°50'
IGB2	41°00'	68°50'
IGB3	41°00'	69°30'
IGB4	41°10'	69°30'
IGB5	41°10'	69°50'
IGB6	41°20'	69°50'
IGB7	41°20'	70°00'
G12	(2)	70°00'

¹ The intersection of the Cape Cod, MA, coastline and 70°00' W. longitude.

² South-facing shoreline of Cape Cod, MA.

(D) *Offshore GB Differential DAS Area.* The Offshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, Atlantic halibut, northern windowpane flounder, GB cod, GB haddock, GB yellowtail flounder, and GB winter flounder. The Offshore GB Differential DAS Area is defined as the area bounded by straight lines connecting the following points in the order stated:

OFFSHORE GB DIFFERENTIAL DAS AREA

Point	N. Latitude	W. Longitude
IGB1	42° 20'	68°50'
OGB1	42°20'	67°20'
CI13	42°22'	67°20'
SNE1	40°27'	65°43'
OGB2	40°10'	(1)
OGB3	40°10'	68°50'
IGB1	42°20'	68°50'

¹ The U.S./Canada maritime boundary as it intersects with the EEZ.

(E) *SNE/MA Differential DAS Area.* The SNE/MA Differential DAS Area applies to the following stocks of regulated species or ocean pout: SNE/MA winter flounder, SNE/MA yellowtail flounder, southern windowpane flounder, and ocean pout. The SNE/MA Differential DAS Area is defined as the area bounded on the north and west by the coastline of the United States, bounded on the east and south by straight lines connecting the following points in the order stated:

SNE/MA DIFFERENTIAL DAS AREA

Point	N. Latitude	W. Longitude
G12	(1)	70°00'
IGB7	41°20'	70°00'
IGB6	41°20'	69°50'
IGB5	41°10'	69°50'
IGB4	41°10'	69°30'
IGB3	41°00'	69°30'
IGB2	41°00'	68°50'
SNEDA1	40°10'	68°50'
SNEDA2	40°10'	73°10'
SNEDA3	39°50'	73°10'
SNEDA4	39°50'	(2)

¹ South-facing shoreline of Cape Cod, MA.

² East-facing shoreline of NJ.

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), the following differential DAS factor shall, except as provided for in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section and implemented in a manner consistent with the Administrative Procedure Act.

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change.
1.0	No change.
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

(iii) *Mixed-stock exception.* When determining the differential DAS counting AM specified in this paragraph (n)(1), the Regional Administrator shall conduct an analysis to determine whether the mixed-stock exception, as specified in § 600.310(m), may be applicable. If the analysis concludes that the mixed-stock exception is applicable, the Regional Administrator shall modify or not apply a differential DAS counting AM on specific stocks, as appropriate, in accordance with the mixed-stock exception.

(iv) *Fishing year 2012.* Any adjustments to DAS counting necessary as a result of either underharvesting or overharvesting any of the sub-ACLs specified for common pool vessels during the 2011 fishing year pursuant to § 648.90(a)(4) shall become effective and remain effective for the duration of fishing year 2012 in addition to the implementation of the trimester TAC AM specified in paragraph (n)(2) of this section.

(2) *Trimester TAC AM for fishing years 2012 and beyond.* Beginning in fishing year 2012, common pool vessels shall be subject to the following restrictions:

(i) *Trimester TACs.* (A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of four months in duration, beginning at the start of the fishing year (*i.e.*, Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows:

PORTION OF COMMON POOL SUB-ACLs APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM Cod	27	36	37
GB Cod	25	37	38
GOM Haddock	27	26	47
GB Haddock	27	33	40

PORTION OF COMMON POOL SUB-ACLs APPORTIONED TO EACH STOCK FOR EACH TRIMESTER—Continued

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
CC/GOM Yellowtail Flounder	35	35	30
GB Yellowtail Flounder	19	30	52
SNE/MA Yellowtail Flounder	21	37	42
GOM Winter Flounder	37	38	25
GB Winter Flounder	8	24	69
SNE/MA Winter Flounder	36	50	14
Witch Flounder	27	31	42
American Plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White Hake	38	31	31
Northern Windowpane Flounder	33	33	34
Southern Windowpane Flounder	33	33	34
Ocean Pout	33	33	34
Atlantic Halibut	33	33	34
Atlantic Wolffish	75	13	12

(B) *Trimester TAC adjustment.* The distribution of trimester TACs specified in paragraph (n)(2)(i)(A) of this section may be adjusted pursuant to the biennial adjustment process specified in § 648.90. Future adjustments to the distribution of trimester TACs shall use catch data for the most recent 5-year period prior to the reevaluation of trimester TACs.

(ii) *Stock area closures.* With the exception of both stocks of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (P) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. For both stocks of windowpane flounder, ocean pout, and Atlantic halibut, the Regional Administrator shall monitor catch of these stocks and shall deduct any projected overages of the sub-ACLs for such stocks pursuant to paragraph (n)(2)(iii) of this section, instead of implementing a stock area closure when

a Trimester TAC for any of these stocks is projected to be caught. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

(A) *GB Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GB1	42°20'	70°00'
GB2	42°20'	(¹)
GB3	40°30'	65°40'
GB4	40°30'	66°40'
GB5	39°50'	66°40'
GB6	39°50'	66°40'
GB7	41°00'	68°50'
GB8	41°00'	69°30'
GB9	41°10'	69°30'
GB10	41°10'	69°50'
GB11	41°20'	69°50'
GB12	(²)	70°00'
GB13	(³)	70°00'
GB14	(⁴)	70°00'
GB15	(⁵)	70°00'
GB1	42°20'	70°00'

¹ U.S./Canada maritime boundary.
² East-facing shoreline of Nantucket, MA.
³ North-facing shoreline of Nantucket, MA.
⁴ South-facing shoreline of Cape Cod, MA.

⁵ North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GOM1	(¹)	69°20'
GOM2	43°40'	69°20'
GOM3	43°40'	69°00'
GOM4	43°20'	69°00'
GOM5	43°20'	69°10'
GOM6	43°00'	69°10'
GOM7	43°00'	69°20'
GOM8	42°50'	69°20'
GOM9	42°50'	69°40'
GOM10	42°20'	69°40'
GOM11	42°20'	70°00'
GOM12	(²)	70°00'

¹ Intersection with ME shoreline.
² North-facing shoreline of Cape Cod, MA.

(C) *GB Haddock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB HADDOCK TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GB1	42°20'	70°00'
GB2	42°20'	(1)
GB3	40°30'	65°40'
GB4	40°30'	66°40'
GB5	39°50'	66°40'
GB6	39°50'	66°40'
GB7	41°00'	68°50'
GB8	41°00'	69°30'
GB9	41°10'	69°30'
GB10	41°10'	69°50'
GB11	41°20'	69°50'
GB12	(2)	70°00'
GB13	(3)	70°00'
GB14	(4)	70°00'
GB15	(5)	70°00'
GB1	42°20'	70°00'

- ¹ U.S./Canada maritime boundary.
- ² East-facing shoreline of Nantucket, MA.
- ³ North-facing shoreline of Nantucket, MA.
- ⁴ South-facing shoreline of Cape Cod, MA.
- ⁵ North-facing shoreline of Cape Cod, MA.

(D) *GOM Haddock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM HADDOCK TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GOM1	(1)	69°20'
GOM2	43°40'	69°20'
GOM3	43°40'	69°00'
GOM4	43°20'	69°00'
GOM5	43°20'	67°40'
GOM6	(2)	67°40'
GOM7	42°53.1'	67°44.4'
GOM8	(2)	67°40'
GOM9	42°20'	67°40'
GOM10	42°20'	70°00'
GOM10	(3)	70°00'

- ¹ Intersection with ME shoreline.
- ² U.S./Canada maritime boundary.
- ³ North-facing shoreline of Cape Cod, MA.

(E) *GB Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GB1	42°20'	68°50'
GB2	42°20'	(1)
GB3	40°30'	65°40'
GB4	40°30'	66°40'
GB5	39°50'	66°40'
GB6	39°50'	68°50'
GB1	42°20'	68°50'

¹ U.S./Canada maritime boundary.

(F) *SNE/MA Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
SNEMA1	(1)	70°00'
SNEMA2	(2)	70°00'
SNEMA3	(3)	70°00'
SNEMA4	39°50'	70°00'
SNEMA5	39°50'	71°40'
SNEMA6	40°00'	71°40'
SNEMA7	40°00'	73°00'
SNEMA8	(4)	73°00'
SNEMA9	41°00'	(5)
SNEMA10	41°00'	71°40'
SNEMA11	(6)	71°40'

- ¹ South-facing shoreline of Cape Cod, MA.
- ² North-facing shoreline of Nantucket, MA.
- ³ South-facing shoreline of Nantucket, MA.
- ⁴ South-facing shoreline of Long Island, NY.
- ⁵ East-facing shoreline of Long Island, NY.
- ⁶ Intersection with RI shoreline.

(G) *CC/GOM Yellowtail Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the CC/GOM Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
CCGOM1	42°50'	(1)
CCGOM2	42°50'	69°40'
CCGOM3	42°20'	69°40'
CCGOM4	42°20'	68°50'

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. Latitude	W. Longitude
CCGOM5	41°00'	68°50'
CCGOM6	41°00'	69°30'
CCGOM7	41°10'	69°30'
CCGOM8	41°10'	69°50'
CCGOM9	41°20'	69°50'
CCGOM10	41°20'	(2)
CCGOM11	(3)	70°00'
CCGOM12	(4)	70°00'

- ¹ Intersection with MA shoreline.
- ² East-facing shoreline of Nantucket, MA.
- ³ South-facing shoreline of MA.
- ⁴ North-facing shoreline of Nantucket, MA.

(H) *American Plaice Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
AP1	(1)	68°00'
AP2	44°10'	67°50'
AP3	44°00'	67°50'
AP4	44°00'	67°40'
AP5	(2)	67°40'
AP6	42°53.1'	67°44.4'
AP7	(2)	67°40'
AP8	41°20'	67°40'
AP9	41°10'	67°40'
AP10	41°10'	67°10'
AP11	41°00'	67°10'
AP12	41°00'	67°00'
AP13	40°50'	67°00'
AP14	40°50'	66°50'
AP15	40°40'	66°50'
AP16	40°40'	66°40'
AP17	39°50'	66°40'
AP18	39°50'	68°50'
AP19	41°00'	68°50'
AP20	41°00'	69°30'
AP21	41°10'	69°30'
AP22	41°10'	69°50'
AP23	41°20'	69°50'
AP24	41°20'	(3)
AP25	(4)	70°00'
AP26	(5)	70°00'

- ¹ Intersection with ME shoreline.
- ² U.S./Canada maritime boundary.
- ³ East-facing shoreline of Nantucket, MA.
- ⁴ North-facing shoreline of Nantucket, MA.
- ⁵ South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by

straight lines connecting the following points in the order stated:

WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
AP1	(1)	68°00'
AP2	44°10'	67°50'
AP3	44°00'	67°50'
AP4	44°00'	67°40'
AP5	(2)	67°40'
AP6	42°53.1'	67°44.4'
AP7	(2)	67°40'
AP8	41°20'	67°40'
AP9	41°10'	67°40'
AP10	41°10'	67°10'
AP11	41°00'	67°10'
AP12	41°00'	67°00'
AP13	40°50'	67°00'
AP14	40°50'	66°50'
AP15	40°40'	66°50'
AP16	40°40'	66°40'
AP17	39°50'	66°40'
AP18	39°50'	68°50'
AP19	41°00'	68°50'
AP20	41°00'	69°30'
AP21	41°10'	69°30'
AP22	41°10'	69°50'
AP23	41°20'	69°50'
AP24	41°20'	(3)
AP25	(4)	70°00'
AP26	(5)	70°00'

¹ Intersection with ME shoreline.
² U.S./Canada maritime boundary.
³ East-facing shoreline of Nantucket, MA.
⁴ North-facing shoreline of Nantucket, MA.
⁵ South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GB1	42°20'	68°50'
GB2	42°20'	67°40'
GB3	41°50'	67°40'
GB4	41°50'	(1)
GB5	40°30'	65°40'
GB6	40°30'	66°40'
GB7	40°40'	66°40'
GB8	40°40'	66°50'
GB9	40°50'	66°50'
GB10	40°50'	67°00'
GB11	41°00'	67°00'
GB12	41°00'	67°10'
GB13	41°10'	67°10'
GB14	41°10'	67°00'
GB15	41°20'	67°40'
GB16	41°20'	68°10'
GB17	41°10'	68°10'
GB18	41°10'	68°20'

GB WINTER FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. Latitude	W. Longitude
GB19	41°00'	68°20'
GB20	41°00'	68°50'
GB1	42°20'	68°50'

¹ U.S./Canada maritime boundary.

(K) *GOM Winter Flounder Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
GOM1	42°50'	(1)
GOM2	42°50'	69°40'
GOM3	42°20'	69°40'
GOM4	42°20'	70°00'
GOM5	(2)	70°00'

¹ Intersection with MA shoreline.
² North-facing shoreline of Cape Cod, MA.

(L) *SNE/MA Winter Flounder Trimester TAC AM Closure Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Winter Flounder Trimester TAC Areas I and II shall apply to common pool vessels using trawl gear. The SNE/MA Winter Flounder Trimester TAC Area I is bounded by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER TRIMESTER TAC AREA I

Point	N. Latitude	W. Longitude
SNE/MA1	42°20'	70°00'
SNE/MA2	42°20'	68°50'
SNE/MA3	41°00'	68°50'
SNE/MA4	41°00'	69°30'
SNE/MA5	41°10'	69°30'
SNE/MA6	41°10'	69°50'
SNE/MA7	41°20'	69°50'
SNE/MA8	(1)	70°00'
SNE/MA9	(2)	70°00'
SNE/MA10	(3)	70°00'
SNE/MA11	(4)	70°00'
SNE/MA1	42°20'	70°00'

¹ East-facing shoreline of Nantucket, MA.
² North-facing shoreline of Nantucket, MA.
³ South-facing shoreline of Cape Cod, MA.
⁴ North-facing shoreline of Cape Cod, MA.

SNE/MA Winter Flounder Trimester TAC Area II is bound on the west by the

U.S. coastline, defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER TRIMESTER TAC AREA II

Point	N. Latitude	W. Longitude
SNE/MA12	(1)	71°10'
SNE/MA13	41°20'	71°10'
SNE/MA14	41°20'	(2)
SNE/MA15	41°20'	(3)
SNE/MA16	41°20'	(4)
SNE/MA17	(5)	70°00'
SNE/MA18	39°50'	70°00'
SNE/MA19	39°50'	71°40'
SNE/MA20	40°00'	71°40'
SNE/MA21	40°00'	(6)

¹ Intersection with RI shoreline.
² West-facing shoreline of Martha's Vineyard, MA.
³ East-facing shoreline of Martha's Vineyard, MA.
⁴ West-facing shoreline of Nantucket, MA.
⁵ South-facing shoreline of Nantucket, MA.
⁶ Intersection with NJ shoreline.

(M) *Redfish Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20'
RF2	43°40'	69°20'
RF3	43°40'	69°00'
RF4	43°20'	69°00'
RF5	43°20'	67°40'
RF6	(2)	67°40'
RF7	42°53.1'	67°44.4'
RF8	(2)	67°40'
RF9	41°20'	67°40'
RF10	41°20'	68°10'
RF11	41°10'	68°10'
RF12	41°10'	68°20'
RF13	41°00'	68°20'
RF14	41°00'	69°30'
RF15	41°10'	69°30'
RF16	41°10'	69°50'
RF17	41°20'	69°50'
RF18	(3)	70°00'
RF19	(4)	70°00'
RF20	(5)	70°00'

¹ Intersection with ME shoreline.
² U.S./Canada maritime boundary.
³ East-facing shoreline of Nantucket, MA.
⁴ North-facing shoreline of Nantucket, MA.
⁵ South-facing shoreline of Cape Cod, MA.

(N) *White Hake Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear,

sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20'
RF2	43°40'	69°20'
RF3	43°40'	69°00'
RF4	43°20'	69°00'
RF5	43°20'	67°40'
RF6	(2)	67°40'
RF7	42°53.1'	67°44.4'
RF8	(2)	67°40'
RF9	41°20'	67°40'
RF10	41°20'	68°10'
RF11	41°10'	68°10'
RF12	41°10'	68°20'
RF13	41°00'	68°20'
RF14	41°00'	69°30'
RF15	41°10'	69°30'
RF16	41°10'	69°50'
RF17	41°20'	69°50'
RF18	(3)	70°00'
RF19	(4)	70°00'
RF20	(5)	70°00'

- ¹ Intersection with ME shoreline.
- ² U.S./Canada maritime boundary.
- ³ East-facing shoreline of Nantucket, MA.
- ⁴ North-facing shoreline of Nantucket, MA.
- ⁵ South-facing shoreline of Cape Cod, MA.

(O) *Pollock Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20'
RF2	43°40'	69°20'
RF3	43°40'	69°00'
RF4	43°20'	69°00'
RF5	43°20'	67°40'
RF6	(2)	67°40'
RF7	42°53.1'	67°44.4'
RF8	(2)	67°40'
RF9	41°20'	67°40'
RF10	41°20'	68°10'
RF11	41°10'	68°10'
RF12	41°10'	68°20'
RF13	41°00'	68°20'
RF14	41°00'	69°30'
RF15	41°10'	69°30'
RF16	41°10'	69°50'
RF17	41°20'	69°50'
RF18	(3)	70°00'
RF19	(4)	70°00'
RF20	(5)	70°00'

- ¹ Intersection with ME shoreline.
- ² U.S./Canada maritime boundary.

- ³ East-facing shoreline of Nantucket, MA.
- ⁴ North-facing shoreline of Nantucket, MA.
- ⁵ South-facing shoreline of Cape Cod, MA.

(P) *Atlantic Wolfish Trimester TAC Area*. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Atlantic Wolfish Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

ATLANTIC WOLFISH TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
ATWLF1	(1)	69°20'
ATWLF2	43°40'	69°20'
ATWLF3	43°40'	69°00'
ATWLF4	43°20'	69°00'
ATWLF5	43°20'	69°10'
ATWLF6	43°00'	69°10'
ATWLF7	43°00'	69°20'
ATWLF8	42°50'	69°20'
ATWLF9	42°50'	69°40'
ATWLF10	42°20'	69°40'
ATWLF11	42°20'	67°40'
ATWLF12	41°20'	67°40'
ATWLF13	41°20'	68°10'
ATWLF14	41°10'	68°10'
ATWLF15	41°10'	68°20'
ATWLF16	41°00'	68°20'
ATWLF17	41°00'	69°30'
ATWLF18	41°10'	69°30'
ATWLF19	41°10'	69°50'
ATWLF20	41°20'	69°50'
ATWLF21	(2)	70°00'
ATWLF22	(3)	70°00'
ATWLF23	(4)	70°00'

- ¹ Intersection with ME shoreline.
- ² East-facing shoreline of Nantucket, MA.
- ³ North-facing shoreline of Nantucket, MA.
- ⁴ South-facing shoreline of Cape Cod, MA.

(iii) *Trimester TAC overage/underage*. If any trimester TAC, as specified in paragraph (n)(2)(i) of this section, is not caught during Trimester 1 or 2, the uncaught portion of the trimester TAC shall be carried forward into the next trimester. Uncaught portions of any trimester TAC following Trimester 3 may not be carried over into the following fishing year. If any trimester TAC is exceeded during the Trimesters 1 or 2, the overage shall be deducted from the Trimester 3 TAC for that stock. If the entire sub-ACL for a particular stock that is allocated to the common pool is exceeded (*i.e.*, the common pool catch of that stock at the end of the fishing year, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds all three trimester TACs for that stock combined), an amount equal to the overage shall be

deducted from the sub-ACL for that stock that is allocated to common pool vessels pursuant to § 648.90(a)(4) for the following fishing year.

(iv) *Monitoring requirements*. Starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean pout by common pool vessels shall be monitored at the point of offload by independent, third-part service providers approved/certified to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. These service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. The costs associated with monitoring vessel offloads shall be the responsibility of individual vessels and an individual vessel may only use one dockside monitoring service provider per fishing year. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

(A) *Coverage levels*. At least 20 percent of the trips taken by vessels operating under the provisions of the common pool shall be monitored. To ensure that this level of coverage is achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip must be monitored by a dockside/roving monitor, as specified in paragraph (n)(2) of this section. For example, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor will be required to have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/monitoring services required under this paragraph (n)(2)(iv) must ensure that coverage is randomly distributed among all such trips and that the landing events monitored are representative of fishing operations by common pool vessels throughout the fishing year, unless otherwise directed.

(B) *Dockside/roving monitor service provider standards*. For fishing year 2012 and beyond, a common pool vessel must employ a service provider approved/certified by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved/certified to provide the services specified in

paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards listed in § 648.87(b)(4).

(v) *Adjustments to trimester TACs.* The distribution of trimester TACs specified in paragraph (n)(2)(i) of this section may be revised pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2) and shall use the distribution of landings of the most recent 5-year period available.

(vi) *Trip limit adjustment.* When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(E)(2) is projected to be caught, the Regional Administrator may specify a possession limit for these stocks that is calculated to prevent the yearly sub-ACL from being exceeded prior to the end of the fishing year.

12. In § 648.83, revise paragraph (a)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

13. In § 648.85:

a. Revise the introductory text to paragraph (a)(1), (a)(3), (a)(3)(iii), (b)(8)(v)(A);

b. Revise paragraphs (a)(2), (a)(3)(i) and (ii), (a)(3)(iv) and (v), (a)(3)(vii), (b)(3) through (5), (b)(6)(iv)(D) through (F), (b)(6)(iv)(H) and (I), (b)(6)(iv)(J)(1), (b)(6)(v), (b)(7), (b)(8)(i), (b)(8)(v)(A)(2) through (4), (b)(8)(v)(B), (b)(8)(v)(D), (b)(8)(v)(E)(1) and (3), (b)(8)(v)(F), (b)(8)(v)(H) and (I), and (d); and

c. Add paragraphs (b)(6)(iv)(J)(4), (b)(9), and (e) to read as follows:

§ 648.85 Special management programs.

* * * * *

(a) * * *

(1) *U.S./Canada Management Areas.*

A vessel issued a NE multispecies permit that meets the requirements of paragraph (a)(3) of this section may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

* * * * *

(2) *TAC allocation—(i) Process for establishing TACs.* The amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) To the extent practicable, by June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) To the extent practicable, by July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) To the extent practicable, by August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) To the extent practicable, by October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year as a subset of the ACLs for these stocks available to the commercial fishery pursuant to § 648.90(a)(4). NMFS shall review the Council's recommendations and shall publish the

proposed TACs in the **Federal Register** and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(ii) *Adjustments to TACs.* Any overages of the GB cod and GB haddock TACs specified for either the common pool or individual Sectors, or any overages of the GB yellowtail flounder TAC specified for the common pool, individual Sectors, or the scallop fishery pursuant to this paragraph (a)(2) that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(iii) *Distribution of TACs.* For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between Sectors approved pursuant to § 648.87(c), common pool vessels, and scallop vessels, as specified in § 648.90(a)(4). Approved Sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the Sector's allocation of the overall ACL for these stocks, based upon the fishing histories of Sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual Sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that Sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that Sector may only be harvested outside of the Eastern U.S./Canada Area. Any ACE allocated to that sector For example, if a Sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any common pool or Sector vessel, provided the Sector to which a vessel belongs is allocated ACE for stocks caught in the Eastern U.S./Canada Area pursuant to paragraph (a)(2)(iii) of this section and § 648.87(b)(1)(i), may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. A vessel other than a NE multispecies vessel may

fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies vessel fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(ii) *Declaration.* To fish in the U.S./Canada Management Area under a NE multispecies DAS or on a Sector trip, a NE multispecies vessel must declare through the VMS the specific area within the U.S./Canada Management Areas, as described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP within the U.S./Canada Management Areas, as described in paragraph (b) of this section, the vessel will be fishing in prior to leaving the dock, in accordance with instructions to be provided by the Regional Administrator, and must comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies vessels are not required to declare into the U.S./Canada Management Areas.

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (4) of this section. A vessel on a Sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (3) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on that trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area, as instructed by the Regional Administrator. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS and vessels on

a Sector trip that are not fishing under a NE multispecies DAS for the purposes of complying with the restrictions of other fisheries, once a vessel elects to fish outside of the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(5)(iii).

(2) Unless otherwise exempted pursuant to this part, the vessel must comply with the reporting requirements of the U.S./Canada Management Area specified in § 648.85(a)(3)(v) for the duration of the trip.

(3) [Reserved]

(4) If a common pool vessel fishing under a NE multispecies DAS possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (*i.e.*, may not fish outside of the U.S./Canada Management Area).

(B) A common pool vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (*e.g.*, the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in § 648.85(a)(3)(v). A vessel on a Sector trip in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive reporting requirements specified in § 648.85(a)(3)(v), unless otherwise exempted pursuant to this part.

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* A NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in

paragraphs (b)(6) and (8) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(1) of this section, or a haddock separator trawl, or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Unless otherwise restricted by § 648.80(n), gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net, or gear authorized under paragraphs (b)(6) and (8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations in § 648.23(b). The description of the haddock separator trawl and the flounder trawl net, and the description of the Ruhle trawl may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, in a manner consistent with the Administrative Procedure Act.

* * * * *

(iv) *Harvest controls.* Unless otherwise specified in this paragraph (a)(3)(iv), any NE multispecies vessel fishing in the U.S./Canada Management Areas is subject to the following restrictions. For common pool vessels, the trip limits specified in this paragraph (a)(3)(iv) are in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas. A Sector vessel is subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(1) *Initial cod landing limit.* Unless modified pursuant to paragraph (a)(3)(iv)(D) of this section, notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other

Special Management Programs, as required under this section.

(2) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to NE multispecies DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit all vessels from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(B) *Haddock landing limit—(1) Initial haddock landing limit.* The initial haddock landing limit for common pool vessels is specified in § 648.86(a), unless adjusted pursuant to paragraphs (a)(3)(iv)(B)(2) and (3) of this section.

(2) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the haddock TAC allocation specified for common pool vessels, as described in paragraph (a)(2) of this section, will be harvested, NMFS shall implement, in a manner consistent with the Administrative Procedure Act, a haddock trip limit for common pool vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock distributed to either common pool vessels or a particular Sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit—(1) Initial yellowtail flounder landing limit.* Unless further restricted under paragraphs (a)(3)(iv)(C)(2) or (D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D) of this section, there is no initial limit to the amount of yellowtail flounder that could be landed for each fishing year.

(2) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon

available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the entire U.S./Canada Management Area or to only the Western or Eastern Area.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder distributed to either common pool vessels or a particular Sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

(D) *Other restrictions or inseason adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, or modify the total number of trips into the U.S./Canada Management Area, to

prevent over-harvesting or to facilitate achieving the TAC specified in paragraph (a)(2) of this section. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (*i.e.*, haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a Sector trip may only fish in a SAP if that vessel's Sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP

identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. A vessel fishing on a Sector trip is subject to the reporting requirements specified in this paragraph (a)(3)(v) unless the Regional Administrator determines that weekly Sector catch reports, as required by § 648.87(b)(1)(v), are sufficient to monitor Sector catch within the U.S./Canada Management Areas, and the Regional Administrator makes that determination in a manner consistent with the Administrative Procedure Act. Vessels subject to this reporting requirement must continue to report daily, even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) VTR serial number or other universal ID specified by the Regional Administrator;

(B) Date fish were caught; and

(C) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

* * * * *

(vii) *Transiting.* A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is

stowed in accordance with the regulations in § 648.23(b).

* * * * *

(b) * * *

(3) *Closed Area II Yellowtail Flounder/Haddock SAP*—(i) *Eligibility.* Any vessel issued a valid limited access NE multispecies permit fishing under a NE multispecies DAS or on a Sector trip, provided the Sector to which the vessel belongs has been allocated ACE for all stocks that may be caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), are eligible to participate in the Closed Area II Yellowtail Flounder/Haddock SAP, and may fish in the Closed Area II Yellowtail Flounder/Haddock Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, provided the Eastern U.S./Canada Area, as described in paragraph (a)(1)(ii) of this section, is not closed according to the provisions specified in paragraph (a)(3)(iv)(E) of this section, or that the Sector to which a vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i). All eligible vessels must comply with the requirements of this section, unless otherwise specified in this paragraph (b)(3).

(ii) *Closed Area II Yellowtail Flounder/Haddock SAP Area.* The Closed Area II Yellowtail Flounder/Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER/HADDOCK SAP AREA

Point	N. Latitude	W. Longitude
Ytail 1	41°30'	67°20'
Ytail 2	41°30'	66°34.8'
G5	41°18.6'	66°24.8'1
ClI 2	41°00'	66°35.8'
ClI 1	41°00'	67°20'
Ytail 1	41°30'	67°20'

(iii) *Season*—(A) *Season when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the Closed Area II Yellowtail Flounder/Haddock SAP from July 1 through December 31.

(B) *Season when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as

specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the CA II Yellowtail Flounder/Haddock SAP from August 1 through January 31.

(iv) *VMS requirement.* All NE multispecies vessels fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 48 hr prior to the beginning of any trip that it declares into the SAP as required under this paragraph (b)(3)(v). To fish in the Closed Area II Yellowtail Flounder/Haddock SAP, a vessel must declare into this area through the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Closed Area II Yellowtail Flounder/Haddock SAP may also fish in the area outside the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, on the same trip, provided the vessel also declares into this area prior to departure from port and fishes under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished during the entire trip.

(vi) *Number of trips per vessel*—(A) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible common pool vessels are restricted to one trip per calendar month during the season described in paragraph (b)(3)(iii) of this section.

(B) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, there is no limit on the number of trips that can be taken by eligible vessels during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Opening criteria*—(A) *Opening the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator, as specified in paragraph

(a)(3)(iv)(D) of this section, the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP for each fishing year shall be as announced by the Regional Administrator on or about June 1, after consultation with the Council, in a manner consistent with the Administrative Procedure Act. Except as provided in paragraph (b)(3)(vii)(B) of this section, the total number of trips by all common pool vessels that may be declared into this SAP when the SAP is open to target yellowtail flounder shall not exceed 320 per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, the expected number of SAP participants, and any other available information. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(B) *Opening the CA II Yellowtail/Haddock SAP to only target haddock.* If the CA II Yellowtail Flounder/Haddock SAP is not open to targeting yellowtail flounder due to an insufficient amount of yellowtail flounder TAC, or because the maximum number of trips allowed into the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder has been achieved pursuant to paragraph (b)(3)(vii)(A) of this section, eligible vessels may target haddock in the CA II Yellowtail Flounder/Haddock Access Area, as specified in paragraph (b)(3)(ii) of this section, provided the Eastern GB haddock TAC specified in paragraph (a)(2) of this section has not been caught, the Eastern U.S./Canada Area is not closed pursuant to paragraph (a)(3)(iv)(D) of this section; and, for vessels on a Sector trip, the Sector to which the Sector vessel belongs has ACE remaining for the stocks caught in the Eastern U.S./Canada Area.

(viii) *Trip limits.* Vessels subject to the provisions of the common pool that are fishing in the Closed Area II Yellowtail

Flounder/Haddock SAP are subject to the following trip limits, unless otherwise restricted in this part. Vessels subject to the restrictions and conditions of an approved Sector operations plan fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Yellowtail flounder trip limit—(1) Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, a vessel subject to the provisions of the common pool that is fishing in the CA II Yellowtail Flounder/Haddock SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(2) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target haddock.* Unless otherwise specified by the Regional Administrator pursuant to paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is only open to target haddock, as specified in paragraph (b)(3)(vii) of this section, the trip limit for yellowtail flounder is specified in paragraph (b)(3)(viii)(C) of this section.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a common pool vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder/Haddock SAP on a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A common pool vessel fishing on a NE multispecies DAS in the Closed Area II Yellowtail Flounder/Haddock SAP is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(C) *Other species trip limits.* A common pool vessel fishing on a NE multispecies DAS in the CA II Yellowtail Flounder/Haddock SAP using a haddock separator trawl, a Ruhle trawl, or any other gear specified pursuant to paragraph (b)(3)(x)(B) must comply with the trip limits specified in § 648.86, unless further restricted by the trip limits specified in paragraph (e) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder/Haddock SAP, and other areas as specified in paragraph (b)(3)(v) of this section, may not fish for, possess, or land fish in or from outside of the declared area during the same trip.

(x) *Gear requirements—(A) Approved gear.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels must fish with a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(3) of this section (all three nets may be onboard the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed according to the regulations at § 648.23(b).

(B) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the CA II Yellowtail Flounder/Haddock SAP in accordance with the standards and requirements specified in paragraph (b)(6)(iv)(J)(2) of this section.

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder/Haddock SAP under a NE multispecies DAS or on a Sector trip may not discard legal-sized regulated NE multispecies, unless the possession of the species is prohibited pursuant to § 648.86, or unless otherwise specified in this paragraph (b)(3)(xi). A vessel may discard Atlantic halibut exceeding the one fish per trip possession limit. If a vessel fishing in the CA II Yellowtail Flounder/Haddock SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a common pool vessel operator fishing in the CA II Yellowtail Flounder/Haddock SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies or Atlantic halibut than the maximum landing limits allowed per trip, as specified in paragraph (b)(3)(iv) or (viii) of this section, or in § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a

vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (*i.e.*, either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Category B DAS.

(xii) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(xiii) *Catch distribution.* All catch of GB haddock from vessels declared into the CA II Yellowtail Flounder/Haddock SAP shall be applied against the Eastern GB haddock TAC, as specified in paragraph (a)(2) of this section, for either common pool vessels or individual approved Sectors.

(4) [Reserved]

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, witch flounder, and pollock. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, GB winter flounder, and pollock.* With the exception of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod and pollock.* Each of the Incidental Catch TACs for GB cod and pollock specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, and pollock; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A), or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(f) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(f) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species or ocean pout is prohibited, as specified in §§ 648.85 and 648.86. If such a vessel harvests and brings on board legal-sized regulated species or ocean pout in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel

declared into the Regular B DAS Program at the beginning of the trip (*i.e.*, at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified in § 648.85(a) or § 648.86 and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in an area subject to differential DAS counting pursuant to § 648.82(n)(1), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by the applicable differential DAS counting factor specified in § 648.82(n)(1)(ii). For example, if a vessel plans a trip under the Regular B DAS Program in the Inshore GOM Differential DAS Area during a fishing year in which the area is subject to a differential DAS counting factor of 1.2, and the vessel has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 8 (10 divided by 1.2 = 8.33, but since Regular B DAS are charged in 24-hr intervals, 8 Regular B DAS is the maximum that can be used for this trip). A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(1).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(1).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator,

for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described in paragraph (b)(6)(iv)(E) of this section.

(J) * * *

(I) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(3) of this section, respectively, or other type of gear if approved as described in this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program pursuant to § 648.23(b).

* * * * *

(4) *Mesh size.* An eligible vessel fishing in the Regular B DAS Program pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(v) *Definition of stock areas.* The species stock areas associated with the incidental catch TACs for the Regular B DAS Program are defined in paragraphs (b)(6)(v)(A) through (K) of this section. Where specified, these areas also identify stock areas applicable for trip limits specified in § 648.86 and for determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b). Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GOM COD STOCK AREA

Point	N. Latitude	W. Longitude
GOM1	(1)	70°00'
GOM2	42°20'	70°00'
GOM3	42°20'	67°40'
GOM4	43°50'	67°40'
GOM5	43°50'	66°50'
GOM6	44°20'	66°50'
GOM7	44°20'	67°00'
GOM8	(2)	67°00'

¹ Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

² Intersection of the south-facing ME coastline and 67°00' W. long.

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. Latitude	W. Longitude
GB1	(1)	70°00'
GB2	42°20'	70°00'
GB3	42°20'	66°00'
GB4	42°10'	66°00'
GB5	42°10'	65°50'
GB6	42°00'	65°50'
GB7	42°00'	65°40'
GB8	40°30'	65°40'
GB9	39°00'	65°40'
GB10	39°00'	70°00'
GB11	35°00'	70°00'
GB12	35°00'	(2)

¹ Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

² Intersection of the east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

(C) *CC/GOM yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
CCGOM1	43°00'	(1)
CCGOM2	43°00'	70°00'
CCGOM3	42°30'	70°00'
CCGOM4	42°30'	69°30'
CCGOM5	41°30'	69°30'
CCGOM6	41°30'	69°00'
CCGOM7	41°00'	69°00'
CCGOM8	41°00'	69°30'
CCGOM5	41°30'	69°30'
CCGOM9	41°30'	70°00'
CCGOM10	(2)	70°00'

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. Latitude	W. Longitude
CCGOM11	42°00'	(3)
CCGOM12	42°00'	(4)
CCGOM13	(5)	70°00'

¹ Intersection with the NH coastline.

² Intersection of the south-facing shoreline of Cape Cod, MA.

³ Intersection with the east-facing shoreline of Cape Cod, MA.

⁴ Intersection with the west-facing shoreline of Cape Cod, MA.

⁵ Intersection with the east-facing shoreline of Massachusetts.

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Latitude	W. Longitude
AMP1	(1)	67°00'
AMP2	44°20'	67°00'
AMP3	44°20'	66°50'
AMP4	43°50'	66°50'
AMP5	43°50'	67°40'
AMP6	42°30'	67°40'
AMP7	42°30'	66°00'
AMP8	42°10'	66°00'
AMP9	42°10'	65°50'
AMP10	42°00'	65°50'
AMP11	42°00'	65°40'
AMP12	40°30'	65°40'
AMP13	39°00'	65°40'
AMP14	39°00'	70°00'
AMP15	35°00'	70°00'
AMP16	35°00'	(2)

¹ Intersection of south-facing ME coastline and 67°00' W. long.

² Intersection of east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

(E) *SNE/MA yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the SNE/MA stock area is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
SNEMA1	40°00'	74°00'
SNEMA2	40°00'	72°00'
SNEMA3	40°30'	72°00'
SNEMA4	40°30'	69°30'
SNEMA5	41°30'	69°30'
SNEMA6	41°30'	70°00'
SNEMA7	41°00'	70°00'

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. Latitude	W. Longitude
SNEMA8	41°00'	70°30'
SNEMA9	41°00'	70°30'
SNEMA10	41°30'	70°30'
SNEMA11	(1)	72°00'
SNEMA12	(2)	72°00'
SNEMA13	(3)	73°00'
SNEMA14	40°30'	73°00'
SNEMA15	40°30'	74°00'
SNEMA16	40°00'	74°00'

¹ South-facing shoreline of CT.
² North-facing shoreline of Long Island, NY.
³ South-facing shoreline of Long Island, NY.

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
SNEW1	(1)	70°00'
SNEW2	42°20'	70°00'
SNEW3	42°20'	68°50'
SNEW4	39°50'	68°50'
SNEW5	39°50'	71°40'
SNEW6	39°00'	71°40'
SNEW7	39°00'	70°00'
SNEW8	35°00'	70°00'
SNEW9	35°00'	(2)

¹ Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00' W. long.
² The intersection of the east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

(G) *Witch flounder stock area.* The witch flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
WF1	(1)	67°00'
WF2	44°20'	67°00'
WF3	44°20'	66°50'
WF4	43°50'	66°50'
WF5	43°50'	67°40'
WF6	42°20'	67°40'
WF7	42°20'	66°00'
WF8	42°10'	66°00'
WF9	42°10'	65°50'

WITCH FLOUNDER STOCK AREA—Continued

Point	N. Latitude	W. Longitude
WF10	42°00'	65°50'
WF11	42°00'	65°40'
WF12	40°30'	65°40'
WF13	40°30'	66°40'
WF14	39°50'	66°40'
WF15	39°50'	70°00'
WF16	(2)	70°00'
WF17	(3)	70°00'
WF18	(4)	70°00'

¹ Intersection of south-facing ME coastline and 67°00' W. long.
² Intersection of south-facing coastline of Nantucket, MA, and 70°00' W. long.
³ Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. long.
⁴ Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. long.

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined as the U.S./Canada Management Areas, as specified in paragraphs (a)(1)(i) and (ii) of this section.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined as the U.S./Canada Management Areas, as specified in paragraphs (a)(1)(i) and (ii) of this section.

(J) *White hake stock area.* The white hake stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00' N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(K) *Pollock stock area.* The pollock stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north by the coastline of the United States, bounded on the east by the boundary of the EEZ running southward from the U.S.-Canada border

to its intersection with 39°00' N. lat., bounded on the south by 39°00' N. lat., and bounded on the west by a line running northward along 71°40' W. long. from its intersection with 39°00' N. lat. until it intersects with the south-facing shoreline of RI.

* * * * *

(7) *CA I Hook Gear Haddock SAP—(i) Eligibility.* A vessel issued a valid limited access NE multispecies permit operating under a NE multispecies DAS or on a Sector trip, provided the Sector to which the vessel belongs has been allocated ACE for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the CA I Hook Gear Haddock SAP and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided any such vessel complies with the requirements of this section, the SAP is not closed according to the provisions specified in paragraph (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section, or the Sector in which the vessel is participating no longer has ACE available for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i). Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock SAP Area.* The CA I Hook Gear Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CA I HOOK GEAR HADDOCK SAP AREA

Point	N. Latitude	W. Longitude
Hook 1	41°09'	68°30'
CI4	41°30'	68°30'
CI1	41°30'	69°23'
Hook 2	41°04'	69°01.1'

(iii) *Season.* The season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

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

(A) *DAS use restrictions.* A vessel fishing in the Closed Area I Hook Gear Haddock SAP under a NE multispecies

DAS may not initiate a DAS flip. A vessel is prohibited from fishing in the Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement.* An eligible NE multispecies vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* To fish in the CA I Hook Gear Haddock SAP Prior to departure from port, a vessel must declare into the SAP via VMS, and, for a vessel fishing under a NE multispecies DAS, indicate the type of DAS that it intends to fish, prior to departure from port, as instructed by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described in paragraph (b)(7)(ii) of this section on a declared trip.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraph (b)(7)(v)(A) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: Biomass YEAR X = (1,130 mt live weight) × (Projected WGB Haddock Exploitable Biomass YEAR X / WGB Haddock Exploitable Biomass 2004). The size of the western component of

the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP. A vessel operating under a NE multispecies DAS must end the trip if the vessel exceeds the applicable landing limits described in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section.

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise specified in this part, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels, including both common pool and Sector vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a Sector vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(v).

(A) *Gear restrictions.* A Sector vessel is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(c) and those specified under paragraph (b)(7)(iv)(E) of this section.

(B) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the landing limits for regulated species in effect under the Sector's Operations Plan, as approved under § 648.87(c).

(C) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the Sector Manager, consistent with instructions to be provided by the

Sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake discarded; date fish were caught; and VTR serial numbers for each trip declared into the CA I Hook Gear Haddock SAP, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) or (H) of this section.

(D) *Incidental catch TACs.* There are no incidental catch TACs specified for regulated species or ocean pout for Sector vessels declared into the CA I Hook Gear Haddock SAP. All regulated species or ocean pout caught by Sector vessels fishing in the SAP count toward the Sector's annual ACE for each stock, as specified in § 648.87(b)(1)(i).

(vi) *Common pool vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a common pool vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(vi).

(A) *DAS use restrictions.* A common pool vessel may only use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A common pool vessel is prohibited from using Category A DAS and may not initiate a DAS flip when declared into the SAP. A common pool vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section.

(C) *Landing limits.* A common pool vessel may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A common pool vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a common pool

vessel must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2359 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

(E) *Incidental catch TACs.* The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by a common pool vessel from the CA I Hook Gear Haddock SAP Area in a fishing year is the amount specified in paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC.* When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, the CA I Hook Gear Haddock SAP Area shall be closed to all common pool vessels in a manner consistent with the Administrative Procedure Act.

(8) * * *

(i) *Eligibility.* A vessel issued a valid limited access NE multispecies permit and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section while operating under a NE multispecies DAS or on a Sector trip, provided the Sector to which the vessel belongs has been allocated ACE for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the Eastern U.S./Canada Haddock SAP and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section and provided the SAP is not closed according to the provisions specified in

paragraph (b)(8)(v)(K) or (L) of this section, the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section, or the Sector to which the vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i).

* * * * *

(v) * * *

(A) *Area and DAS use restrictions.* A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS in accordance with § 648.82(d)(2), or in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A). A vessel on a Sector trip in the Eastern U.S./Canada Haddock SAP may elect to fish in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A).

* * * * *

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, and, for common pool vessels fishing a NE multispecies DAS, while under either a Category A DAS or a Category B DAS.

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder/Haddock SAP Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided a common pool vessel fishes under a Category A DAS and all eligible vessels comply with the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(4) A common pool vessel fishing under a NE multispecies DAS that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements of the areas fished for the entire trip. A vessel on a Sector trip that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must comply with the most restrictive reporting requirements of the areas fished for the entire trip, unless otherwise specified by the Regional Administrator in a

manner consistent with the Administrative Procedure Act.

(B) *VMS requirement.* A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(D) *VMS declaration.* To fish in the Eastern U.S./Canada Haddock SAP, a vessel issued a limited access NE multispecies permit must declare into the SAP via VMS and provide information on the areas within the Eastern U.S./Canada Area that it intends to fish and the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, if operating under the provisions of the common pool, prior to departure from port, in accordance with paragraph (b)(8)(v)(A) of this section and any instructions provided by the Regional Administrator.

(E) * * *

(1) A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or the Ruhle Trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(j)(3) of this section, respectively, or another type of gear, if approved as described in this paragraph (b)(8)(v)(E). Other gear may be on board the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, provided that the gear is stowed in accordance with § 648.23(b).

* * * * *

(3) *Mesh size.* A vessel eligible to fish in the Eastern U.S./Canada Haddock SAP pursuant to paragraph (b)(8) of this section must use trawl gear described in this paragraph (b)(8)(v)(E) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb

(45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a Sector trip will be applied against the ACE for each stock that is specified for the Sector in which the vessel participates.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated or ocean pout unless otherwise required due to a prohibition of the possession of such species specified in this part. If a common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified in paragraph (b)(8)(v)(F) of this section, or in § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified in § 648.85(a) or § 648.86. If a common pool vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified in paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined in paragraph (b)(8)(ii) of this section for the remainder of the trip. For a common pool vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS pursuant to § 648.82(e)(1), and not Category B DAS.

* * * * *

(9) *GOM Haddock Sink Gillnet Pilot Program*—(i) *Eligibility.* A vessel that has been issued a valid limited access NE multispecies permit that has also declared its intent to participate in the

GOM Haddock Sink Gillnet Pilot Program pursuant to paragraph (b)(9)(v)(B) of this section is eligible to participate in the GOM Haddock Sink Gillnet Pilot Program, provided any such vessel complies with the requirements of this paragraph (b)(9), the pilot program is not closed according to the provisions specified in paragraph (b)(9)(viii) of this section, and, for vessels on a Sector trip, the Sector to which the vessel belongs has been allocated ACE for all stocks caught within the GOM Regulated Mesh Area pursuant to § 648.87(b)(1)(i).

(ii) *GOM Haddock Sink Gillnet Pilot Program Area.* The GOM Haddock Sink Gillnet Pilot Program Area is the area encompassed by the GOM Regulated Mesh Area, as defined in § 648.80(a)(1). Copies of a map depicting this area are available from the Regional Administrator upon request.

(iii) *Gear Restrictions*—(A) *Mesh size.* An eligible vessel participating in the GOM Haddock Sink Gillnet Pilot Program may fish with and possess on board sink gillnets comprised of 6-inch (15.2-cm) mesh.

(B) *Net restriction.* A Day gillnet vessel participating in the GOM Haddock Sink Gillnet Pilot Program may not fish with, possess, haul, or deploy more than 30 sink gillnets. A Trip gillnet vessel is not subject to the limit on the number of nets that can be used under the GOM Haddock Sink Gillnet Pilot Program. Tie-down gillnets may not be used by any vessel participating in the GOM Haddock Sink Gillnet Pilot Program.

(iv) *Season.* An eligible vessel participating in the GOM Haddock Sink Gillnet Pilot Program may fish in the GOM Haddock Sink Gillnet Pilot Program from January 1 through April 30.

(v) *Program Restrictions*—(A) *DAS Use.* An eligible vessel participating in the GOM Haddock Sink Gillnet Pilot Program must use Category A DAS for any fishing trip during the time the vessel is participating in this program pursuant to paragraph (b)(9)(v)(B)(1), including trips where gear is deployed, but no catch is landed.

(B) *Observer notification*—(1) *Notice of participation.* To be eligible to participate in the GOM Haddock Sink Gillnet Pilot Program, a vessel must notify the NMFS Observer Program by October 1 of its intent to participate in this pilot program and the duration of its participation in this program, as instructed by the Regional Administrator. Any vessel participating in this program must participate for the entire season specified in paragraph (b)(9)(iv) of this section. Upon

notification of a vessel operator's intent to participate in this pilot program pursuant to this paragraph (b)(9)(v)(B), the Regional Administrator shall issue a letter of authorization to participate in this pilot program to the eligible vessel.

(2) *Notice of fishing.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it fishes under the provisions of the GOM Haddock Sink Gillnet Pilot Program, as specified in paragraph (b)(9) of this section, in accordance with instructions provided by the Regional Administrator.

(C) *Letter of authorization requirement.* A vessel eligible to participate in the GOM Haddock Sink Gillnet Pilot Program must retain on board the letter of authorization issued by the Regional Administrator pursuant to paragraph (b)(9)(v)(B) of this section for the duration of the period specified in paragraph (b)(9)(v)(B) of this section.

(vi) *Reporting requirements.* There are no additional reporting requirements for vessels participating in this pilot program.

(vii) *Duration of GOM Haddock Sink Gillnet Pilot Program.* This program is in effect from May 1, 2010, through April 30, 2013.

(viii) *Closure of the GOM Haddock Sink Gillnet Pilot Program.* The Regional Administrator may suspend participation in the GOM Sink Gillnet Pilot Program to any or all eligible vessels if the Pilot Program is determined to be inconsistent with the goals and objectives of the NE Multispecies FMP.

* * * * *

(d) *Incidental catch allowance for some limited access herring vessels.* The incidental catch allowance for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit is 0.2 percent of the combined ACLs for GOM haddock and GB haddock (U.S. landings only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year.

(e) *Authorized gear performance standards.* Unless otherwise restricted in this part, in areas and times when a special management program, as specified in this section, requires the use of gear authorized by that program to reduce catches of stocks of concern, participating vessels are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice,

witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

14. In § 648.86, revise the introductory text to this section; revise paragraphs (a)(1), (a)(2)(iii), (b), (e), (g), and (j); and add paragraphs (p), and (q) to read as follows:

§ 648.86 Multispecies possession restrictions.

Except as provided in § 648.17 or elsewhere in this part, the following possession restrictions apply:

(a) * * *

(1) *NE multispecies DAS vessels*—(i) *Implementation and adjustments to the haddock trip limit to prevent exceeding the common pool sub-ACL.* At any time prior to or during the fishing year, if the Regional Administrator projects that the haddock sub-ACL allocated to the common pool vessels pursuant to § 648.90(a)(4) will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent exceeding the haddock sub-ACL allocated to the common pool in that fishing year.

(ii) *Implementation and adjustments to the haddock trip limit to facilitate harvest of the haddock sub-ACL allocated to the common pool.* At any time prior to or during the fishing year, if the Regional Administrator projects that less than 75 percent of the haddock sub-ACL allocated to the common pool pursuant to § 648.90(a)(4) for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to facilitate a haddock harvest and enable the total catch to approach, but not exceed, the haddock sub-ACL allocated to the common pool for that fishing year.

(2) * * *

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels also issued limited access NE multispecies

permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(b) *Cod*—(1) *GOM cod landing limit.* Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod for each DAS, or part of a DAS, up to 12,000 lb (5443.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *GB cod landing and maximum possession limits.* Unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(4) of this section and this paragraph (b)(2). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) [Reserved]

(4) *Exemption.* A common pool vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the GOM Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a common pool vessel that fishes or intends to fish under a NE multispecies DAS south of the line described in paragraph (b)(4) of this section, under the cod trip limits described in paragraph (b)(2) of this section, must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish

north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A common pool vessel exempt from the GOM cod landing limit pursuant to paragraph (b)(4)(i) of this section may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions is not restricted in the amount of white hake the vessel may land per trip during fishing years 2010 and 2011. Starting in fishing year 2012, unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 2,000 lb (907.2 kg) per trip.

* * * * *

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined in § 648.85(a)(1), may land or possess on board up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,500 lb (680.4 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (*i.e.*, that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is subject to the GB yellowtail flounder limit described in paragraph § 648.85(a)(3)(iv)(c).

* * * * *

(j) *GB winter flounder.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is not restricted in the amount of GB winter flounder the vessel may land per trip.

* * * * *

(p) *Ocean pout, winter flounder, SNE/MA winter flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish. In addition, such vessels may not fish for, possess, or land winter flounder caught in or from the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b).

(q) *Additional possession restrictions—(1) Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period. For example, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 2,000 lb (907.2 kg) of GOM cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day.

(2) *Possession limits for vessels fishing in multiple areas.* If a vessel fishes in more than one stock area on the same trip, as defined in

§ 648.85(b)(6)(v) or § 648.87(b)(1)(ii), the most restrictive trip limit for a species applies for the entire trip.

15. Revise § 648.87 to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the Sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the Sector wants to begin operations in accordance with the conditions and restrictions of this section. The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate a management action to implement the Sector proposal. Should a biennial adjustment or framework adjustment to authorize a Sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(j) as of May 1, 2008, is eligible to join a NE multispecies Sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies Sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a Sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a Sector under this section, a Sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in

that Sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercise any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation—(A) Allocated stocks.* Each Sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels participating in each Sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(1) of this section.

(B) *Eastern GB stocks.* Each Sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the Sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a Sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that Sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE

multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over.* With the exception of GB yellowtail flounder, a Sector may carry over up to 10 percent of unused ACE for each stock into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual Sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the Sector allocation during the previous fishing year are no longer participating in the same Sector for the subsequent fishing year.

(D) *Maximum ACE allocation.* There is no maximum amount of ACE that can be allocated to a particular Sector during each fishing year.

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved Sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(1) and (2) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to Sectors pursuant to this paragraph (b)(1)(i). The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(1) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(2) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, dealer landings of each stock of NE multispecies caught while operating under the restrictions associated with a limited access NE multispecies permit, including regulated species or ocean

pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, that are available in the commercial dealer database to NMFS shall be summed for fishing years 1996 through 2006. This value shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join Sectors as of May 1, 2008. This produces an individual permit's share of the ACL for each regulated species or ocean pout stock available to the NE multispecies fishery. The landings history for each permit includes all landings that can be attributed to that permit pursuant to this paragraph (b)(1)(i)(E). For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during fishing years 1996 through 2003 before the adoption of the limited access Handgear A permit category in 2004.

(2) *Calculation of GB cod PSC.* The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(2) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new Sector, or fishes pursuant to the provisions of the common pool.

(i) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each valid NE multispecies permit that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid signature executed on or before March 1, 2008, on a preliminary roster for either of these Sectors, the PSC for GB cod shall be based upon the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join Sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(1) of this section.

(ii) *GB cod PSC for all other permits.* For all NE multispecies permits that have not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (o)(2)(i) of this section, the GB cod PSC shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (o)(2)(i) of this section. First, each permit's individual share of the available GB cod PSC shall be calculated by dividing the sum of the individual permit's landings of GB cod

available in the commercial dealer database for fishing years 1996 through 2006 by the total landings of GB cod by permits eligible to join Sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008, during that period. This individual share shall then multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section from one. This shall provide each vessel's share of the available GB cod PSC.

(ii) *Areas that can be fished.* Vessels in a Sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the Sector has been allocated, or acquires pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks caught in that stock area. A Sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the Sector cease fishing operations prior to exceeding it. Once a Sector has harvested its ACE for a stock, all vessels in that Sector must cease fishing operations in that stock area with gear capable of catching NE multispecies (*i.e.*, gear not listed as exempted gear in this part) unless and until it acquires additional ACE from another Sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular Sector that exceed the ACE allocated to that Sector, as of the date received or purchased by the dealer, whichever occurs first.

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to Sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
CCGOM1	(1)	70°00'
CCGOM2	41°20'	(2)
CCGOM3	41°20'	69°50'
CCGOM4	41°10'	69°50'
CCGOM5	41°10'	69°30'
CCGOM6	41°00'	69°30'
CCGOM7	41°00'	68°50'
CCGOM8	42°20'	68°50'
CCGOM9	42°20'	67°40'
CCGOM10	43°50'	67°40'
CCGOM11	43°50'	66°50'
CCGOM12	44°20'	66°50'
CCGOM13	44°20'	67°00'
CCGOM14	(3)	67°00'

¹ Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. long.
² Intersection of east-facing coastline of Nantucket, MA, and 41°20' N. lat.
³ Intersection of south-facing ME coastline and 67°00' W. long.

(B) *SNE/MA Yellowtail Flounder Stock Area.* The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to Sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
SNE1	35°00'	(1)
SNE2	35°00'	70°00'
SNE3	39°00'	70°00'
SNE4	39°00'	71°40'
SNE5	39°50'	71°40'
SNE6	39°50'	68°50'
SNE7	41°00'	68°50'
SNE8	41°00'	69°30'
SNE9	41°10'	69°30'
SNE10	41°10'	69°50'
SNE11	41°20'	69°50'
SNE12	(2)	70°00'
SNE13	(3)	70°00'
SNE14	(4)	70°00'

¹ Intersection of east-facing coastline of Outer Banks, NC, and 35°00' N. lat.
² Intersection of south-facing coastline of Nantucket, MA, and 70°00' W. long.
³ Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. long.
⁴ Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. long.

(C) *GOM Haddock Stock Area.* The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to Sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section

is the area bounded by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
GOMSA1	(1)	(1)
GOMSA2	43°58'	67°22'
GOMSA3	43°50'	(2)
GOMSA4	43°50'	67°40'
GOMSA5	(2)	67°40'
GOMSA6	42°53.1'	67°44.4'
GOMSA7	(2)	67°40'
GOMSA8	42°20'	67°40'
GOMSA9	42°20'	70°00'
GOMSA10	(3)	70°00'

¹ The intersection of the shoreline and the U.S./Canada maritime boundary.
² U.S./Canada maritime boundary.
³ North-facing shoreline of Cape Cod, MA.

(D) *GB Haddock Stock Area.* The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to Sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
GBSA1	(1)	70°00'
GBSA2	42°20'	70°00'
GBSA3	42°20'	(2)
GBSA4	40°30'	65°40'
GBSA5	40°30'	66°40'
GBSA6	39°50'	66°40'
GBSA7	39°50'	71°40'
GBSA8	(3)	71°40'

¹ North-facing shoreline of Cape Cod, MA.
² U.S./Canada maritime boundary.
³ Intersection With RI Shoreline

(E) *Redfish Stock Area.* The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to Sector allocations of redfish ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

Point	N. Latitude	W. Longitude
RFSA1	(1)	(1)
RFSA2	43°58'	67°22'
RFSA3	43°50'	67°40'
RFSA4	43°50'	67°40'
RFSA5	(2)	67°40'
RFSA6	42°53.1'	67°44.4'
RFSA7	(2)	67°40'
RFSA8	42°20'	67°40'
RFSA9	42°20'	(2)
RFSA10	40°30'	65°40'
RFSA11	39°00'	(2)
RFSA12	39°00'	71°40'

Point	N. Latitude	W. Longitude
RFSA13	(3)	71°40'

¹ The intersection of the shoreline and the U.S./Canada maritime boundary.
² U.S./Canada maritime boundary.
³ Intersection with RI shoreline.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to Sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
GOM1	(1)	70°00'
GOM2	42°20'	70°00'
GOM3	42°20'	67°40'
GOM4	43°50'	67°40'
GOM5	43°50'	66°50'
GOM6	44°20'	66°50'
GOM7	44°20'	67°00'
GOM8	(2)	67°00'

¹ Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.
² Intersection of the south-facing Maine coastline and 67°00' W. long.

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate Sector catch using VTR, VMS, IVR, and any other available information to determine whether a Sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each Sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a Sector be exceeded in a given fishing year, the Sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the Sector, each vessel, vessel operator and/or vessel owner participating in the Sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. For the purposes of this paragraph (b)(1)(iii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular Sector that exceed the ACE allocated to that Sector, as of the date received or purchased by the dealer, whichever occurs first, after

considering all ACE transfer requests received and/or approved by NMFS during the current fishing year (including those that are submitted up to 2 weeks into the following fishing year), pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). If an ACE allocated to a Sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the Sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant Sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all Sectors and common pool vessels have operated within their ACE or sub-ACL limits, a Sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain Sectors stay within their ACE while other Sectors or the common pool exceed their respective ACEs or sub-ACLs, the Sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other Sectors or the common pool exceeded their ACE or sub-ACL, divided among such Sectors proportional to each Sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a Sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that Sector to fish under the provisions of the common pool or in another Sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the Sector operations plan and associated Sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a Sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of

permits/vessels participating in that Sector during the fishing year following the overage, individual permit holders that participated in the Sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(1) *PSC reduction.* If a Sector disbands following an overage, and the owner of an individual permit joins another Sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other Sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the Sector during the fishing year in which the overage occurred. For example, if a Sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that Sector, but then joins another Sector during the following fishing year shall have its contribution of GB cod to another Sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another Sector during that fishing year.

(2) *DAS reduction.* If a Sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that Sector of any of the stocks for which an overage occurred. For example, if a Sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(3) *Fishing prohibition.* If a Sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that Sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that Sector shall be prohibited from fishing in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that Sector can acquire sufficient ACE from another Sector to cover the remaining overage from the

previous fishing year. For example, if a Sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (*i.e.*, it exceeded its GB cod ACE by 15 mt), each permit/vessel that participated in that Sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that Sector would not be able to fish with gear capable of catching NE multispecies (*i.e.*, gear not listed as exempted gear in this part) in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another Sector (*i.e.*, 15 mt overage – 10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a Sector's ACE for each stock for a period of up to 61 days (*i.e.*, through June 30) to allow time to process any ACE transfers submitted by May 15 pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any Sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that Sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement—(A) Sector compliance and joint/several liability.* Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each Sector, permit/vessel owner, and vessel operator participating in the Sector may be charged jointly and severally for violations of the following Sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a Sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a Sector.* A permit/vessel participating in a Sector must remain in the Sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the Sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the Sector pursuant to enforcement actions specified in an approved Sector operations plan, permit replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a Sector participant during the fishing year, the new owner must comply with the Sector regulations for the remainder of the fishing year. If a permit/vessel has been expelled from a Sector, the Sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a Sector during a specific fishing year for violation of the Sector rules shall not be eligible to fish under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year.

(v) *Sector monitoring.* Each Sector shall monitor catch by participating Sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The Sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to Sectors; and report Sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to Sectors by vessels on a Sector trip shall be deducted from the Sector's ACE for each NE multispecies stock regardless of what fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (*i.e.*, gear not listed as exempted gear under this part) would be deducted from a Sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout caught while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the Sector's ACE for

each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a Sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the Sector.

(A) *Discards.* A Sector vessel may not discard any legal-sized regulated species or ocean pout allocated to Sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a Sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a Sector's ACE for each NE multispecies stock allocated to a Sector.

(B) *Independent third-party monitoring program.* Beginning in fishing year 2010, a Sector must develop, implement, and pay for, to the extent not funded by NMFS, an independent third-party dockside/roving and at-sea/electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring landings and utilization of Sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service providers providing dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea/electronic monitoring program proposed by Sectors must meet the operational standards specified in paragraph (b)(5) and (b)(6) of this section, respectively, and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act.

(1) *Dockside/roving monitors.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout by Sector vessels at the first point of offload, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. The level

of coverage for landings by Sector vessels is specified in paragraph (b)(1)(v)(B)(3) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. The details of the dockside/roving monitoring program used by each Sector must be specified in the Sector's operations plan and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act.

(2) *At-sea/electronic monitoring program.* Beginning in fishing year 2012, in addition to the dockside/roving monitoring requirement specified in paragraph (b)(1)(v)(B)(1) of this section, an at-sea/electronic monitoring program must be implemented to verify area fished as well as catch and discards by species and gear type. A Sector may elect to develop an at-sea/electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor unless approved by NMFS as part of the Sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea/electronic monitoring program developed and implemented by each Sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the Sector's annual operations plan. The Regional Administrator shall review the at-sea/electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner

consistent with the Administrative Procedure Act. The level of coverage for landings by Sector vessels is specified in paragraph (b)(1)(v)(B)(3) of this section.

(3) *Coverage levels.* Any service provider providing dockside/roving or at-sea monitoring services required under this paragraph (b)(1)(v)(B)(3) must provide coverage that is fair, equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each Sector and by all Sector vessel operations throughout the fishing year.

(i) *Dockside/roving monitoring.* For fishing year 2010, at least 50 percent of all Sector trips shall be monitored by dockside/roving monitors. Beginning in fishing year 2011, at least 20 percent of all Sector trips shall be monitored by dockside/roving monitors.

(ii) *At-sea/electronic monitoring.* Beginning in fishing year 2012, coverage levels for an at-sea monitoring program shall be specified by NMFS, but shall be less than 100 percent of all Sector trips. Such coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor Sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

(4) *Hail reports.* For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), Sector vessels must submit all hail reports for a Sector trip in which the NE multispecies catch applies against the ACE allocated to a Sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be specified in the annual Sector operations plan, consistent with paragraphs (b)(5) and (6) of this section.

(5) *Notification of service provider change.* If for any reason a Sector decides to change service providers used to provide the dockside/roving and at-sea monitoring services required in this paragraph (b)(1)(v), the Sector manager must first inform NMFS of the effective date of the change in service providers in conjunction with the submission of the next weekly Sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A Sector may employ more than one service provider at any time, provided any service provider employed by a Sector

meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements.* In addition to the other reporting/recordkeeping requirements specified in this part, a Sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports.* Prior to each Sector trip, a Sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The Sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each Sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each Sector based upon regulated species and ocean pout landings and discards of vessels participating in that Sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the Sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of Sector catch for each NE multispecies stock allocated to that particular Sector; Sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 2359 hr on Thursday of the week following the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the Sector operations plan and approved by NMFS. If requested, Sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing Sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved Sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the

following information: Catch, including landings and discards, of all species by Sector vessels; the permit number of each Sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by Sector vessels; the landing port used by Sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of Sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries—*
(A) *Use of DAS.* A Sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a Sector vessel, as applicable. For example, if a Sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the Sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a Sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a Sector, vessels participating in that Sector cannot participate in those other fisheries unless NMFS has approved a Sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* Unless otherwise specified pursuant to paragraph (b)(1)(viii)(D) of this section, all or a portion of a Sector's ACE for any NE multispecies stock may be transferred to another Sector at any time during the fishing year and up to 2 weeks into the following fishing year (*i.e.*, through May 14) to cover any overages during the previous fishing year. A Sector is not required to transfer ACE to another Sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B).

(A) *Application to transfer ACE.* ACE may be transferred from one Sector to another through written request to the Regional Administrator. This request must include the name of the Sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each Sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both Sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section.

(D) *Transfer of ACE by NOAA-sponsored permit banks.* A state-operated permit bank sponsored by NOAA shall be considered a Sector for the exclusive purpose of transferring ACE to qualifying Sectors. Such permit banks will be allocated ACE for a fishing year based on the PSCs of permits owned by the permit bank that are declared as ACE permits for that fishing year. All or a portion of a permit bank's ACE for any NE multispecies stock may be transferred to a qualifying Sector at any time during the fishing year. Permit banks may only act as the transferor in an ACE transfer.

(ix) *Trip limits.* With the exception of stocks listed in § 648.87(l), a Sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and Sector contract.* To be approved to operate, each Sector must submit an operations plan and Sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the Sector intends to begin operations. This operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is

sufficient to assess the impacts of Sector operations during the 2-year period and that Sector membership, or any other parameter that may affect Sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a Sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved operations plan. At least the following elements must be contained in either the operations plan or Sector contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A list of all Federal and state permits held by persons participating in the Sector, including an indication for each permit whether it is enrolled and will actively fish in a Sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all Sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the Sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of such consolidation or redistribution within the Sector;

(vi) A list of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the Sector rules;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the ACE allocated to the Sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework

adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a Sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by Sector participants, including, but not limited to, detailed information describing the Sector's dockside/roving and at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that Sector; identification of the independent third-party service providers employed by the Sector to provide dockside/roving and at-sea/electronic monitoring services; the mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea monitors and electronic monitoring equipment; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the Sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to Sector operations to ensure allocated ACE is not exceeded, and details regarding the Sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of Sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the Sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the Sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a Sector to operate during a particular fishing year, each Sector must develop and submit to NMFS, in conjunction with the yearly operations plan and Sector contract, an appropriate

NEPA analysis assessing the impacts of forming the Sector and operating under the measures described in the Sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide Sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, Sectors, Sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities

and duties of a Sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside and/or at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* Dockside/roving and at-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(2) A service provider must be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by Sectors, or a subset of ports as part of a contract with a particular Sector;

(3) A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring

mechanism deployments to NMFS and the Sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate Sector;

(4) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the Sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(5) A service provider's dockside, roving, and at-sea monitor assignment must be fair, equitable, representative of fishing activities within each Sector, and able to monitor fishing activity throughout the fishing year;

(6) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the Sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the Sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (*i.e.*, Sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting

fishing vessel for any reason including, but not limited to, the following:

(1) If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(2) If the service provider is not given adequate notice of vessel departure or landing from the Sector manager or participating vessels, as specified by the service provider;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(4) Failure to pay for previous deployments of dockside, roving, or at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, Sectors, Sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual dockside/roving monitors.* For an individual to be approved/certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS, such as being certified by a physician to be physically fit to work as a dockside/roving monitor after consideration that a monitor may be required to climb a ladder to inspect fish holds and/or trucks;

(D) Absence of fisheries-related convictions based upon a thorough background check; and

(E) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, Sectors, Sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(iv) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels, pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

(1) Susceptibility to chronic motion sickness;

(2) Ability to live in confined quarters;

(3) Ability to tolerate stress;

(4) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(5) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(6) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies,

Sectors, Sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *Dockside monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed as part of a Sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(1) of this section, or required as part of the trimester TAC AM specified in § 648.82(n)(2) must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements—(A) Reporting/recordkeeping requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of independent dockside and roving monitors pursuant to § 648.82(n)(2)(iv) and paragraph (b)(1)(v) of this section, the operator of a vessel fishing under the provisions of the common pool or on a Sector trip must comply with the following requirements:

(1) *Trip-start hail report.* The vessel operator must submit a trip-start hail report notifying the Sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the trip duration prior to departing port at the beginning of each trip. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor service provider within 10 minutes of sending the original trip-start hail report, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

(2) *Trip-end hail report.* Prior to returning to port upon the completion of a fishing trip, the vessel operator must submit a trip-end hail report notifying the dockside/roving monitor service provider of the vessel permit number; trip ID submitted pursuant to paragraph (b)(5)(i)(A)(1) of this section; intended offloading location(s), including the dock/dealer, port/harbor, and state for all dealers/facilities where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and estimated total weight of each species on board. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be

submitted within sufficient time to allow the deployment of the dockside/roving monitor to the offloading site, as specified by the dockside/roving monitoring service provider in consultation with NMFS Office of Law Enforcement. These reports may be in the form of an e-mail to the dockside/roving monitor service provider or another means of communication specified by the service provider.

(B) *Copies of trip documents.* The operator of a Sector vessel that is issued a waiver from the dockside/roving monitoring requirements specified in paragraph (b)(1)(v)(B) of this section for a particular trip must provide copies of all VTRs and dealer receipts associated with that trip to the Sector or designated third party contractor, as appropriate, within 24 hr of offloading.

(C) *Vessel offloads.* A vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor(s) assigned to that trip is present, as specified in paragraph (b)(5)(ii)(A) of this section.

(ii) *Dockside/roving monitor service provider requirements—(A) Confirmation of vessel hail reports.* Upon receipt of a trip-start or trip-end hail reports pursuant to paragraphs (b)(5)(i)(A)(1) and (2) of this section, the service provider shall immediately send confirmation that the trip-start or trip-end hail report was received to the vessel. A service provider must establish an independent back-up system to the primary hail report system (e.g., a phone number if the primary hail report system is based upon e-mail) to ensure receipt of such trip-start or trip-end hail reports. In confirming the receipt of a trip-end hail report, the service provider will inform the vessel operator that the offload(s) associated with that trip will be monitored by a dockside/roving monitor or that the vessel is issued a dockside/roving monitor waiver for that trip. If a dockside/roving monitor is assigned to observe a trip's offloads, but cannot meet the vessel as scheduled, the service provider must inform the vessel, the Sector, and NMFS Office of Law Enforcement, as appropriate, as soon as possible, to specify the time when the dockside/roving monitor will arrive, or issue the vessel a waiver for that particular trip. The service provider or Sector manager must also provide NMFS Office of Law Enforcement with the information contained in the trip-start and trip-end hail reports, including whether the vessel has been assigned a dockside/roving monitor for that trip, at the same time that the confirmation is sent to the vessel.

(B) *Documentation of offloads—(1) Offloads directly to a dealer.* Upon the completion of the offload, the dockside/roving monitor shall retain a copy of all VTRs associated with the trip, including all information submitted (i.e., no blocked cells) provided by the Sector vessel; record whether the dealer scales were certified by an appropriate state agency; observe and record whether ice and box weights are tared by the dealer before catch is added, or record the estimated weight of ice and the box from the dealer; record the weight of catch offloaded by species (and market category, if culled); determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; sign the dealer receipt associated with the offload for each trip (i.e., dealer/weightout slip or other form of documentation of the amount of catch offloaded by the dealer), or have the dealer sign the dockside/roving monitor report, as appropriate; provide data summarizing the offloads of each trip, including copies of the VTR(s), dockside/roving monitor report, and dealer receipt(s), if separate from the dockside/roving monitor report, to the Sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator.

(2) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (i.e., no blocked cells) provided by the Sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species and market class in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial

number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the Sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the Sector manager or third-party service provider, as appropriate.

(C) *Record retention.* The dockside/roving monitor service provider shall retain an electronic record of each offload observed and make electronic and other records that document an offload available to NMFS upon request.

(D) *Safe-harbor provision.* The dockside/roving monitor service provider must work with the Sector and NMFS Office of Law Enforcement to establish an acceptable process for safe-harbor situations where a vessel is unable to follow normal dockside/roving monitor protocols outlined in paragraph (b)(5) of this section due to an emergency situation.

(iii) *Adjustment to operational standards.* The dockside/roving monitor operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(6) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a Sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(2) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program

service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(3)(a) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements*. In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(2) of this section, the operator of a vessel fishing on a Sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, e-mail, etc.), and information needed for such pre-trip notifications shall be included as part of a Sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(1) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements*—(1) *Confirmation of pre-trip notification*. Upon receipt of a pre-trip notification pursuant to paragraph (b)(6)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(6)(ii) of this section.

(2) *At-sea/electronic monitoring report*. A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate Sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and Sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A) *Vessel requirements*. The operator of a Sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(6)(iii)(B)(1) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(6)(iv)(B) of this section, until the identified safety deficiency has been resolved pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements*. An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a Sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(6)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards*. The at-sea/electronic monitoring operational standards specified in paragraph (b)(6) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator*. (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove Sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the Sector. The letter of authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraphs

(c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for Sector participants*. The Regional Administrator may not exempt participants in a Sector from the following Federal fishing regulations: NE multispecies year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements or SAP-specific reporting requirements specified in this part). This list may be modified through a framework adjustment, as specified in § 648.90.

(ii) *Universal Sector exemptions*. All Sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a Sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.82(f)(1) and (g), respectively, provided Sector vessels comply with the Sector-specific GOM Rolling Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Rulle trawl defined in § 648.85(b)(6)(iv)(J)(3) within the GB RMA, as defined in § 648.80(a)(2), provided Sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time, if it is determined that Sector participants are not complying with the requirements of an approved operations

plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved Sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the Sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these Sectors shall be specified pursuant to the operations plan and Sector contract, as required by this section.

- (1) *GB Cod Hook Sector.*
- (2) *GB Cod Fixed Gear Sector.*
- (3) *Sustainable Harvest Sector.*
- (4) *Port Clyde Community Groundfish Sector.*
- (5) *Northeast Fishery Sector I.*
- (6) *Northeast Fishery Sector II.*
- (7) *Northeast Fishery Sector III.*
- (8) *Northeast Fishery Sector IV.*
- (9) *Northeast Fishery Sector V.*
- (10) *Northeast Fishery Sector VI.*
- (11) *Northeast Fishery Sector VII.*
- (12) *Northeast Fishery Sector VIII.*
- (13) *Northeast Fishery Sector IX.*
- (14) *Northeast Fishery Sector X.*
- (15) *Northeast Fishery Sector XI.*
- (16) *Northeast Fishery Sector XII.*
- (17) *Northeast Fishery Sector XIII.*
- (18) *Tristate Sector.*
- (19) *Northeast Coastal Communities Sector.*

16. In § 648.88, revise paragraph (a)(1) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *
 (1) The vessel may possess and land up to 200 lb (90.7 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. Should the GOM cod trip limit specified in § 648.86(b)(1) be adjusted in the future, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

* * * * *

17. In § 648.89, revise the introductory text to paragraph (c); revise paragraphs (a), (b)(1), (b)(4), (c)(1)(v), and (c)(2)(v); and add paragraphs (c)(5) and (f) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter/party vessels permitted under this part and not fishing under the DAS program or under the restrictions and conditions of an approved Sector operations plan, as specified in § 648.87(c), and recreational fishing vessels in the EEZ, are prohibited from fishing with more than one line per angler, and must stow all other fishing gear on board the vessel as specified in § 648.23(b).

(b) * * *
 (1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) of this section, persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved Sector operations plan, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL), as follows:

Species	Size (inches)
Cod	22 (55.9 cm).
Haddock	18 (45.7 cm).
Pollock	19 (48.3 cm).
Witch flounder (gray sole)	14 (35.6 cm).
Yellowtail flounder	13 (33.0 cm).
American plaice (dab) ...	14 (35.6 cm).
Atlantic halibut	41 (104.1 cm).
Winter flounder (blackback)	12 (30.5 cm).
Redfish	9 (22.9 cm).

* * * * *

(4) Fish fillets, or parts of fish, must have at least 2 square inches (5.1 square cm) of skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. The skin must be contiguous and must allow ready identification of the fish species.

* * * * *

(c) *Possession restrictions.*

(1) * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for or possess any cod from November 1 through April 15. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area

may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

(2) * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels permitted under this part and not fishing under the NE multispecies DAS program or on a Sector trip that are fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for, possess, or land any cod from November 1 through April 15. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

(5) *Atlantic wolffish.* Possession of Atlantic wolffish by charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program and recreational fishing vessels fishing in the EEZ is prohibited.

* * * * *

(f) *Recreational fishery AM—(1) Catch evaluation.* As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if the regulated species or ocean pout sub-ACL specified for the recreational fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock, as follows:

(i) For fishing year 2010, recreational catch shall be compared to the recreational sub-ACL for that stock for fishing year 2010.

(ii) For fishing year 2011, the average recreational catch for fishing years 2010 and 2011 shall be compared to the average recreational sub-ACLs for that stock during fishing years 2010 and 2012.

(iii) Starting in fishing year 2012, the 3-year average recreational catch shall be compared to the 3-year average of the recreational sub-ACLs for that stock.

(2) *Measure adjustment.* If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the

Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

18. In § 648.90, revise the introductory text for this section and paragraph (a); revise paragraphs (a)(2)(i) through (iv), (a)(2)(vi), and (c)(1)(i); and add paragraphs (a)(4) through (6) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures, setting of ACLs and other allocations, AMs, specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process.

(a) *NE multispecies*. For the purpose of this paragraph (a), the term “NE multispecies fishery” is defined as common pool vessels, Sector vessels, and private recreational and charter/party vessels, as defined in this part; the term “NE multispecies commercial fishery” is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term “NE multispecies recreational fishery” is defined as private recreational vessels and charter or party boats, as further defined in this part.

* * * * *
(2) * * *

(i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided

primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, including changes to the Northeast Region SBRM.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, Sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information.

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identification and distribution of ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses

for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including the establishment of a new Sector, the disapproval of an existing Sector, and the allowable percent of ACL available to a Sector through a Sector allocation; Sector administration provisions, including at-sea and dockside monitoring measures; Sector reporting requirements; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

(iv) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

* * * * *

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the

Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or Sector ACE allocation the vessel or Sector ultimately receives for that year, as appropriate.

* * * * *

(4) *Process for setting ABCs and ACLs*—(i) *ABC/ACL recommendations*. As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(5) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(A) *ABC recommendations*. The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available

information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommended by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations*. The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

(ii) *Timing*. The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law.

After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner consistent with the Administrative Procedure Act.

(iii) *ABC/ACL distribution*. The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (E) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (E) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP*. The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

(B) *Regulated species or ocean pout catch by exempted fisheries*. Regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery*. Yellowtail flounder catch in the Atlantic sea

scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. At a minimum, these values must be consistent with the incidental catch amounts for yellowtail flounder specified for the closed area access programs described in §§ 648.60(a)(5) and 648.85(c).

(D) *Haddock catch by the Atlantic herring fishery.* The GOM and GB haddock ABC/ACL shall each be reduced by 0.2 percent to account for haddock bycatch in the Atlantic herring fishery, pursuant to the restrictions at §§ 648.85(d) and 648.86(a)(3) and pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4).

(E) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i)(B), after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (D) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial fishery, pursuant to this paragraph (a)(4)(iii)(E).

(1) *Recreational allocation.* Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(E)(1) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(i) *Stocks allocated.* Unless otherwise specified in this paragraph (a)(4)(iii)(E)(1), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(ii) *Process for determining if a recreational allocation is necessary.* A recreational allocation may not be made

if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(2) *Commercial allocation.* The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(1) of this section, shall be divided between vessels operating under approved Sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in Sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and Sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(2) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether Sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(3) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) *ACL monitoring—(A) Landings.* For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, Sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports,

and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a Sector trip shall be monitored pursuant to paragraph (b)(1)(v)(A) of this section.

(v) *Adjustments to ACLs.* The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) and (D) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (*i.e.*, common pool vessels, Sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(E) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then the AMs described in § 648.82(n) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels

pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by Sector vessels.* If the catch of regulated species and ocean pout by Sector vessels exceeds the amount of the ACL specified for Sector vessels pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each Sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved Sector. If such catch does not exceed the portion of the ACL specified for an individual Sector pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then no AMs shall take effect for that Sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(1) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(1) of this section, then no AMs shall take effect for the recreational fishery.

(i) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery, including the catch of regulated species or ocean pout by vessels fishing in state waters outside of the FMP, or in exempted fisheries, as defined in this part, or the catch of yellowtail flounder by the Atlantic sea scallop fishery, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that

stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(6) *Specifications process—(i) PDT recommendations.* Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines.* As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations.* Based on the PDT's recommendations and any public comment received, the Groundfish Oversight Committee shall recommend to the Council appropriate specifications for a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS.

NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis.* Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(c) * * *

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(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of cruiser in the hook-gear fishery, Sector requirements, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season

adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM

(including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-

funded observers or observer set-aside programs).

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