use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

189. In particular, the Commission seeks comment on whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. The Commission also seeks comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

190. Based on these questions, and the alternatives the Commission has discussed, the Commission anticipates that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband. The Commission welcomes proposals of alternatives from any of the approaches as described in Section A, supra.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

191. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–4393 Filed 2–25–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110201085–1087–01]

RIN 0648–XY55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2011 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: As part of the process for the NMFS Northeast Regional Administrator approval of proposed sector operations established under Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), sectors are required to submit operations plans and sector contracts, and request an allocation of stocks regulated under the FMP for each fishing year (FY). This action is to provide interested parties an opportunity to comment on 19 FY 2011 proposed sector operations plans and contracts. Although NMFS received 22 proposed sector operations plans and contracts for approval, only 19 of the 22 sector operations plans and contracts are being considered for approval because 3 sectors, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were excluded from consideration.

DATES: Written comments must be received on or before March 15, 2011.

ADDRESSES: You may submit comments, identified by 0648–XY55, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison Murphy.
- *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 2011 Sector Operations Plans and Contracts."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.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, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the sector operations plans and contracts and the environmental assessment (EA) are available at *http://www.regulations.gov* and from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EA, and the preamble and the Classification sections of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that 19 sector operations plans and contracts, which were initially submitted to NMFS on or before September 1, 2010, and sector rosters, submitted on or before September 10, 2010, are: (1) Consistent with the goals of the FMP, as described in Amendment 16 Final Environmental Impact Statement (FEIS) and other applicable laws, (2) in compliance with the measures that govern the development and operation of a sector as specified in Section 4.2.3 of the Amendment 16 FEIS, and (3) have met administrative deadlines, including roster deadlines, for being proposed as a sector operations plan for FY 2011. This proposed rule summarizes many of the sector requirements as implemented by Amendment 16 and the requirements proposed for modification in Framework Adjustment 45 (FW 45), and solicits comments on the regulatory exemptions requested by sectors as well as the applicable environmental analyses.

As stated in Amendment 16, the deadline to submit operations plans and signed contracts was September 1, 2010. However, because NE multispecies permit holders were notified of their preliminary FY 2011 Potential Sector Contribution (PSC) in mid-August, 2010, NMFS extended the deadline to submit signed contracts from September 1, 2010, to September 10, 2010, to allow vessel owners adequate time to make a decision to join a sector for FY 2011 or to fish in the common pool. Based upon industry request, this deadline was further extended to December 1, 2010, to provide additional flexibility.

Background

The final rule implementing Amendment 13 to the NE Multispecies FMP (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, sector operations plans and contracts must contain certain elements, including a contract signed by all sector participants and an operations plan containing rules that sector members agree to abide by to avoid exceeding their sector TAC. An EA, or other appropriate analysis, must be prepared for the sectors that analyzes

the individual and cumulative impacts of all proposed sector operations. Additionally, the public must be provided an opportunity to comment on the proposed sector operations plans, sector contracts, and EA. The regulations require that, upon completion of the public comment period, the Regional Administrator must make a determination regarding approval of the sectors operations plans and contracts. Amendment 13 implemented the GB Cod Hook Sector in FY 2004, and Framework 42 (71 FR 62156; October 23, 2006) implemented the GB Cod Fixed Gear Sector in FY 2006.

Amendment 16 (74 FR 18262; April 9, 2010) expanded the sector management measures, revised the 2 existing sectors, and implemented an additional 17 new sectors for a total of 19 sectors, including the Northeast Fishery Sectors I through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, and the Port Clyde Community Groundfish Sector. Amendment 16 defined a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives." A sector's TAC is referred to as an annual catch entitlement (ACE). Regional Administrator approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each FY. Each individual sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the PSC of permits participating in that sector. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

FW 45, as proposed by the New England Fishery Management Council (Council) and available for public review through the **Federal Register**, would revise the rules for the 19 previously approved sectors and include 5 new sectors (for a total of 24 sectors), including the Maine Permit Bank Sector, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, the Rhode Island Permit Bank Sector, and Sustainable Harvest Sector 3. Approval of the operation of these new sectors is conditional on approval of measures proposed in FW 45. Similarly, approval of some of the exemptions requested by the sectors that submitted operations plans for FY 2011 is also contingent on FW 45. Therefore, final action regarding the approval of the operation of these sectors and the exemptions requested will not be made unless and until a final decision on FW 45 has been made. FW 45 is expected to be implemented on May 1, 2011. Concurrent with the implementation of FW 45, NMFS and the States of Maine, Massachusetts, New Hampshire, and Rhode Island have entered into separate Memoranda of Agreement (MOA) for the administration of State-managed permit banks. Terms and conditions for permit banks include: The permit bank may only transfer out ACE, it may not transfer in ACE; the permit bank may only transfer ACE to sectors for use by vessels that are 45 ft (13.72 m) in length or smaller, based out of ports with a population of 30,000 residents or less. The States of Massachusetts, New Hampshire, and Rhode Island were unable to fulfill roster requirements in time to be considered in this rulemaking process for FY 2011. The Maine Permit Bank Sector is proposed to consist of two privately held permits, as well as any additional permits purchased by the permit bank. The State issued a request for proposal, soliciting permit holders who are interested in selling permits to the State permit bank, and submitted this information to NMFS as additional prospective permits. The Maine Permit Bank Sector must finalize the purchase of permits from this list and notify NMFS by February 1, 2011.

Representatives from 22 of the 24 current and proposed sectors submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2011. Neither the GB Cod Hook Sector, nor Northeast Fishery Sector I chose to submit an operations plan and sector contract for FY 2011. The Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector submitted operations plans for FY 2011, but were unable to demonstrate membership requirements, and thus will not be considered for approval in this rule, reducing the number of potential FY 2011 sectors to 19. Two of the proposed FY 2011 sectors, Northeast Fishery Sector IV and Sustainable Harvest Sector 3, would operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits onto active vessels.

Sector ACEs

As of December 1, 2010, 834 of the 1,475 eligible NE multispecies permits, which would account for approximately 98.8 percent of the historical commercial NE multispecies landings during the qualifying period selected by the Council in Amendment 16, have preliminarily enrolled in a sector for FY 2011. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2010. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2011, to withdraw from a sector and fish in the common pool for FY 2011. NMFS will publish final sector sub-ACL and common pool sub-ACL totals, based upon final rosters as soon as possible after the start of FY 2011.

Table 2 details the cumulative PSC (a percentage) each sector would receive based on their rosters as of December 1, 2010. Tables 3a and 3b detail the ACEs (in thousands of pounds and metric tons) each sector would be allocated based on their December 1, 2010, sector rosters for FY 2011. While the common pool does not receive a specific allocation of ACE, it has been included in each of these tables for comparison.

Note that individual sector members are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather each sector is allocated a portion of the GB cod and GB haddock ACE to harvest exclusively in the Eastern U.S./Canada Area. The amount of cod and haddock that a sector may harvest in the Eastern U.S./Canada Area is calculated by multiplying the percentage of the GB cod and GB haddock ACLs by the overall Eastern U.S./Canada Area GB cod and GB haddock TACs, respectively.

In accordance with Amendment 16, at the start of FY 2011, NMFS will withhold 20 percent of a sector's FY 2011 ACE for each stock for a period of up to 61 days, to allow time to process any FY 2010 ACE transfers submitted by May 14, 2011, and to determine whether the FY 2011 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2010 ACE overage by that sector. At the request of the Council, NMFS is considering relaxing the May 14 requirement to submit ACE transfers. The Council and sector managers will be notified of any change in this deadline in writing and the decision will be announced on the NERO Web site (*http://www.nero.noaa.gov/*).

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Table1. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2011 sectors.*

Sector	Permits Enrolled	Number of Active Vessels	Gear Type Fished	Regulated Mesh Areas
Northeast Fishery Sector II	85	42	100% trawl	Gulf of Maine (GOM), Offshore GB, Inshore GB and southern New England (SNE)
Northeast Fishery Sector III	94	47	85% gillnet, 5% hook gear, 5%pots/traps, 5% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IV	43	0	Lease-only sector	n/a
Northeast Fishery Sector V	34	27	3% gillnet, 97% trawl	Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VI	19	5	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VII	20	13	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VIII	20	16	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IX	60	25	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector X	51	26	36% gillnet, 13% hook, 6% pots/traps, 45% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XI	47	21	80% gillnet, 20% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XII	11	6	50% gillnet, 50% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XIII	35	29	5% gillnet, 95% trawl	GOM, Offshore GB, Inshore GB and SNE
Fixed Gear Sector	100	42	45% gillnet, 55% hook	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector I	106	38	14% gillnet, 86% trawl	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector III	18	0	Lease-only sector	GOM, Offshore GB, Inshore GB and SNE
Port Clyde Sector	40	24	52% gillnet, 48% trawl	GOM
Tri-State Sector	19	6	14% gillnet, 14% hook, 71% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Coastal Community Sector	30	10	3% gillnet, 83% hook gear, 4% trawl	GOM, Offshore GB, Inshore GB and SNE
Maine Permit Bank Sector	3†	0	Lease-only sector	n/a

*The data in this table is from the sector operations plans rosters submitted as of December 1, 2010, and is subject to change based on final sector rosters, as well as approval of FW 45.

†The Maine Permit Bank Sector has submitted a list of prospective permits for purchase and provided verification that it currently consists of two privately held permits, although it must hold a minimum of three permits to be considered for approval. The roster will be finalized prior to publication of the final rule.

Table 2. Cumulative PSC (a percentage (%)) each sector would receive by stock for FY 2011.*†

Sector Name	GB Cod**	GOM Cod	GB Haddock **	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	5.6416	19.7846	11.6936	18.2263	1.7086	1.791	20.9032	8.7677	13.6092	1.6863	21.0839	16.6122	6.4119	12.3534
Northeast Fishery Sector III	1.2709	17.4856	0.1687	12.3099	0.0488	0.4077	9.5304	4.443	3.0767	0.0332	11.0202	1.5538	5.2303	7.8559
Northeast Fishery Sector IV	4.979	7.916	5.3991	6.3661	2.1572	2.3396	5.6746	9.1101	9.0588	0.6943	5.2478	6.3388	7.8068	5.5055
Northeast Fishery Sector V	2.0143	0.1073	3.924	0.3233	6.4631	24.5741	1.058	1.4542	1.7362	1.9868	0.3251	0.2892	0.2237	0.3079
Northeast Fishery Sector VI	2.0304	1.6847	2.8673	2.9631	2.6926	5.1235	2.0702	3.5871	4.3706	1.4196	3.1215	5.2605	3.7045	3.2193
Northeast Fishery Sector VII	4.3904	0.43	3.7914	0.5607	9.04	3.7049	2.6826	3.3925	3.0833	11.3642	0.8716	0.6455	0.7531	0.6917
Northeast Fishery Sector VIII	6.4095	0.4948	5.8444	0.2138	11.3303	5.6259	6.6737	1.7342	2.6131	16.1316	3.3715	0.4326	0.5011	0.6107
Northeast Fishery Sector IX	14.6337	1.6406	11.9719	4.6872	27.5215	8.0685	10.6527	8.3807	8.359	42.7723	2.4385	5.7757	4.1021	3.8914
Northeast Fishery Sector X	1.1837	5.5255	0.3145	2.6295	0.0173	0.5447	13.8233	2.0188	3.6106	0.0154	27.3616	0.5673	0.9707	1.5095
Northeast Fishery Sector XI	0.3946	12.5501	0.0359	2.4992	0.0008	0.0172	2.1833	1.4866	1.5349	0.0009	2.0241	0.9613	2.4354	6.5775
Northeast Fishery Sector XII	0.0153	2.4258	0.0026	0.8571	0.0008	0.0022	0.4841	0.749	0.6074	0.0025	0.3167	1.0592	2.4934	2.9572
Northeast Fishery Sector XIII	7.9921	0.7	14.8854	0.8584	17.215	12.5965	3.0581	3.8585	5.0255	10.8272	1.2532	4.5666	1.8671	2.3386
Fixed Gear Sector	28.1486	1.981	6.3547	1.3048	0.0124	0.3002	1.9144	0.5517	0.8365	0.0274	2.2061	2.9007	5.8446	7.8416
Sustainable Harvest Sector 1	16.3732	18.3448	28.777	40.259	11.6724	6.2706	10.0973	39.8059	33.9417	9.9403	5.4883	48.1545	51.0972	38.758
Sustainable Harvest Sector 3	1.1898	0.675	1.95	1.5146	0.5151	4.1559	2.2231	1.1166	1.5197	0.4392	3.2569	1.6237	0.8663	1.0483
Port Clyde Sector	0.088	4.0634	0.0316	2.1605	0.0033	0.6561	0.8644	5.8481	3.8644	0.002	1.2895	2.0374	3.6385	3.0264
Tri-State Sector	0.6744	0.801	1.4482	0.4622	7.2379	1.2235	2.039	1.0025	0.9406	1.9203	2.0841	0.0053	0.0184	0.0384
Northeast Coastal Community Sector	0.1709	0.765	0.1213	0.3389	0.8371	0.7194	0.6147	0.1485	0.2171	0.0685	0.9058	0.44	0.8562	0.4504
Maine Permit Bank Sector	0.1004	0.0217	0.0007	0.0016	0.0003	0.0001	0.1108	0.0363	0.0045	0.0045	0.5678	0	0	0.0282
All Sectors Combined	97.7008	97.3969	99.5823	98.5362	98.4745	78.1216	96.6579	97.492	98.0098	99.3365	94.2342	99.2243	98.8213	99.0099
Common Pool	2.2992	2.6031	0.4178	1.4639	1.5255	21.8782	3.3421	2.5078	1.9901	0.6635	5.7657	0.7755	1.1787	0.9901

SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

*The data in this table are based on signed roster contracts as of December 1, 2010.

** For FY 2011, the 4.56 percent of the GB cod ACE would be allocated for the Eastern U.S./Canada Area, while 31.26 percent of the GB haddock ACE would be allocated for the Eastern U.S./Canada Area.

† Percentages have been rounded to the nearest hundredth of a percent in this table, but thousandths of a percent are used in calculating ACEs in metric tons and tons. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

Table 3a. Proposed ACE (in thousands of pounds) each sector would receive by stock for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	25	510	2105	2485	5465	316	30	21	433	601	371	75	73	2762	420	3800
Northeast Fishery Sector III	6	115	1860	36	79	214	1	5	198	304	84	1	38	258	343	2416
Northeast Fishery Sector IV	22	450	842	1147	2523	110	38	27	118	624	247	31	18	1054	512	1693
Northeast Fishery Sector V	9	182	11	834	1834	6	113	284	22	100	47	88	1	48	15	95
Northeast Fishery Sector VI	9	184	179	609	1340	51	47	59	43	246	119	63	11	875	243	990
Northeast Fishery Sector VII	19	397	46	806	1772	10	158	43	56	232	84	503	3	107	49	213
Northeast Fishery Sector VIII	28	579	53	1242	2732	4	198	65	138	119	71	714	12	72	33	188
Northeast Fishery Sector IX	65	1323	175	2544	5595	81	480	93	221	574	228	1893	8	960	269	1197
Northeast Fishery Sector X	5	107	588	67	147	46	0	6	286	138	98	1	95	94	64	464
Northeast Fishery Sector XI	2	36	1335	8	17	43	0	0	45	102	42	0	7	160	160	2023
Northeast Fishery Sector XII	0	1	258	1	1	15	0	0	10	51	17	0	1	176	163	910
Northeast Fishery Sector XIII	35	723	74	3164	6957	15	300	146	63	264	137	479	4	759	122	719
Fixed Gear Sector	124	2545	211	1351	2970	23	0	3	40	38	23	1	8	482	383	2412
Sustainable Harvest Sector 1	72	1480	1951	6116	13450	699	203	72	209	2727	925	440	19	8006	3350	11922
Sustainable Harvest Sector 3	5	108	72	414	911	26	9	48	46	77	41	19	11	270	57	322
Port Clyde Community Groundfish Sector	0	8	432	7	15	37	0	8	18	401	105	0	4	339	239	931
Tri-State Sector	3	61	85	308	677	8	126	14	42	69	26	85	7	1	1	12
Northeast Coastal Community Sector	1	15	81	26	57	6	15	8	13	10	6	3	3	73	56	139
Maine Permit Bank Sector	0	9	2	0	0	0	0	0	2	2	0	0	2	0	0	9
All Sectors	431	8833	10360	21164	46543	1710	1717	902	2003	6680	2671	4395	328	16496	6479	30454
Common Pool	10	208	277	89	195	25	27	253	69	172	54	29	20	129	77	305

*The data in this table are based on signed roster contracts as of December 1, 2010. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs recommended by the Council in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

Table 3b. Poundage of ACE (in metric tons) by stock proposed for each sector for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	11	231	955	1127	2479	143	14	9	196	273	168	34	33	1253	191	1724
Northeast Fishery Sector III	3	52	844	16	36	97	0	2	90	138	38	1	17	117	156	1096
Northeast Fishery Sector IV	10	204	382	520	1145	50	17	12	53	283	112	14	8	478	232	768
Northeast Fishery Sector V	4	83	5	378	832	3	51	129	10	45	21	40	1	22	7	43
Northeast Fishery Sector VI	4	83	81	276	608	23	21	27	19	111	54	28	5	397	110	449
Northeast Fishery Sector VII	9	180	21	365	804	4	71	19	25	105	38	228	1	49	22	97
Northeast Fishery Sector VIII	13	263	24	563	1239	2	90	29	63	54	32	324	5	33	15	85
Northeast Fishery Sector IX	29	600	79	1154	2538	37	218	42	100	260	103	858	4	436	122	543
Northeast Fishery Sector X	2	49	267	30	67	21	0	3	130	63	45	0	43	43	29	211
Northeast Fishery Sector XI	1	16	606	3	8	20	0	0	21	46	19	0	3	72	72	918
Northeast Fishery Sector XII	0	1	117	0	1	7	0	0	5	23	8	0	1	80	74	413
Northeast Fishery Sector XIII	16	328	34	1435	3156	7	136	66	29	120	62	217	2	344	56	326
Fixed Gear Sector	56	1154	96	613	1347	10	0	2	18	17	10	1	3	219	174	1094
Sustainable Harvest Sector I	33	671	885	2774	6101	317	92	33	95	1237	420	200	9	3631	1520	5408
Sustainable Harvest Sector III	2	49	33	188	413	12	4	22	21	35	19	9	5	122	26	146
Port Clyde Community Groundfish Sector	0	4	196	3	7	17	0	3	8	182	48	0	2	154	108	422
Tri-State Sector	1	28	39	140	307	4	57	6	19	31	12	39	3	0	1	5
Northeast Coastal Community Sector	0	7	37	12	26	3	7	4	6	5	3	1	1	33	25	63
Maine Permit Bank Sector	0	4	1	0	0	0	0	0	1	1	0	0	1	0	0	4
All Sectors	195	4007	4699	9600	21111	775	779	409	909	3030	1211	1994	149	7483	2939	13814
Common Pool	5	94	126	40	89	12	12	115	31	78	25	13	9	58	35	138

*The data in this table are based on signed roster contracts as of December 1, 2010. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs recommended by the Council in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

BILLING CODE 3510–22–C

Sector Operations Plans and Contracts

All sectors must, on an annual basis, submit an operations plan and sector contract to NMFS by a specified deadline to be authorized to fish and receive an allocation of groundfish for the following FY. Of the 24 current and FW 45 proposed sectors, 19 sectors met the September 1, 2010, operations plan deadline and the final December 1, 2010, NMFS roster deadline for FY 2011, including the Maine Permit Bank Sector. Each sector operations plan contains the rules under which each sector would fish. The sector contract provides the legal contract that binds members to a sector and its operations plan. Most sectors submitted one document to NMFS that encompasses both the operations plan and contract.

While each sector conducts fishing activities according to its approved operations plan, Section 4.2.3 of the Amendment 16 FEIS contains numerous provisions that apply to all sector operations plans and sector members. Under this amendment, all permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (*i.e.,* in the common pool) during the FY. Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator, as part of the approval of a sector's operations plan, as described further below. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes would be included in updated LOAs issued to sector members and through amendments to the approved operations plan.

Sectors would be allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder. Sector vessels would be required to retain all legal-sized allocated groundfish, unless an exemption is granted allowing sector vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (*e.g.,* not fishing under provisions of a NE multispecies exempted fishery) would have their groundfish catch (including discards) on those trips debited against the sector's ACE. Discard ratios applied to sectors would be determined by NMFS based on observed trips.

The final rule issued for Amendment 16 implemented a program whereby ACE may be transferred between sectors, although ACE transfers to or from common pool vessels is prohibited. Each sector would be required to ensure that its ACE is not exceeded during the FY. Additionally, Amendment 16 required sectors to develop independent third-party dockside monitoring programs (DSM) to verify landings at the time they are weighed by the dealer, and to certify that the landing weights are accurate as reported by the dealer. During FY 2010, 50 percent of trips from each sector are required to be randomly selected for DSM. Dockside monitoring coverage was specified to be reduced to 20 percent in FY 2011; however, FW 45, as proposed, would change the required coverage level for DSM to the level NMFS is able to fund, up to 100 percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. In addition, the Council voted to remove DSM requirements (a reporting requirement) from the list of prohibited exemptions for sectors. Sectors would be required to monitor their landings and available ACE and submit weekly catch reports to NMFS. In addition, the sector manager would be required to provide NMFS with aggregate sector reports on a daily basis when a threshold (specified in the operations plan) is reached. Once a sector's ACE for a particular stock is caught, a sector would be required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. Each sector would be required to submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the contract. Sector members could be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). As required by Amendment 16, each sector contract submitted for FY 2011 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2011, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE.

Amendment 16 contains several "universal" exemptions that are applicable to all sectors. These universal exemptions include exemptions from: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB; and portions of the GOM Rolling Closure Areas. Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements). FW 45 proposes to exclude DSM from the reporting requirements from which sectors may not be exempted.

Proposed FY 2011 Exemptions

A total of 31 exemptions from the NE multispecies regulations have been requested by sectors through their FY 2011 operations plans. These requests fall into several categories: Exemptions previously approved for FY 2010 (numbers 1–7); additional exemptions that were under consideration for FY 2010 at the time of the request for FY 2011 (numbers 8–9); exemptions disapproved in FY 2010 (number 10); novel exemptions for FY 2011 (numbers 11–19), dockside monitoring exemptions (numbers 20–30) and State permit bank exemptions (number 31). A

full discussion of the 31 exemptions is below. The requirements that were exempted in FY 2010 and have again been requested for FY 2011 are: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) prohibition on a vessel hauling another vessel's gillnet gear; (3) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (4) limitation on the number of gillnets imposed on Day gillnet vessels; (5) 20-day spawning block out of the fishery required for all vessels; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. Additional regulations that were under consideration for exemption for FY 2010 at the time of the request, and have again been requested for FY 2011 are: (8) the GOM Sink Gillnet Mesh Exemption; and (9) prohibition on the possession or use of squid or mackerel in the Closed Area I (CAI) Hook Gear Haddock (HGH) Special Access Program (SAP). For FY 2011, sectors requested an exemption from the follow regulation that was previously disapproved for FY 2010 is again being proposed for FY 2011: (10) access to GOM Rolling Closure Areas in May and June. For FY 2011, sectors have proposed novel exemptions from the following regulations: (11) prohibition on discarding; (12) extension of the GOM Sink Gillnet Mesh Exemption through the month of May; (13) daily catch reporting by Sector Managers for vessels participating in the CAI HGH SAP; (14) prohibition on pair trawling; (15) minimum hook size requirements for demersal longline gear; (16) minimum mesh size requirement; (17) Rhule and Haddock Separator requirements to utilize the 98.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™ in areas where these gear types are approved; (18) trawl gear restrictions in the U.S./Canada Area; and (19) the requirement to power a VMS while at the dock. Due to the Council's vote to exclude DSM from the list of prohibited exemptions in FW 45, sectors have requested exemptions from DSM requirements ranging from a complete exemption to area-, fishery-, and volume-based exemptions. Specifically, sectors requested novel exemptions from the following DSM requirements for FY 2011: (20) All DSM and roving monitoring requirements; (21) DSM requirements for directed monkfish, skate, and dogfish trips; (22) DSM requirements for jig vessels; (23) DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4535.9 kg) of groundfish per year; (24) DSM requirements in May when fishing in several mid-Atlantic NMFS Statistical Areas; (25) DSM requirements for vessels fishing west of 72°30′ W. long.; (26) DSM, roving monitoring, and hail requirements for hook-only or handgear vessels; (27) DSM, roving monitoring, and hail requirements for vessels using demersal longline, jig and handgear while targeting spiny dogfish in Massachusetts State waters of NMFS Statistical Area 521; (28) DSM requirements when at-sea monitoring has previously observed the trip; (29) the requirement to delay offloading due to the late arrival of the assigned monitor; and (30) the prohibition on offloading of non-allocated stocks prior to the arrival of the monitor. These exemptions were considered too late to be included in the EA for this action; they will be fully analyzed and included in the final EA. Finally, the State permit bank sector has requested an exemption from: (31) the requirement to provide a sector roster to NMFS by the specified deadline.

NMFS is soliciting public comment on the proposed sector operations plans and all 31 of the exemptions specified above. NMFS is particularly interested in receiving comments on the exemptions from the GOM Rolling Closure Areas, prohibition on pair trawling, minimum trawl mesh size requirements on targeted redfish trips, and dockside monitoring exemptions, because of particular concerns regarding the potential impacts of these exemptions.

1. 120-Day Block Out of the Fishery Requirement for Day Gillnet Vessels

The 120-day block out of the fishery requirement for day gillnet vessels was implemented in 1997 under Framework 20 (62 FR 15381; April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, given that gillnets continue to fish as long as they are in the water. Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. An exemption from this requirement was previously approved for FY 2010 based upon the rationale that this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. For additional information pertaining to this exemption and other exemptions previously approved in FY 2010, please refer to the proposed and final sector rules for FY 2010 (74 FR 68015, December 22, 2010 and 75 FR 18113, April 9, 2010, respectively). This exemption would increase the operational flexibility of sector vessels and would be expected to increase profit margins of sector fishermen. The exemption from the Day gillnet 120-day block requirement is requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

2. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Regulations at §§ 648.14(k)(6)(ii)(A) and 648.84(a) specify the manner in which gillnet gear must be tagged, requiring that information pertinent to the vessel owner or vessel be permanently affixed to the gear. No provisions exist in the regulations allowing for multiple vessels to haul the same gear. An exemption from this regulation, which was previously approved in FY 2010 because it was determined that the regulations pertaining to hauling and setting responsibilities are no longer necessary when sectors are confined to an ACE for each stock, would allow a sector to share fixed gear among sector vessels, thereby reducing costs. Consistent with the exemption as originally approved, the sectors requesting this exemption have proposed that all vessels utilizing community fixed gear be jointly liable for any violations associated with that gear. Additionally, each member intending to haul the same gear will be required to tag the gear with the appropriate gillnet tags, consistent with § 648.84(a). The exemption from the prohibition on hauling another vessel's gear is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

3. Limitation on the Number of Gillnets That May be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

Regulations at § 648.80(a)(4)(iv) prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB were implemented as a groundfish mortality control under

Amendment 13. An exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS was previously granted in FY 2010 because it would allow nets deployed under existing net limits of the Monkfish FMP to be hauled more efficiently by vessels dually permitted under both FMPs. The exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

4. Limitation on the Number of Gillnets for Day Gillnet Vessels

Current gear restrictions in the groundfish regulated mesh areas (RMA) restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). This exemption was previously requested and approved in FY 2010, and would allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA, and provides greater operational flexibility to sector vessels in deploying gillnet gear. This exemption was previously approved for FY 2010 because it is designed to control fishing effort and is no longer necessary for sector vessels, since each sector is restricted by an ACE for each stock, which caps overall fishing mortality. The exemption from the limit on the number of gillnets for Day gillnet vessels is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

5. 20-Day Spawning Block

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. This regulation was developed to reduce fishing effort on spawning groundfish stocks and an exemption was approved for FY 2010 sectors based upon the rationale that the sector's ACE will restrict fishing mortality, making this measure no longer necessary as an effort control. An exemption from this requirement would provide vessel owners with greater flexibility to plan operations according to fishing and market conditions. The exemption from the Day gillnet 20-day block requirement is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

6. Limitation on the Number of Hooks That May be Fished

Current regulations for the GOM RMA, GB RMA, and SNE and MAA RMAs at §§ 648.80(a)(3)(iv)(B)(*2*), 648.80(a)(4)(iv)(B)(*2*), 648.80(b)(2)(iv)(B)(*1*), and 648.80(c)(2)(v)(B)(*1*), respectively, prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or 4,500 rigged hooks in the MA RMA. This measure, which was initially implemented in 2002 through an interim action (67 FR 50292; August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort. An exemption from the number of hooks that a vessel may fish was approved for FY 2010 because it would allow sector vessels to more efficiently harvest ACE and is no longer a necessary control on effort by sector vessels. This exemption was granted to the GB Cod Hook Sector from 2004–2009, and was granted to the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XII; the Sustainable Harvest Sector; and the Tri-State Sector for either all or a portion of FY 2010. The exemption from the limitation on the number of hooks that may be fished is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

7. Length and Horsepower Restrictions on DAS Leasing

While sector vessels are exempt from the requirement to use NE multispecies DAS to harvest groundfish, sector vessels have been allocated, and still need to use, NE multispecies DAS for specific circumstances. For example, the Monkfish FMP includes a requirement that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish possession limit must fish under both a monkfish and a groundfish DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

An exemption from the DAS Leasing Program length and horsepower baseline restrictions on DAS leases between vessels within their individual sectors, as well as with vessels in other sectors with this exemption was approved in FY 2010. Restricting sectors to their ACEs eliminates the need to use vessel characteristics to control groundfish fishing effort. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and redirection of effort in their FY 2010 operations plans. In addition, any potential redirection in effort would be restricted by the sector's ACE for each stock, as well as by effort controls in other fisheries (*e.g.,* monkfish trip limits and DAS). The exemption from the length and horsepower restrictions on DAS leasing is being requested by the GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; all 12 Northeast Fishery Sectors; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

8. The GOM Sink Gillnet Mesh Exemption

The regulations require a minimum mesh size of 6.5-in (16.51-cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)). Minimum mesh size requirements have been used to reduce overall mortality on groundfish stocks, as well as to reduce discarding of, and improve survival of, sub-legal groundfish. An exemption from this regulation, which would allow vessels to potentially catch more haddock seasonally in the GOM, was considered in a supplemental proposed and final rule to FY 2010 sector operations (75 FR 53939; September 2, 2010; and 75 FR 80720; December 23, 2010) and is functionally equivalent to a pilot program that was proposed by the Council in Amendment 16. This exemption would allow sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2012, to April 30, 2012, when fishing for haddock. The designation of this season is consistent with the original pilot program proposal and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets during this period. Sector vessels may transit the

GOM RMA with tie-down gillnets, provided they are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b).

The GOM Sink Gillnet Mesh Program, as proposed by the Council, stipulated that Day gillnet vessels would not be able to fish with, possess, haul, or deploy more than 30 nets per trip. Consistent with the original scope of the pilot program, for FY 2010 NMFS proposed in supplemental rulemaking that Day gillnet vessels utilizing this exemption also be limited to 30 nets per trip during this period, but requested public comment on a net limit of between 30 and 150 stand-up nets, analyzing up to 150 nets. Because Day gillnet vessels granted the sector exemption from Day gillnet net limits, as explained under exemption request 4, would not be subject to the general net limit in the GOM RMA, and thus able to fish up to 150 nets in the GOM RMA, they would be limited to 30 nets when fishing under this exemption program. Therefore, NMFS again requests public comment on the feasibility of allowing up to 150 nets when fishing under this exemption. The LOA issued to sector vessels that qualify for this exemption would specify the net restrictions to help ensure the provision is enforceable. There would be no limit on the number of nets that participating Trip gillnet vessels would be able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

Recent selectivity studies have indicated that 6.5-inch (16.51-cm) sink gillnets may not be effective at retaining haddock at the current legal minimum fish size. An exemption from this requirement would provide sector vessels the opportunity to utilize a smaller mesh size gillnet to potentially catch more haddock in the GOM, and, thereby, increase efficiency and revenue in the fishery. NMFS believes that impacts to allocated target stocks resulting from this exemption would be negligible, given that fishing mortality by sector vessels is restricted by an ACE for allocated stocks, capping overall mortality. It is possible that a higher net limit for Day gillnet vessels participating in this program could result in an increase in the number of gillnets in the water at any one time and, therefore, potentially increase interactions with protected species. However, potential negative impacts to protected species from this exemption are expected to be low because additional nets may result in greater efficiency that could decrease the overall number of soak hours throughout the year as a sector's ACE is caught faster, thus potentially reducing interactions with protected species. In addition, sector vessels utilizing this exemption would still be required to comply with all requirements of the Harbor Porpoise Take Reduction Plan and Atlantic Large Whale Take Reduction Plan. The GOM Sink Gillnet Mesh Exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

9. Prohibition on the Possession or Use of Squid or Mackerel in the CAI Hook Gear Haddock SAP

The restriction on the possession or use of squid or mackerel as bait in the CAI Hook Gear Haddock SAP was originally approved by the Council in Framework 41, and analyzed in the FEIS for Framework 41, but inadvertently not included in the regulations implementing Framework 41. To correct this oversight, this provision was implemented as part of the Amendment 16 final rule. This restriction was intended to control the catch rates of cod, as squid and mackerel have been demonstrated to result in higher catch rates of cod. NMFS received comments on Amendment 16 that the bait restrictions should not apply to sector vessels. In the final rule implementing Amendment 16, NMFS stated that * * * because the Council did not provide for a specific exemption from such bait restriction in Amendment 16, NMFS cannot provide a sector an exemption from the bait requirements for this SAP in the final rule." However, because the bait restriction in Framework 41 was included under Section 4.2.2.2 "Requirements for Vessels not in the Hook Sector," NMFS, after further discussion with Council staff, understands that Framework 41 intended that this bait restriction apply only to vessels fishing outside of a sector (*i.e.,* the common pool). Based on this, NMFS intends to revise the current regulations for this requirement in an upcoming correction rule and, until the correction is effective, exempt any interested sector from this provision for the remainder of FY 2010 through an amendment to that sector's approved operations plan.

The GB Cod Fixed Gear Sector requested an exemption from this bait restriction, asserting the provision is an input control used to control fishing effort within the SAP under the DAS system and is unnecessary because catch by the sector will be limited by the ACE for each stock that caps overall fishing effort.

10. Access to GOM Rolling Closure Areas in May and June

The GOM Rolling Closure Areas were initially implemented in 1998 under Framework 25 to the FMP to reduce fishing effort in "areas with high GOM cod landings." However, Framework 26 referred to the rolling closure areas as "inshore 'cod spawning' closures." The stated purpose and need under Framework 26 (Section 3.0) states that the Council wanted to "take additional action to protect cod during the 1999 spawning season * * * and immediate action is necessary to reduce catches and protect the spawning stock." As a result, Framework 26 expanded the time period of these "cod spawning" closures, which included several 30-minute blocks. The final rule implementing Framework 26 (64 FR 2601; January 15, 1999) specified that the Council undertook action to expand these closures because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure." Amendment 16 implemented universal sector exemptions from specific portions of the current GOM Rolling Closure Areas, and specifically did not exempt these portions of these areas due to the understanding that they protect spawning aggregations of cod. The Council tasked the Groundfish Plan Development Team (PDT) with reviewing and analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans. On November 18, 2009, the Council voted to endorse a previous FY 2010 exemption request from block 138 in May.

Several sectors requested exemptions from GOM Rolling Closure Areas for FY 2010; however, these exemptions were ultimately rejected in the final rule implementing FY 2010 sector operations plans because the requesting sectors failed to consider that, despite ACE limits, direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. Additionally, justification that demonstrates that spawning fish could be avoided was not provided by the individual sectors. The final rule also cited that the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine

mammals. Six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from these rolling closures in FY 2010.

The sectors requesting this exemption for FY 2011 assert that the GOM Rolling Closure Areas were originally intended as mortality closures, and are now unnecessary because fishing mortality for sectors is capped by the ACE allocated for each groundfish stock. Sustainable Harvest Sectors 1 and 3 are requesting access to 30-minute blocks 138 and 139 in May, and 30-minute block 139 in June. They argue that they should not be subject to additional mortality controls because sector vessels are limited to a hard TAC. Additionally, these sectors note that Table 177 in the Environmental Impact Statement for Amendment 16 indicates that May is not a particularly important time for groundfish spawning, with the exception of plaice and haddock. The Port Clyde Community Groundfish Sector is requesting access to 30-minute blocks 138 and 139 in May, and 30-minute blocks 139, 145, and 146 in June. The Port Clyde Community Groundfish Sector stipulated a strategy to minimize the impacts to spawning fish while promoting benefits to sector members. Under this strategy, the sector would restrict the harvesting of any species in these areas and times by capping the percentage of the sector's available ACE that could be harvested from these areas, and would institute a closure of these areas if, based on NMFS Northeast Fisheries Observer Program (NEFOP) data, a significant amount of spawning fish are harvested. Additionally, the sector proposes to implement a program to notify the sector manager and other vessels if spawning aggregations and/or marine mammals are detected in these areas. Finally, the Port Clyde Community Groundfish Sector contends that vessels fishing in the requested exemption areas would provide additional data, which could serve as a pilot study for future use of these areas and times by all sectors.

11. Prohibition on Discarding

Current regulations prohibit sector vessels from discarding legal-sized fish of any of the 14 stocks allocated to sectors while at sea (§ 648.87(b)(1)(v)(A)). Amendment 16 contained this provision to ensure that the sector's ACE is accurately monitored. Sectors requested a partial exemption from this prohibition, because of concerns that retaining and landing large amounts of unmarketable fish, including fish carcasses, creates operational difficulties and potentially unsafe working conditions for sector vessels at sea. The Regional Administrator considered a partial exemption from the requirement to retain all legal-sized fish in a supplemental proposed rule to FY 2010 sector operations. However, due to problematic mid-season implementation issues, further consideration of this exemption was delayed until FY 2011 in the supplemental final rule to FY 2010 sector operations. Under this proposed exemption, all legal-sized unmarketable allocated fish would be accounted for in the overall sector-specific discard rates in the same way discards of undersized fish at sea are currently accounted for, through observer and at-sea monitoring coverage. If approved, unmarketable fish discarded by a sector's vessels on observed trips would be deducted from that sector's ACE and incorporated into that sector's discard rates to account for discarding under this exemption on unobserved trips. Vessels in a sector opting for this exemption would be required to discard all legal-sized unmarketable fish at sea (*i.e.,* not just on select trips). Legal-sized unmarketable fish would be prohibited from being landed to prevent the potential to skew observed discards. NMFS is specifically seeking comment on the implementation of this requirement.

NMFS received several comments regarding this exemption in response to the proposed supplemental rule for FY 2010 sector operations, which initially proposed this exemption. This included comment from Oceana, who raised concern that this exemption would expand loopholes in the self-reporting component of the sector monitoring program, and encourage high-grading, thereby weakening the sector monitoring program and undermining the FMP goals, as well as National Standards 2 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act. However, the accounting of discards does not rely on self-reported data. Rather, actual discards by sector vessels observed by NMFS observers and at-sea monitors on sector trips are applied to the sector's ACEs in live weights, and incorporated into sector-specific discard rates that are used to account for discards by sector vessels on unobserved trips. In addition, this exemption is not expected to lead to high-grading of catch, given that there is a financial incentive for sector vessels to minimize discards of allocated stocks. Since discards of allocated stocks are applied to the sector's ACE through observer data and sector-specific discard rates, there is an incentive for sector vessels that opt for this exemption to land catch rather than discard it, to maximize the value of the sector's ACEs. Thus, this discarding exemption is intended to provide NMFS with additional data for the monitoring of sector ACEs. Currently, a sector vessel could illegally discard legal-sized unmarketable fish at sea for operational or safety reasons. If such discarding is occurring only on unobserved sector trips, these discards may be unaccounted for in the sector-specific discard rates. This exemption would allow sectors to legally discard these fish at sea and, therefore, would provide NMFS with a means of capturing some of this information. Therefore, allowing the discarding of unmarketable fish and incorporating observed unmarketable discards into the sector-specific discard rates under this exemption would account for any illegal discarding that may currently be occurring on unobserved trips and, thereby, improve the information being used to extrapolate discards across all sector trips.

Finally, NMFS received a comment that the proposed rule did not contain sufficient analysis of the exemption and that further analysis should be completed prior to implementation. This exemption was analyzed in the FY 2010 proposed supplemental rule and EA, and is further discussed here. The analysis of this exemption was based upon information available at the time of the analysis, which consisted of observer data from sector trips through November 3, 2010. Dealer reports and vessel trip reports (VTRs) were not designed to specifically monitor the landing and handling of unmarketable fish, so there is little information available from these sources about the amount of unmarketable fish that sector vessels have landed to date. During the development of this exemption, NMFS identified the need for, and implemented, a specific code that could be used by vessels to report the landing of unmarketable fish on their VTRs. A permit holder letter sent on October 20, 2010, introduced this VTR code to vessel operators and included instructions for both vessel operators and dealers for the reporting of unmarketable fish. If approved, legal-sized unmarketable fish could be discarded at sea, and recorded as such on the VTR. Sectors that do not receive this exemption would continue to use the new VTR code. NMFS observers and at-sea monitors record the amount of each species kept by sector vessels because they are prohibited from discarding such fish by the regulations. Fish recorded under this category likely

consist of unmarketable legal-sized fish of allocated stocks that could not otherwise be discarded by the vessel operator and, therefore, represent the best estimate of the amount of unmarketable fish that sector vessels encounter on a given trip and may be expected to discard under this exemption. Observer data from sector trips during the first half of FY 2010 show that retained legal-sized unmarketable groundfish have been observed on 7.3 percent of observed sector trips. Observers reported a total of 14,423 lb (6,542 kg) of unmarketable groundfish that have been retained by sector vessels on 161 trips. Gillnet vessels encountered the most unmarketable groundfish per trip, with an average of 92 lb (42 kg), and a maximum of 402 lb (182 kg). Hook vessels retained an average of 64 lb (29 kg) of unmarketable groundfish per trip (maximum of 150 lb (68 kg)), and trawl vessels retained an average of only 23 lb (10 kg) of unmarketable groundfish per trip (maximum of 14 lb (6 kg)). In addition, unmarketable fish have a much greater occurrence on gillnet trips than trips using hook or trawl gear, during the time from May 1 through November 3, 2010, with observers reporting legal-sized unmarketable fish on 151 gillnet trips, but only 7 hook trips and 3 trawl trips. The occurrence of legal-sized unmarketable fish that had to be retained is limited, and does not appear to be a significant portion of sector catch. To date, these observed fish, and other unmarketable fish landed, are deducted from the sector's ACE. For sectors opting for the discarding exemption, any unmarketable fish that would have been required to be landed without the exemption and now are discarded by sector vessels will be recorded by observers as discards and applied to sector ACEs through discard data and sector-specific discard rates on unobserved trips.

The discarding exemption, in combination with the enhanced reporting of legal-sized unmarketable fish, would improve the monitoring of this unmarketable portion of sector catch, particularly on unobserved sector trips. The discard exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors II–III, V–VI and X–XII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

12. Extension of the GOM Sink Gillnet Mesh Exemption Through May

For a full description of the GOM Sink Gillnet Mesh Exemption, please *see* exemption 8 of this section. Northeast Fishery Sectors III, VI–VIII, and X have requested that the GOM Sink Gillnet Mesh Exemption, proposed above, be extended an additional month, from the end of April until the end of May.

This exemption would provide sector vessels the opportunity to potentially catch more GOM haddock, a fully rebuilt stock, during the months that haddock are most prevalent, and would also provide sector participants the opportunity to more fully harvest their allocation of GOM haddock, therefore increasing efficiency and revenues for vessel participating in this program. The sectors assert that impacts to non-target species would be minimal, because fishing effort by sectors vessels is restricted by ACE for allocated stocks, which caps overall mortality.

13. Daily Catch Reporting by Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP

The regulations at § 648.85(b)(7)(v)(C) require that sector vessels that declared into the CA I Hook Gear Haddock SAP submit daily catch reports to the sector manager, and that the sector manager report catch information to NMFS, on a daily basis. This reporting requirement was originally implemented through Framework 40A, to facilitate real-time monitoring of quotas by both the sector manager and NMFS. Amendment 16 granted authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. Through the final rule implementing Amendment 16, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), though these reporting requirements were retained for the CA I Hook Gear Haddock SAP, given that NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP.

The GB Cod Fixed Gear Sector requests that NMFS exempt the sector manager from submitting these reports to NMFS, opting instead to mandate that participating vessels submit a VMS catch report directly to NMFS containing all required information, analogous to the requirements for common pool vessels. The sector contends that this scenario would provide NMFS with data in a more timely fashion.

NMFS is currently evaluating the possibility of using the sector manager's weekly report, rather than daily reports, to monitor the TAC. Sector weekly reports have provided information in a timely enough manner to adequately monitor other SAPs. However, the weekly reports, in their current form would not provide sufficient information. Furthermore, NMFS is concerned that this provision may reduce the sector manager's capability to accurately monitor the sector's ACE in a timely manner. NMFS is soliciting comment on both the utility of the current reporting method, and the alternate reporting options highlighted above.

14. Prohibition on Pair Trawling

The regulations at § 648.14(k)(5)(vi) prohibit pair trawling in the NE multispecies fishery. This prohibition was originally implemented through an emergency interim rule (58 FR 32062; June 8, 1993), extended through a second emergency interim rule (59 FR 26; January 3, 1994), and made permanent in Amendment 5 (59 FR 9872; March 1, 1994). The first emergency interim rule prohibited pair trawling, based on record low abundance of spawning stock biomass and high fishing mortality of cod, conditions of the haddock stock and benefits to reducing discards of haddock, the high efficiency of this gear type, and an increase in the number of vessels electing to use this gear. The second emergency interim rule extending the prohibition noted that pair trawls are "highly efficient gear, and its unlimited use during a period of severely declining haddock and cod stocks is counterproductive to the goal of reducing effort in an overfished fishery." Amendment 5 also noted that pair trawling vessels "had significantly higher revenue-per-day-absent and landings-per-day-absent than otter trawl vessels fishing singly," further demonstrating the efficiency of this gear type. While initially intended to protect cod and haddock stocks, which at the time were at all-time low levels of abundance, the rule noted that "the stock condition and landings will continue to decline until such time that meaningful measures are implemented that will eliminate the overfished condition of the stocks and reduce the exploitation rate to levels that will allow significant rebuilding to take place."

Northeast Fishery Sectors VI–X and XIII are requesting an exemption from the pair trawling restriction for FY 2011, while restricting vessels to using either the Ruhle Trawl or the Eliminator Trawl. The sectors comment that a prohibition of this highly efficient gear type was intended to reduce fishing mortality. Given this, the sectors assert that, since sectors are managed under an ACE, they should be exempt from effort controls. These sectors anticipate that

the exemption will enable participating vessels to harvest the sector's ACE more efficiently and economically.

However, NMFS has concerns with granting this exemption because, due to the efficiency of pair trawling, sectors may not have sufficient ACE for all stocks caught by this gear, and may be unable to selectively target desired stocks. Additionally, this gear configuration has not been studied, and it could be that an increase in herding could diminish the established selectivity of the Ruhle Trawl. NMFS is especially interested in receiving public comment on this exemption request.

15. Minimum Hook Size Requirements for Demersal Longline Gear

The regulations at §§ 648.80(a)(3)(v), 648.80(a)(4)(v), 648.80(b)(2)(v), and 648.80(c)(2)(iv) specify that "all longline gear hooks must be circle hooks, of a minimum size of 12/0." This restriction was implemented through Amendment 13 to reduce the catch of small fish and improve their survivability in the hook fishery. In addition, the Amendment 13 FEIS further reasoned that "limits on the number of hooks are intended to reduce overall effort in the hook fishery."

The Northeast Coastal Communities Sector requested an exemption from this regulation, which would allow sector members the ability to target flatfish, species of fish which generally have smaller mouths than other groundfish. The sector asserts that bycatch could be avoided by selectively placing this gear, and that this exemption would allow its members to more effectively harvest the sector's ACE and increase profit margins of sector fishermen. However, NMFS has concerns with allowing a smaller hook size, given that this could increase the catch of sublegal fish.

16. Minimum Mesh Size Requirements on Targeted Redfish Trips

The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs. The regulations implementing the minimum mesh size were initially adopted through interim rules in 2001 and 2002 (67 FR 21140, 29 April 2002; 67 FR 50292, August 1, 2002) and made permanent through Amendment 13. This provision was intended to provide protection to spawning fish and increase the size of targeted fish. Framework 42 further modified the mesh regulations in the SNE/MA RMAs to reduce discards of yellowtail flounder.

Northeast Fishery Sectors II, V–X and XIII are requesting an exemption from the current minimum mesh size codend on targeted redfish trips for FY 2011; replacing this requirement with a 5-inch (12.7-cm) minimum mesh size codend on directed redfish trips. The sectors also propose that members be required to notify the manager at least 48 hrs in advance of such a trip, and be required to have 100 percent observer or at-sea monitor coverage while utilizing this gear. Also, to accurately monitor the ACE, Sector members would be required to submit catch reports to the sector manager on a daily basis while at sea. The requesting sectors argue that this exemption could increase the operational flexibility of sector vessels and could increase profit margins of sector fishermen.

The sectors referenced several studies in support of this exemption. A study entitled "The Status of the Fishery Resources of the Northeast U.S.," by Mayo, R., L. Col and M. Traver 2006 describes the gear historically used in the redfish fishery. It notes that the minimum mesh size restrictions, along with "low biomass and truncated size and age structure of the redfish stock have effectively eliminated the prosecution of a fishery since the mid 1980s."

Anecdotal information for FY 2010 provided by some industry members, as well as information in a study entitled "ME Boats go for Redfish the New-Fashioned Way," by Peter K. Prybot, in the September 2010 issue of Commercial Fisheries News, suggests that some sector members have been successful at targeting redfish utilizing gear with 6.5-inch (16.51-cm) mesh. NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM through a network approach, including fishing enterprises, gear manufacturers, researchers, and social and economic experts and managers, which will include the investigation of success of various mesh sizes within the fishery. Given that the use of this smaller mesh could negatively impact spawning fish and populations of flounders, which the current minimum mesh sizes were intended to protect, NMFS has reservations about approving this exemption, until such time that results from this study can first be considered.

17. Rhule and Haddock Separator Requirements to Utilize the 98.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™

Through several separate rulemakings (73 FR 29098, May 20, 2008; 73 FR 40186, July 14, 2008; 73 FR 52214, August 9, 2008; and 73 FR 53158, August 15, 2008), NMFS has authorized the use of the Ruhle Trawl (f.k.a., Eliminator Trawl and Haddock Rope Trawl) for use in the B DAS Program, Eastern U.S./Canada Haddock SAP, and the Eastern U.S./Canada Area Program. NMFS approval of this gear was based upon a recommendation from the Council, following a review of a study that demonstrated that this experimental net was successful at targeting haddock and significantly reducing the catch of other groundfish species. NMFS, however, noted in the final rule approving this gear for use in the B DAS Program and the Eastern U.S./Canada Haddock SAP that the "results of the experiment cannot be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels" but that "research is currently underway testing a smaller, modified version of the haddock rope trawl, and at-sea observations indicate that this smaller net may also be effective at reducing bycatch."

Although the results of the smaller-scale trawl study have yet to be reviewed by the Council, several of the Northeast Fishery Sectors (II, V–X, and XIII) have requested an exemption to utilize the 8.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™ in areas and programs where the Ruhle trawl has been approved. In addition, these sectors wish to have this gear type included in the Ruhle trawl discard strata. Therefore observed discards from this smaller net would apply to the current Ruhle trawl strata, and the discard rate for the Ruhle trawl strata would apply to all unobserved trips utilizing this gear. The sectors assert that approving this gear type will provide sector members greater flexibility, as many vessels are too small to utilize the larger version of the net. In addition, the sectors argue that, based upon the final results of "Exploring Bycatch Reduction in the Haddock Fishery through the use of the Eliminator Trawl with Fishing Vessels in the 250 to 550 HP Range," by Laura Scrobe, David Beutel and Jonathan Knight, this smaller net may reduce the catch of major stocks of concern, while allowing vessels to selectively target haddock. As with the previous mesh size exemption request discussed under exemption 16, NMFS has concerns with granting this exemption prior to reviewing the results of the report studying this smaller net.

18. Gear Requirements in the U.S./Canada Management Area

Current regulations require that a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area

must fish with a Ruhle trawl, a haddock separator trawl, or a flounder trawl net. The final rule implementing Amendment 13 clarified that the restriction to use a haddock separator trawl or a flounder trawl net was designed to "ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal."

The requirement to utilize a Ruhle trawl in the Eastern U.S./Canada Area was implemented through several inseason actions, and made permanent in Amendment 16. This gear configuration was originally authorized for its demonstrated ability to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. The addition of the Ruhle Trawl to gear previously approved (haddock separator trawl and flounder trawl net) provided added flexibility to trawl vessels.

The Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the trawl gear requirements in the Eastern U.S./Canada Area, to allow either a standard otter trawl or modified versions of currently approved trawl gear (Ruhle trawl, a haddock separator trawl, or a flounder trawl net) to access the area. The sectors both assert that this measure was initially designed as a method to control fishing effort and therefore is no longer necessary because a sector is now constrained by the allocated ACE for each stock, which caps overall fishing mortality.

19. Requirement to Power a VMS While at the Dock

The regulations at § 648.10(b)(4) require that a vessel issued certain categories of NE multispecies permits, or eligible and participating in a sector, to have an operational VMS unit onboard. Additionally, § 648.10(c)(1)(i) requires that the VMS units onboard a NE multispecies vessel transmit accurate positional information (*i.e.,* polling) at least every hour, 24 hr per day, throughout the year. Amendment 5 first included the requirement for vessels to use VMS. While the requirement to use VMS was delayed until a later action (Framework 42 ultimately implemented a VMS requirement for NE multispecies DAS vessels), NMFS supported polling due to its ability to insure adequacy of monitoring requirements and address enforcement concerns, and because it could be beneficial in the event of an at-sea emergency.

Under certain circumstances, the regulations at § 648.10(c)(2) allow NMFS to issue a LOA allowing vessels to sign out of the VMS program for a minimum of 30 consecutive days. The ability to power-down a VMS unit was justified in Amendment 13 to reduce vessel costs when reduced DAS allocation limited fishing opportunities to a small portion of the year.

The Tri-State Sector requested an exemption from the requirement to power a VMS while at the dock, noting that the VMS was used to track DAS and proximity to closed areas, and would require that the VMS unit be operational when the vessel is away from the dock. The Tri-State Sector further noted that other reporting requirements (trip start and trip end hails, VMS declarations, *etc.*) received by the sector manager and NMFS could be used to monitor vessels granted this exemption.

20. All DSM and Roving Monitoring Requirements

Amendment 13 adopted the concept that sectors are responsible for monitoring sector catch, but provided few details for that requirement. Amendment 16 formalized this requirement, by specifying that sector operations plans must include how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation; including developing and implementing an independent third-party DSM program for monitoring landings from sector trips and utilization of ACE. The DSM program was implemented to ensure that catch is accurately documented and that all sectors are being held to the same standards, for the purpose of bolstering compliance monitoring efforts.

The GB Cod Fixed Gear Sector and Northeast Fishery Sectors II–III and V–XIII have requested an exemption from all DSM requirements. The GB Fixed Gear sector contends that this program has added little value to the sectors' infrastructure or sector members' businesses. Additionally, the sector argues that ambiguities with the DSM program, such as the failure to require confirmation that all landings have been offloaded, the fact that NMFS does not utilize or cross-reference this data, and the ability of fishermen to alter behavior when notified of a monitoring event, prevent the program from meeting its stated objectives. The GB Cod Fixed Gear Sector also asserts that NMFS has yet to request any dockside or roving monitoring reports to validate or verify a landing event, and therefore the requirement is not being utilized as an enforcement tool. The Northeast Fishery Sectors contend that the implementation of the DSM program has not met the stated objectives of the DSM program in an economically efficient manner. They contend that DSM was meant as a means for sector managers to verify catch, and that the Northeast Fishery Sector managers do not utilize DSM reports, but rather opt to utilize dealer weigh-out slips for this purpose. NMFS acknowledges that the DSM program could be strengthened, and intends to modify DSM standards for the start of FY 2011, to help ensure better compliance monitoring, the primary objective of the program.

At its November 18, 2010, meeting, the Council voted to include in FW 45 a provision that would remove DSM from the list of reporting requirements, thereby removing this requirement from the list of prohibited sector exemptions. Many of the DSM requirements that were requested for exemption in the operations plans submitted as of September 1, 2010, were, at the time, prohibited under Amendment 16 and, therefore, not analyzed in the sector EA, given that there was insufficient time to do so. This request, and other DSM exemption requests, will be analyzed in the final EA.

21. DSM Requirements for Directed Monkfish, Skate, and Dogfish Trips

As explained above in exemption 20, Amendment 13 adopted the concept that sectors are responsible for monitoring sector catch, and Amendment 16 formalized these requirements. Unless a vessel is fishing in an exempted fishery, directed monkfish, skate and dogfish trips are considered a sector trip because a groundfish trip declaration is required (NE multispecies DAS or sector trip), since gear utilized on such trips is capable of catching groundfish and groundfish retention is permitted.

The Northeast Coastal Communities Sector; and Northeast Fishery Sectors II–III, V–X, and XIII have requested an exemption from DSM while on directed fishing trips on monkfish, skate, and/or dogfish. Specifically, the Northeast Coastal Communities Sector has requested an exemption from DSM on dogfish trips when vessels are utilizing hook gear. The sector contends that data collected from observed FY 2010 dogfish trips demonstrate that little groundfish incidental catch occurs, making the cost of DSM per pound of groundfish too low to support it. The Northeast Fishery Sectors have requested an exemption on all directed

monkfish, skate, and dogfish trips, contending that the implementation of DSM in FY 2010 has not met the objectives stated in Amendment 16 in an economically efficient manner. These sectors state that providing an exemption on these trips could provide economic relief from the costs of monitoring trips that land little groundfish.

NMFS believes that this request poses operational concerns. Vessels fishing on directed monkfish, skate, and dogfish trips, unless in an exempted fishery, are declared as a sector trip, and/or require the declaration of a DAS. Such trips are not prohibited from targeting or landing groundfish and, therefore, may land substantial amounts of groundfish. Since these trips are made through groundfish declarations, it is currently impossible to distinguish these trips from directed groundfish trips. Sector discard rates, a crucial component of ACE monitoring, are calculated based on total catch, not solely groundfish catch. A reduction in monitoring would decrease oversight of, and confidence in, this crucial calculation. Additionally, the sectors requesting this exemption did not address the benefit that this program provides to compliance monitoring.

22. DSM Requirements for Jig Vessels

Jigging, with respect to the NE multispecies fishery, is defined at § 648.2 as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved with an up and down motion. Jigging gear is not exempted gear and, therefore, sector trips utilizing this gear are required to participate in the DSM program.

The Northeast Coastal Communities Sector requested an exemption from DSM requirements for vessels using jig gear, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector points out that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

The Council, through FW 45, proposes to remove DSM requirements in FY 2011 for common pool vessels with Handgear A and B permitted vessels, as well as for Small Vessel permitted vessels, because small quantities of groundfish landed by these permit categories would make monitoring such trips uneconomical. Vessels that have a valid Handgear or Small Vessel permit and that fish with jig gear would be exempt from DSM, if the provision in FW 45 is approved by NMFS.

23. DSM Requirements for Hook Vessels When the Sector Has Caught Less Than 10,000 lb (4,535.9 kg) of Groundfish per Year

The regulations at § 648.87(b)(1)(v)(B)(*3*) specify that any DSM service provider must provide coverage that is distributed in a random manner among all trips, such that the coverage is representative of fishing activities by all vessels within each sector and by all sector vessels operations throughout the fishing year.

The Northeast Coastal Communities Sector has requested an exemption from DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4535.9 kg) of groundfish per year, noting that, in FY 2010, trips by sector vessels have, thus far, yielded little groundfish, and due to the remote location of its ports, DSM has been cost prohibitive. The sector proposes a 10,000-lb (4,535.9 kg) threshold for the year, above which DSM would be required, and stated that catch could be verified through a comparison of dealer data, vessel trip reports, and VMS catch reports. The manager proposes to notify NMFS when 8,000 lb (3,628.7 kg) of groundfish have been caught, and would submit to DSM program requirements at that time.

NMFS is concerned that this threshold is somewhat arbitrary and is interested in public comment on this. Additionally, a 10,000-lb (4,535.9-kg) cap is a significant amount of landings, and exempting a sector from DSM requirements could raise compliance monitoring concerns (as noted above).

24. DSM Requirements in May When Fishing in Certain Mid-Atlantic (MA) Areas

Upon receiving exemption requests to the DSM requirement for vessels fishing in SNE and MA waters, the Regional Administrator, in a September 1, 2010, letter to the Council, requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. At its November 18, 2010, meeting, the Council considered this request and supported removal of DSM from the list of prohibited exemptions to allow sectors to request geographic- and gear-based exemptions from DSM.

Northeast Fishery Sectors VI–VIII and X–XIII have requested an exemption from DSM in May and June on non-groundfish directed trips that occur in the following NMFS statistical areas: 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 633, 635, 637, and 638. The sectors point out that historical data indicate that little groundfish incidental catch has been observed in these areas, and monitoring of such trips is therefore not a beneficial use of financial resources.

25. DSM Requirements for Vessels Fishing West of 72°30′ W. long.

Please *see* exemption 24 for background on this request. Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the DSM requirements for vessels fishing west of 72°30′ W. long., noting that historical data indicate that little groundfish incidental catch has been observed in this area, and monitoring of such trips is therefore not a beneficial use of financial resources.

26. DSM, Roving Monitoring, and Hail Requirements for Hook-Only or Handgear Vessels

Neither hook gear nor handgear, as defined in § 648.2, are exempted gear, and therefore sector trips utilizing these gear types are required to have DSM.

The GB Cod Fixed Gear Sector requested an exemption from DSM, roving monitoring, and hail requirements for hook-only or handgear vessels, noting that vessels utilizing this gear type are among the smallest operators and have historically landed small amounts of groundfish. The sector contends that the proceeds from these trips may be less than the cost of deploying a dockside or roving monitor, making the cost of monitoring of these vessels disproportionately high relative to the rest of the groundfish fleet. The sector also requests that, if this exemption is granted, these vessels should also be exempt from hail requirements. Although FW 45 proposes to remove DSM requirements from the list of regulations that sectors may not be exempt from, hail requirements would remain reporting requirements, and therefore may not be exempted. While hails are widely viewed as necessary for the deployment of dockside monitors, NMFS receives this information and also uses it to coordinate the deployment of enforcement resources in monitoring offloads.

As explained above in exemption 22, the Council, through FW 45, proposes to remove DSM requirements in FY 2011 for common pool vessels with Handgear A and B permitted vessels, as well as for Small Vessel permitted vessels.

27. DSM, Roving Monitoring, and Hail Requirements for Vessels Using Demersal Longline Gear, Jig Gear, and Handgear While Targeting Spiny Dogfish in Massachusetts State Waters

Unless a vessel is fishing in an exempted fishery, directed monkfish, skate, and dogfish trips are considered sector trips, because a groundfish trip declaration is required (NE multispecies DAS or sector trip), since gear utilized on such trips is capable of catching groundfish and groundfish retention is permitted.

The GB Cod Fixed Gear Sector has requested an exemption from DSM, roving monitoring, and hail requirements for vessels using demersal longline gear, jig gear, and handlines while targeting spiny dogfish in Massachusetts State waters of NMFS Statistical Area 521, asserting that its FY 2010 sector data indicate little groundfish incidental catch in this area. The sector contends that deploying monitors on such trips provides little value to a program designed to monitor landings of regulated groundfish.

NMFS believes that this request may pose operational concerns. Vessels fishing on a directed dogfish trip, outside of an exempted fishery, must declare a sector trip through VMS or IVR prior to starting their trip. It is currently impossible to distinguish such a trip from a directed groundfish trip. Sector discard rates, a crucial component of ACE monitoring, are calculated based on total catch, not solely groundfish catch. A reduction in monitoring would decrease oversight of and confidence in this crucial calculation. The sector did not address the benefit that this program provides to compliance monitoring.

28. DSM Requirements When a Trip Has Been Monitored by Either an At-Sea Monitor or Fishery Observer

The regulations at § 648.87(b)(1)(v)(B)(3) specify that any DSM service provider must provide coverage that is distributed in a random manner among all trips, thereby accurately observing sector fishing activity.

The Northeast Coastal Communities Sector has requested an exemption from DSM requirements when a trip has been monitored by either an at-sea monitor or fishery observer, noting that requiring both at-sea monitoring and DSM is redundant, as the goal of both programs is catch verification. The sector claims that requiring DSM on trips that also receive monitoring at-sea is overly burdensome for sector members. At its November 18, 2010, meeting, the Council asked NMFS to prioritize DSM for trips that did not receive an at-sea monitor.

29. The Requirement To Delay Offloading Due to the Late Arrival of the Assigned Monitor

The regulations at § 648.87(b)(5)(i)(C) specify that a vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor assigned to that trip is present. The regulations implementing Amendment 16 require each sector to develop, implement, and fund a DSM program, including the selection and hiring of approved monitoring provider(s). Because each sector contracts directly with monitoring provider(s), the sector has the ability, and responsibility, to resolve the late arrival of an assigned monitor directly with its contracted provider(s).

The GB Cod Fixed Gear Sector has requested a partial exemption from the above regulation, allowing vessels to begin offloading catch if a dockside or roving monitor is late. The sector argues that it is the responsibility of the monitor to ensure timely arrival at monitoring events, and that delays have negative social and economic impacts for the sector member being observed, for the dealer, and for other members that must also wait to offload.

This request, however, poses several operational concerns. First, confirming the late arrival of a monitor may be difficult, as it would require verification of the information in the vessel's trip end hail to the dockside monitor. Second, granting this exemption may promote misreporting of the offloading locations in an attempt to delay the arrival of a monitor and avoid monitoring coverage. Additionally, the sector did not address the benefit that this program provides to compliance monitoring.

30. Prohibition on Offloading of Non-Allocated Species Prior to the Arrival of the Monitor

The regulations at § 648.87(b)(5)(i)(C) specify that a vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor assigned to that trip is present.

Sustainable Harvest Sectors 1 and 3 have requested an exemption from the prohibition on offloading of non-allocated species prior to the arrival of the monitor, to allow for the offload of non-allocated species prior to the arrival of a monitor. The sectors contend that, on occasion, dealers request vessels to offload non-allocated stocks, such as lobster, prior to the offload of groundfish; this exemption would give additional flexibility to sector members and dealers for the processing of catch. The sectors propose to require their vessels to file VMS catch reports and/or a trip end hail reports prior to crossing the demarcation line to account for total catch. Additionally, the sector proposes to require captains to sign an affidavit stating that no allocated stock was offloaded during these instances. The DSM standards require catch of all stocks to be monitored because sector discard ratios are calculated based on total catch, not groundfish catch only. NMFS is concerned, therefore, that granting this exemption could decrease oversight of, and confidence in, this crucial calculation.

31. Requirement To Provide a Sector Roster to NMFS by the Specified Deadline

The regulations implementing Amendment 16, at § 648.87(b)(2), expanded the requirements for sector operations plan submissions and specified a due date of September 1 to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next FY. The deadline for submitting sector documents is an administrative one, set to ensure sufficient time to comply with all applicable laws. For FY 2011, NMFS extended the deadline for sector rosters to December 1, 2010, in response to industry requests.

The Maine Permit Bank Sector has requested an exemption from the December 1 deadline to allow for additional time to acquire permits. Because membership is a prerequisite to sector formation, the Maine Permit Bank Sector has been notified that it must demonstrate its compliance with minimum membership requirements ("Rule of 3"), but that a list of permits that the State expects to purchase by February 1, 2011 ("bid sheets") would be accepted in the interim. The bid sheet, thus represents a list of permits offered for sale to the Maine Permit Bank Sector by their owners. Similar to vessels on a traditional sector roster, these permits are not bound to the sector for FY 2011 at this time. Since NMFS is accepting bid sheets, it is possible that any permits associated with the permit bank sector could also be on the roster for another sector. Sectors currently account for approximately 99 percent of available ACE, and sectors are free to transfer ACE among each other during the FY. Consequently, the EA has analyzed the impacts of each sector's operations as if 100 percent of ACE

would be harvested by that sector. For permits moving from another sector to the permit bank, the current analysis already accounts for the harvest of this ACE within active sectors. Since current sector rosters account for the vast majority of historic landings, little additional ACE is anticipated to move from the common pool to sectors, based on this exemption. Since the development of permit bank requirements has been a collaborative process, the need for this exemption was not developed until it was clear that Maine would not have finalized the purchase of permits by the December 1 roster deadline. Due to this delay, this exemption is not considered in the draft EA. The final purchase of permits acquired by the Maine Permit Bank Sector must be officially documented to NMFS prior to the publication of the final rule. Setting the deadline for submitting sector documents is an administrative matter. Therefore, this exemption request is being highlighted, but not proposed because NMFS has accommodated the permit bank's needs.

Requested Exemptions Not Being Considered in This Action Because They Are Prohibited or Were Previously Rejected

Exemptions requested by several sectors, ranging from at-sea monitoring provisions, discard rate calculation methods, Eastern U.S./Canada Area requirements, VTR requirements, and NMFS's Office of Law Enforcement (OLE) confidentiality requirements, are either specifically prohibited, or fall outside the NE multispecies regulations. In a letter dated September 1, 2010, NMFS notified the Council that NMFS interprets the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including at-sea monitoring, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter, NMFS also requested that the Council define which regulations sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to remove DSM from the list of regulations that sectors may not be exempted from, but did not take such action for at-sea monitoring, ACE monitoring, VTR regulations, or counting of discards against ACE. Northeast Fishery Sectors II, V–X, and XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested an exemption from a delayed opening of the Eastern U.S./Canada Area for trawl gear. However, this is a temporary rule that the Regional Administrator has the authority to implement, as specified at § 648.85(a)(3)(iv)(D), to prevent either over-harvesting or to facilitate achieving the Eastern U.S./Canada Area TACs. Additionally, the GB Cod Fixed Gear Sector requested an exemption from OLE confidentiality requirements to receive information about enforcement actions or concerns from OLE within 24 hr; however, this is not controlled by regulations implementing the NE Multispecies FMP. Accordingly, these exemption requests are not proposed in this rule.

As previously stated, Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements).

In addition, sectors requested several exemptions for FY 2011 that were previously disapproved for FY 2010, but failed to provide new information or justification for these exemptions. These include VMS requirements and minimum fish size requirements. The Northeast Fishery Sectors requested a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. NMFS previously disapproved this exemption request because of serious concern that interrupting chain of custody of catch information would leave the catch information open to tampering. The Northeast Fishery Sectors provided no new information, justification, rationale, or mitigation to address this concern. Accordingly, this exemption is not proposed in this rule. In addition, the GB Cod Fixed Gear Sector and several of the Northeast Fishery Sectors requested an exemption from the minimum fish size requirements for allocated stocks. This exemption was previously disapproved because it would present significant enforcement issues by allowing two different legal minimum fish sizes in the marketplace and could potentially increase the targeting of juvenile fish. The requesting sectors have provided no new information, justification, rationale, or mitigation to address these concerns.

Sector EA

In order to comply with NEPA, one EA was prepared encompassing all 22 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit *http://www.regulations.gov* to view the EA prepared for the 19 sectors that this rule proposes to approve.

Special Management Program (SMP) Reporting Requirements

Amendment 16 provided the Regional Administrator with the authority to remove SMP-specific reporting requirements if it is determined that the reporting requirements are unnecessary. Consistent with the provisions adopted under Amendment 16, NMFS retained 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. For FY 2010, the Regional Administrator determined that daily SMP-specific VMS catch reports for vessels participating in sectors are unnecessary, because sectors were 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. For these same reasons, the Regional Administrator has determined, unless otherwise noted above, that SMP-specific reporting requirements are not necessary to monitor sector catch for FY 2011. 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, as 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 for the CAI Hook Gear Haddock SAP only.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to

further consideration after public comment.

This action is exempt from review under Executive Order (E.O.) 12866.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section and the **SUMMARY** section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

Economic Impacts on Regulated Small Entities Enrolled in a Sector

This proposed action would affect regulated entities engaged in commercial fishing for groundfish that have elected to join any one of the 19 proposed sectors that have submitted operations plans for FY 2010. Any limited access Federal permit issued under the NE Multispecies FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Although we acknowledge there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data, we cannot apply the business size standard at this time. Data are currently being compiled on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities in the groundfish fishery for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of December 1, 2010, a total of 834 of 1,475 eligible permits elected to join a sector. Table 4 summarizes the number and percent of individual permits currently enrolled in a sector for FY 2011, as well as those predicted to be active. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2011, the number of permits participating in sectors on May 1, 2011, and the resulting sector ACE allocations, are likely to change.

Over the past decade, there has been a significant amount of consolidation in this fishery in response to management measures to end overfishing of, and to rebuild, groundfish stocks. The recent implementation of ACLs and AMs, and the expanded use of sectors under Amendment 16 have affected fishing patterns in ways that cannot yet be quantified and analyzed. Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels have fished thus far this year, in comparison to FY 2009, may be related to owners with multiple vessels fishing fewer vessels, or vessel owners or sectors using quota differently and waiting to fish later in the fishing year to maximize revenue in response to some of the efficiencies gained through the implementation of sector measures in 2010. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for and landing regulated species and ocean pout stocks, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, as alluded to above, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to fishing years prior to the implementation of Amendment 16. Further, most proposed FY 2011 sectors are anticipating no further consolidation than previously occurred through FY 2010. Five sectors have reported that they anticipate a smaller percentage of permits to harvest groundfish for FY 2011 as compared to FY 2010. Based upon concerns over consolidation raised by the public during the development of Amendment 16, the Council is currently working on a white paper regarding fleet diversity and accumulation limits, and has agreed to develop an amendment to the FMP to address concerns identified.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be based upon which option—joining a sector or fishing under effort controls in the common pool—offers the greater economic advantage. Since sectors would be granted certain universal exemptions, and may request and be granted additional exemptions from regulatory measures that will apply to common pool vessels, sector vessels would be afforded greater flexibility. Sector members would no longer have groundfish catch limited by DAS allocations and would, instead, be limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector 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.

Unlike common pool vessels, sectors bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, DSM, and at-sea monitoring. However, FW 45 proposes to change the required coverage level for DSM to the level NMFS is able to fund, up to 100 percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from $60,000 to $150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from $13,500 to $17,800 per vessel. These estimates 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. The majority of these administrative costs was subsidized by NMFS in FY 2010 and will continue to be subsidized in FY 2011. Whether these subsidies, which include providing financial support for preparation of sector EAs, DSM, and at-sea monitoring, will continue beyond FY 2011 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2011.

The capability to form a sector in the groundfish fishery was first implemented in 2004 through Amendment 13. Prior to FY 2010, there were only two sectors operating and only one sector had been operating continuously from 2004 to 2010. Available data (Table 5) suggest that the economic performance of the two sectors that had been operating prior to FY 2010 was positive. Whether improved profitability experienced by these two sectors will translate into improved performance for all 17 sectors that were implemented during FY2010

is not known since the fishing year is incomplete. Nevertheless, the analysis conducted for Amendment 16 posited that the combination of relief from specific regulations and the incentives to change fishing practices would result in improved ACL utilization compared to TAC use rates while the majority of the groundfish fleet was still operating under DAS controls. Using a straight-line projection approach suggests that for most stocks the use rates for aggregate sector ACLs will be higher than the average observed TAC use rates compared to FY 2007 and FY 2008. This assumes that the average weekly catch rates by sector vessels will remain constant for the remainder of the fishing year. Further, given substantial differences in ACE across sectors and among members within sectors, economic performance may be expected to vary considerably.

TABLE 4—SUMMARY OF THE NUMBER AND PERCENT OF INDIVIDUAL PERMITS AND LIKELY ACTIVE PERMITS CURRENTLY ENROLLED IN A SECTOR FOR FY 2011

Sector	Number of individual permits *	Percent of individual permits	Number of active permits *	Percent of active permits **
Northeast Fishery Sector II	85	5.63	42	50.60
Northeast Fishery Sector III	95	6.44	49	51.58
Northeast Fishery Sector IV	43	2.78	0	0
Northeast Fishery Sector V	34	2.24	27	81.82
Northeast Fishery Sector VI	19	1.29	5	26.32
Northeast Fishery Sector VII	20	1.49	15	68.18
Northeast Fishery Sector VIII	20	1.36	16	80.00
Northeast Fishery Sector IX	60	3.73	22	40.00
Northeast Fishery Sector X	51	3.32	26	53.06
Northeast Fishery Sector XI	47	3.19	21	44.68
Northeast Fishery Sector XII	11	0.75	6	54.55
Northeast Fishery Sector XIII	35	2.37	29	82.86
Fixed Gear Sector	100	6.71	42	42.42
Sustainable Harvest Sector 1	106	7.05	37	35.58
Sustainable Harvest Sector 3	18	1.15	0	0
Port Clyde Sector	40	2.85	24	57.14
Tri-State Sector	19	1.29	9	47.37
Northeast Coastal Community Sector	30	2.03	27	90.00
Maine Permit Bank Sector	†3	0.20	0	0
All Sectors	834	55.66	397	48.36

* Number of permits in each sector is from sector operation plans and EAs submitted as of September 10, 2010.
** In 2010, 453 sector vessels were reported to be active vessels.
† The Maine Permit Bank Sector has submitted a list of prospective permits for purchase and provided verification that it currently consists of two privately held permits, although it must hold a minimum of three permits to be considered for approval. The roster will be finalized prior to publication of the final rule.

TABLE 5—YEAR TO DATE SECTOR CATCHES AND PROJECTED ACL USE RATES FOR FY 2010

Stock	Percent Sector catch as of October 9 (percent)	Sector weekly catch rate	Projected FY10 sector ACL utilization (percent)	2007–2008 average utilization rate (percent)
GB Cod	29	0.01215	63.2	44
GOM Cod	42	0.01766	91.9	69
GB Haddock	8	0.00323	16.8	17
GOM Haddock	13	0.01766	91.9	51
GB Yellowtail Flounder	46	0.01934	100.6	117
SNE/MA Yellowtail Flounder	5	0.00205	10.7	174
CC/GOM Yellowtail Flounder	16	0.00680	35.4	55
Plaice	23	0.00973	50.6	28
Witch Flounder	34	0.01398	72.7	24
GB Winter Flounder	49	0.02037	105.9	48
GOM Winter Flounder	28	0.01147	59.7	NA
Redfish	14	0.00567	29.5	46
White Hake	27	0.01118	58.2	114
Pollock[1]	11	0.00467	24.3	82

[1] The 2010 projection of the Pollock sector use rate is significantly lower than that of the 2008–2009 average. This is because the revised Pollock reference points raised the ACL substantially above the TAC-levels set for either 2007 or 2008.

The proposed action would provide relief from having to comply with specified regulations. These regulatory exemptions include a set of universal exemptions in Amendment 16, as well as the possibility for individual sectors to request additional exemptions. During FY 2010, a number of exemptions were requested by individual sectors. To provide maximum regulatory relief, as well as to reduce the cost of administering, monitoring, and enforcing a unique set of exemptions for each sector, these sector-requested exemptions were

extended to additional sectors for the remainder of FY 2010 through supplemental rulemaking. The exemptions in this rule were analyzed so that they mimicked the universal exemptions; that is, any approvable exemption requested by one sector was approved for all sectors whether it had been requested or not. However, unlike the universal exemptions, any of the sector exemptions approved during FY 2010 must be requested again for FY 2011. The list of these exemptions is included in Section 3.3 and 3.4 of the EA.

Economic Impacts of Exemptions Requested in the Proposed Action

Exemption from the Day gillnet 120-day block out of the fishery requirement is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block would allow sector members to realize the cost savings associated with retiring the redundant vessel. Furthermore, this exemption would provide additional flexibility to sector vessels to maximize the utility of other sector-specific and universal exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed-gear exemption would allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector have requested to be exempt from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Approving this exemption would increase operational flexibility and provide an opportunity for a substantial portion of the fleet to improve vessel profitability.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This exemption would provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the 20-day spawning block out of the fishery requirement. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs (within a 3-month window) and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the number of hooks that may be fished. These exemptions would provide vessel owners in these sectors with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption would also provide an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since FY 2004, and was granted to the GB Cod Fixed Gear Sector for FY 2010. Approving this exemption for these additional sectors would extend the potential economic benefits to more vessels in other sectors.

GB Cod Fixed Gear Sector, the Maine Permit Bank Sector, all Northeast Fishery Sectors, the Port Clyde Community Groundfish Sector, Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector request an exemption from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions would allow greater flexibility to lease DAS between vessels of different sizes and may be expected to expand the market of potential lessees for some vessels. The efficiency gains of this exemption, if approved, for a requesting sector would be limited because the exemption would only apply to leases within and between sectors requesting this exemption. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption would be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

The GOM Sink Gillnet Mesh Exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The exemption would allow the use of 6-inch (15.24-cm) mesh gillnets in the GOM RMA from January 1, 2012 through April 30, 2012. This exemption would provide participating sector vessels an opportunity to potentially retain more GOM haddock, a healthy stock, and share in the benefits from the stock recovery. To utilize this exemption, it would be necessary for participating sector vessels to purchase 6-inch (15.24-cm) mesh gillnets. However, it would allow a greater catch of haddock, which may increase revenues for gillnet fishermen and the ports where they land their fish, particularly if participating vessels are able to change fishing behavior to selectively target this stock and minimize catch of other allocated target stocks.

The GB Cod Fixed Gear Sector has requested an exemption from the prohibition on the use of squid or mackerel as bait, or possessing squid or mackerel on board vessels, when participating in the CA I Hook Gear Haddock SAP. Providing relief from the bait restrictions would provide participating sector vessels with greater operational flexibility to choose the bait that best meets fishing circumstances. Participating vessels would also be able to use the bait of their choice, depending on expected catch, as well as the cost of bait.

Sustainable Harvest Sectors 1 and 3 and the Port Clyde Community Groundfish Sector have requested access to specific blocks within the GOM Rolling Closure Areas, specifically blocks 138 and 139 during May and/or access to blocks 139, 145, and 146 during June. These closure areas were selected primarily to reduce fishing mortality on GOM cod at a time of year where catch rates had been observed to be high. Given higher catch per unit effort, sector vessels would be able harvest available ACE at a lower cost, since less fishing time would be required to harvest the same amount of available ACE. Whether this would result in higher profitability is uncertain, since prices during May and June tend to be lower due to larger supplies and somewhat lower quality. During FY 2010 average cod prices have been above their historic average. The price effect of increased supplies of cod entering the market early in the FY is uncertain, but could offset some of the cost savings associated with being able to obtain higher catch rates.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors II–III, V–VI, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the regulations that currently prohibit sector vessels from discarding any legal-size regulated species allocated to sectors. Sector vessels have had to retain legal-size unmarketable fish, which requires them to store this fish on the vessel while at sea, in some cases in large quantities in totes on deck, creating potential unsafe work conditions. In addition, sector vessels have had to determine a method of disposal for any unmarketable fish landed. Anecdotal information indicates that some fish dealers dispose of unmarketable fish for sector vessels as a courtesy; however, the scope of this occurrence and any operational costs incurred by the dealer or vessels is unknown. A partial exemption from this regulation that would allow sector vessels to discard unmarketable fish would provide sector vessels more operational flexibility and improve safety conditions at sea. It would also relieve the burden, if any, on sector vessels and their dealers to find a way to dispose of the unmarketable fish once landed.

Northeast Fishery Sectors III, VI–VIII, and X have requested an exemption from the minimum sink gillnet mesh size in May, thereby extending the proposed GOM Sink Gillnet Mesh Exemption. Assuming approval of the proposed GOM Sink Gillnet Mesh Exemption, this ancillary exemption would provide participating sector vessels an opportunity to achieve higher profitability. Preliminary estimates indicate that about half of the available GOM haddock ACE will not be taken during FY 2010. This does not necessarily mean, however, that a larger share of the GOM haddock ACE will not be taken, as the FY has another five months.

The GB Cod Fixed Gear Sector has also requested an exemption from the requirement that the sector manager submit daily catch reports for the CA I Hook Gear Haddock SAP, proposing instead that members submit daily catch reports directly to NMFS. Eliminating the daily catch reporting by sector managers would provide some administrative relief to the sector. Reporting burden of individual participating vessels would remain unchanged, as they would merely change the recipient of their current daily report. This exemption may result in some cost savings to the operation of any given sector and therefore reduce the transactions costs to all sector members, not only to the individual vessels or sector members that participate in the SAP.

Northeast Fishery Sectors VI–X and XIII have requested an exemption from the prohibition on pair trawling. Pair trawling was originally prohibited because of its higher catch rates and impacts to then declining cod and haddock stocks. Providing an exemption allowing for pair trawling would provide participating sector vessels with greater operational flexibility. However, the high catch rates that resulted from this fishing practice while under DAS management may not be as advantageous under sector management unless the practice can be used to selectively target stocks for which a sector has a comparatively large ACE. That is, characterizing use of pair trawling as highly efficient may be accurate from a technical standpoint, but may not necessarily be economically efficient unless catch rates of stocks with limiting ACE can be reduced or eliminated.

The Northeast Coastal Communities Sector has requested an exemption from the minimum hook size. This exemption may be expected to improve operational flexibility for participating sector vessels. Whether the ability to use alternative hook sizes will translate into improved profitability is uncertain, particularly if the larger hook does select for larger fish, which do tend to fetch a premium price. Nevertheless, the exemption would improve flexibility and may allow delivery of a broader range of fish sizes to final markets.

Northeast Fishery Sectors II, V–X, and XIII have requested an exemption from the trawl minimum mesh size when targeting redfish, a healthy stock. The 6.5-inch (16.51-cm) mesh size has been argued to be too large to catch Acadian redfish in quantities that would permit development of a targeted fishery. The proposed exemption would offer participating sector vessels greater operational flexibility. These sectors propose that the fishery using this exemption would be monitored using 100 percent observer coverage, and would require daily catch reporting to the sector manager. Whether the potential improved catch rates would offset these added costs is uncertain. As long as the at-sea monitoring or observer costs are being subsidized, the only added cost may be the requirement for daily reporting by the sector manager. The extent to which observer costs will continue to be subsidized is unknown, but may need to be taken into account when assessing the potential profitability that developing a targeted redfish fishery may provide.

Northeast Fishery Sectors II, V–X, and XIII have requested an exemption from gear restrictions in the U.S./Canada Management Area, allowing for the use of the 250 × 40-cm Eliminator Trawl ™. This exemption would allow the use of a configuration of an eliminator trawl that differs from what is currently approved for specific areas, including the U.S./Canada Management Area. Allowing this exemption would offer greater operational flexibility, but would still be limited to the areas and conditions under which the current eliminator or Ruhle trawl has already been approved. While this net may be used in open areas, the use of this net is prohibited in the Special Management Program, including the SAPs, and Gear Restricted Areas. This exemption is being requested because the specification for approved gear types for these areas is too large to be utilized by some of the participating sector vessels. The extent to which this exemption may improve economic profitability is uncertain, but may be limited to vessels

that have already purchased the gear, may be able to re-rig existing gear at low cost, and may access the areas where the Ruhle trawl is already approved.

Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the trawl gear requirements in the U.S./Canada Management Area. This exemption would allow the use of any groundfish trawl gear, provided the gear conforms to regulatory requirements for using trawl gear to fish for groundfish in the GB RMA. This exemption would result in greater operational flexibility to participating sector vessels, as these vessels would be able to better harvest allocation of ACE. Whether this would result in increased profitability depends on the ability to achieve cost efficiencies by reducing the amount and type of gear necessary to prosecute the groundfish fishery in the U.S./Canada Management Area and elsewhere, and/or the ability to reduce operating costs if the same amount of ACE can be taken with less fishing time.

The Tri-State Sector has requested an exemption from the requirement to power a VMS while at the dock. Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators at all times. These requirements do increase the cost of operating a fishing vessel, whether the vessel is fishing or not. This exemption would provide the opportunity to reduce the overhead costs of maintaining a fishing operation and would result in some improved profitability.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting complete or partial exemptions from DSM requirements. The cost of DSM for FY 2010 has been subsidized by the NMFS. Based on preliminary data, the overall average cost associated with DSM averaged about $0.02 per landed pound of fish. This estimate is based on an agreed formula between the NMFS and sector managers to calculate reimbursement for DSM services, which includes a per-pound rate of $0.015, $33 per trip monitored, and $27 per trip requiring a roving monitor. The estimated cost per pound landed for monitored trips was based on invoices received by sectors from May–August 2010. However, not all sectors had sent in invoices as of the date the average cost reported herein were estimated, so the actual costs may differ by sector and may be substantially different once the FY has been completed. Using methods similar to that used to estimate expected revenues for the FY 2011 and FY 2012 ACLs (*i.e.,* based on a linear projection of average ACL use rates and average discard rates), the estimated cost for DSM for FY 2010 would be $616,000, or 0.8 percent of estimated FY 2010 revenues. Through Amendment 16, DSM was scheduled to be reduced to 20 percent during FY 2011, and the estimated monitoring cost would be $281,000, or 0.4 percent of the estimated FY 2011 groundfish revenues. The actual overall average DSM cost per pound landed will be zero for any lease-only sectors, and may be higher for sectors with below average landings per trip, since the trip cost gets spread out over fewer pounds. Similarly, the average cost per pound may be lower for sectors with higher than average landings per trip. Granting all or a portion of these exemptions would alleviate all upfront costs associated with this program, as well as the unreimbursed costs for monitoring of other stocks, and therefore provide the opportunity to reduce the overhead costs of operating a fishing vessel, which may result in some improved profitability.

Economic Impacts of the Alternative to the Proposed Action

The objective of sector management, as originally developed and implemented under Amendment 13, and expanded under Amendment 16, is to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. Sectors developed the proposed operations plans and prospective members signed binding sector contracts to abide by the measures specified in the proposed operations plan. NMFS is unable to develop additional alternatives because this would require NMFS to develop sector operations plans, which is counter to the intent of sectors, as outlined in Amendment 16. Accordingly, the proposed operations plans reflect the management measures preferred by participating vessels. Therefore, no other alternatives in addition to the No Action and the proposed action were considered. Under the No Action alternative, none of the FY 2011 sector operations plans would be approved, and no sector would be approved to operate in FY 2011. Therefore, no sector would receive a LOA to fish or an allocation to fish. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations. Because of effort control changes made by both Amendment 16 and Framework 44, it is likely that vessels enrolled in a sector for FY 2011 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 22, 2011.

Samuel D. Rauch III,

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

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