DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120120056–2414–02]

RIN 0648–XA797

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2012 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: Final rule.

SUMMARY: This final rule partially approves, and implements, 19 Northeast (NE) multispecies (groundfish) sector operations plans and contracts for fishing year (FY) 2012, and allocates quotas of NE multispecies to the sectors. This final rule does not approve certain exemptions and measures proposed in the operations plans, as explained below. Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. This provides vessels participating in sectors with increased operational flexibility while limiting overall fishing mortality. This final rule also announces a preliminary allocation to the New Hampshire State-Operated Permit Bank.

DATES: Effective May 1, 2012, through April 30, 2013; except the exemption from the requirement to declare intent to fish in the Eastern U.S./Canada Special Access Program and the Closed Area II Yellowtail Flounder/Haddock Special Access Program prior to leaving the dock, which will become effective on further notification.

ADDRESSES: Copies of each sector's final operations plan and contract, the environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Daniel M. Morris, Acting Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on the 19 sector operations plans and contracts was published in the **Federal Register** on February 15, 2012 (77 FR 8780), with public comments accepted through March 1, 2012. After review of the public comments, NMFS has partially approved the 19 sector operations plans and contracts, determining the operations plans, as approved, to be consistent with the goals of the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the sector regulations at § 648.87.

Background

The NE groundfish sector management system is a voluntary system that allocates a portion of groundfish stocks to self-selecting groups of permit holders, called sectors. Sector members are granted increased operational flexibility through exemptions from regulations in exchange for taking on additional responsibility. The annual allocations to sectors are called Annual Catch Entitlements (ACE) and are based on the collective fishing history of the sectors' members. Sectors are self-selecting, meaning each sector can choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

NMFS received operations plans and preliminary contracts for FY 2012 from 19 sectors (see Table 1). In accordance with the sector regulations, the proposed rule for this action sought comment on the 19 operations plans and contracts for FY 2012, and the exemptions proposed. The Administrator of NMFS for the NE Region (Regional Administrator) has made a determination that the 19 sector operations plans and contracts, as approved, are consistent with the goals of the FMP, and comply with sector operation measures.

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the groundfish fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17 sectors, for a total of 19 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized five new sectors (for a total of 24 sectors).

The FMP defines 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 called an ACE. Regional Administrator approval authorizes a sector to fish and allocates an ACE for stocks of regulated NE multispecies. 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, and each ACE is based upon the landings history of permits participating in that sector.

Nineteen sectors submitted operations plans and sector contracts, and requested allocation of stocks regulated under the FMP for FY 2012. The operations plans were similar to previously approved versions, but include changes to incorporate the additional requested exemptions. Five sectors chose not to submit operations plans and contracts for FY 2012: The Georges Bank (GB) Cod Hook Sector; Northeast Fishery Sector (NEFS) I; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and, the State of Rhode Island Permit Bank Sector. The State of Maine Permit Bank Sector, 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 to active vessels.

A separate rule (77 FR 16942, March 23, 2012) approves Amendment 17, which authorizes the allocation of ACE to state-operated permit banks without requiring those state-operated permit banks to comply with the administrative and procedural requirements for groundfish sectors. State-operated permit banks have until April 1, 2012, to declare whether each of their permits will contribute to the permit bank's ACE or will be used to provide DAS to common pool vessels. This final rule approves the Maine Permit Bank Sector; however, the State of Maine may elect to instead operate in FY 2012 under the state-operated permit bank provisions, as authorized by Amendment 17.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE APPROVED FY 2012 SECTORS *

Sector	Permit count	Number of active vessels	Gear type(s) fished (percent)	Area(s) fished
Fixed Gear Sector (FGS)	105	37	Gillnet: 45 Hook Gear: 55	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Maine Permit Bank Sector (MEPBS)	8	0	N/A	N/A.
Northeast Coastal Communities Sectors (NCCS).	28	10	Trawl: 83 Hook Gear: 17	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 10	54	21	Trawl: 65 Gillnets: 34	Gulf of Maine. Inshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 11	44	35	Trawl: 15 Gillnet: 85	Gulf of Maine. Southern New England/Mid-Atlantic.
NEFS 12	11	10	Trawl: 65 Gillnet: 30 Hook: 5	Gulf of Maine. Inshore Georges Bank.
NEFS 13	38	29	Trawl: 96 Gillnet: 4	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 2	79	70	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid Atlantic.
NEFS 3	83	35	Gillnet: 95 Hook Gear: 5	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 4	49	0	N/A	N/A.
NEFS 5	29	22	Trawl: 100	Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 6	19	4	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 7	20	18	Trawl: 56 Gillnet: 44	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 8	20	12	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
NEFS 9	61	18	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Port Clyde Community Groundfish Sector (PCCGS).	42	32	Trawl: 46 Gillnet: 54	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank.
Sustainable Harvest Sector 1 (SHS 1)	116	41	Trawl: 90 Gillnet: 10	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Sustainable Harvest Sector 3 (SHS 3)	19	0	Trawl: 100	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.
Tri-State Sector (TSS)	18	6	Trawl: 83 Gillnet: 16 Hook gear: 1	Gulf of Maine. Inshore Georges Bank. Offshore Georges Bank. Southern New England/Mid-Atlantic.

* The data in this table are from the sector rosters submitted as of December 1, 2011, and are subject to change based on final sector rosters.

Allocation of ACEs

As of December 1, 2011, 845 of the 1,475 eligible NE multispecies permits have preliminarily enrolled in a sector or state-operated permit bank for FY 2012. These permits account for approximately 99 percent of the FY 2012 commercial groundfish sub-ACL. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2011. Permits not enrolled in a sector have through April 30, 2012, to join a sector. Permits enrolled in a sector have until April 30, 2012, to withdraw from a sector and join the common pool for FY 2012. State-operated permit banks must notify NMFS by April 1 whether each of their permits will contribute to the permit bank's ACE or will be used to provide DAS to common pool vessels. NMFS will publish final ACEs for sectors and state-operated permit banks, and common pool sub-ACL totals, based upon final rosters and permit bank declarations, as soon as possible after the start of FY 2012.

ACEs are calculated by summing the potential sector contributions (PSC) of permits enrolled in a sector, or state-operated permit bank, for a stock and then multiplying that percentage by the available commercial sub-ACL for that stock. Table 2 shows the cumulative percentage of each commercial sub-ACL each sector and state-operated permit bank will receive, based on their rosters as of December 1, 2011.

Individual permits are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather the GB cod and GB haddock allocation of each sector and state-operated permit bank is divided into a Western ACE and an Eastern ACE for each stock. Eastern GB cod and haddock ACEs are to be harvested exclusively in the Eastern U.S./Canada Area and are based on the sector's, or permit bank's, percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the Eastern U.S./Canada Area GB cod TAC and 6 percent of the Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs.

An interim final rule (77 FR 19944, April 3, 2012) set the ACL for GOM cod for FY 2012, along with a sub-ACL of GOM cod for the commercial fishery. The commercial fishery sub-ACL for GOM cod is 4,170 mt. The commercial fishery sub-ACL is allocated to sectors, state-operated permit banks, and the common pool based on the total permit enrollment in all sectors and state-operated permit banks, and the cumulative GOM cod PSCs associated with the sectors and state-operated permit banks. This results in a common pool sub-ACL of 81 mt. The remainder of the GOM cod commercial sub-ACL (4,089 mt) is the potential sector catch for FY2012. The potential sector catch is reduced by 471 mt to account for possible carryover of GOM cod ACE from FY 2011. The 471-mt reduction is necessary to ensure sector catch in FY 2012 contributes to a reduction in overfishing of GOM cod. The remaining amount, after reduction for potential ACE carryover, is the sector sub-ACL (3,618 mt). The sector sub-ACL for GOM cod (3,618 mt) is divided among the sectors and state-operated permit banks based on their PSCs.

The PSCs of all sectors and state-operated permit banks do not add up to 100 percent because some limited access permits are enrolled in the common pool. To account for this when allocating the GOM cod sector sub-ACL among only sectors and state-operated permit banks, the GOM cod PSC of each sector and each state-operated permit bank was divided by the sum of all sectors' and state-operated permit banks' GOM cod PSCs. This determines each sector's and state-operated permit bank's share (a percentage) of the sector sub-ACL. Therefore, a sector's GOM cod ACE is calculated by multiplying the sector's share (calculated as described above and listed in Table 3) by the sector sub-ACL (3,618 mt) instead of multiplying the sector's GOM cod PSC (as listed in Table 2) by the commercial sub-ACL for GOM cod (4,170 mt).

Tables 4 and 5 show the ACEs each sector and state-operated permit bank will be allocated based on their December 1, 2011, sector rosters for FY 2012, including any PSC corrections that have been made since the proposed rule published. The final ACEs, to the nearest pound, are provided to the individual sectors and state-operated permit banks, and NMFS uses those final ACEs for monitoring sector catch. While the common pool does not receive a specific allocation of ACE, the common pool sub-ACLs have been included in each of these tables for comparison.

At the start of FY 2012, NMFS will withhold 20 percent of each sector's FY 2012 ACE (the ACE buffer) for each stock to allow time to process any FY 2011 ACE transfers and to determine whether the FY 2012 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2011 ACE overage by that sector. Sectors will be allowed to trade ACE, exclusively to balance any overages, for 2 weeks following the finalization of sector catch for FY 2011. The New England Fishery Management Council (Council) and sector managers will be notified of this deadline in writing and the decision will be announced on the NMFS Northeast Regional Office Web site (*http://www.nero.noaa.gov/*).

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Table 2. Preliminary cumulative PSC (percentage) of each sector and state-operated permit bank, by stock, for FY 2012.*^

Name	Permit Count	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
Common Pool	630	1.79	1.93	0.48	0.73	1.42	22.14	2.59	1.75	1.63	0.65	3.32	0.41	0.81	0.65
Fixed Gear Sector	105	28.32	2.22	6.35	1.35	0.01	0.30	1.91	0.55	0.84	0.03	2.22	2.90	5.86	7.86
Maine Permit Bank Sector	11	0.23	0.96	0.04	1.00	0.01	0.03	0.31	1.04	0.66	0.00	0.87	0.81	1.64	1.71
NCCS	28	0.17	0.73	0.12	0.34	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.44	0.86	0.45
NEFS 2	79	5.88	18.27	11.63	16.50	1.87	1.41	19.04	7.93	12.76	3.16	18.25	15.87	6.28	12.13
NEFS 3	83	1.27	15.70	0.15	9.91	0.01	0.36	9.23	4.27	2.99	0.03	10.70	1.38	4.80	7.07
NEFS 4	49	4.12	8.63	5.31	8.28	2.16	2.36	5.06	9.26	8.48	0.69	5.11	6.63	8.00	5.83
NEFS 5	29	1.77	0.09	3.35	0.31	6.31	22.14	0.64	1.15	1.32	1.79	0.09	0.24	0.20	0.26
NEFS 6	19	2.85	2.48	2.92	3.81	2.70	5.17	2.87	3.80	5.09	1.42	3.69	5.31	3.91	3.29
NEFS 7	20	4.39	0.43	3.74	0.56	9.29	3.93	2.68	3.41	3.07	11.38	0.86	0.54	0.74	0.69
NEFS 8	20	6.14	0.50	5.72	0.21	10.94	5.60	6.43	1.65	2.55	14.57	3.39	0.54	0.51	0.60
NEFS 9	61	14.66	1.74	11.97	4.79	27.55	8.15	10.65	8.38	8.36	42.80	2.44	5.92	4.17	4.24
NEFS 10	54	1.19	5.99	0.31	2.61	0.02	0.55	14.55	2.09	3.70	0.02	29.39	0.57	0.98	1.52
NEFS 11	41	0.39	11.22	0.04	2.36	0.00	0.02	2.11	1.35	1.47	0.00	1.94	0.94	2.34	6.46
NEFS 12	11	0.02	2.43	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	1.06	2.50	2.96
NEFS 13	38	6.84	0.75	13.82	0.88	16.65	14.12	3.46	3.76	4.79	5.39	1.59	3.88	1.71	2.17
New Hampshire State-Operated Permit Bank	4	0.00	1.14	0.00	0.03	0.00	0.00	0.02	0.03	0.01	0.00	0.06	0.02	0.08	0.11
Port Clyde Community Groundfish Sector	42	0.11	4.54	0.04	2.52	0.00	0.66	0.94	7.42	4.99	0.00	1.40	2.49	4.26	3.73
Sustainable Harvest Sector 1	114	18.76	19.35	32.19	42.20	12.55	8.09	12.75	39.51	34.42	15.90	9.57	49.84	50.12	38.17
Sustainable Harvest Sector 3	19	0.43	0.56	0.37	0.28	0.44	2.89	2.32	0.80	1.20	0.17	2.50	0.22	0.23	0.07
Tri-State Sector	18	0.68	0.36	1.45	0.44	7.24	1.35	1.33	0.93	0.85	1.92	1.40	0.00	0.02	0.03
All Sectors and State-Operated Permit Banks	845	98.21	98.07	99.52	99.27	98.58	77.86	97.41	98.25	98.37	99.35	96.68	99.59	99.19	99.35

* The data in this table are based on signed roster contracts as of December 1, 2011.

^ Percentages have been rounded to two decimal places in this table, but seven decimal places are used in calculating ACEs. 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.

† For FY 2012, 14.66 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 58.31 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

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

Table 3. Preliminary GOM Cod PSCs and Sector Shares for FY 2012.

Name	Permit Count	GOM Cod PSC %	GOM Cod Share %
Common Pool	630	1.93	
Fixed Gear Sector	105	2.22	2.26
Maine Permit Bank Sector	11	0.96	0.98
NCCS	28	0.73	0.74
NEFS 2	79	18.27	18.63
NEFS 3	83	15.70	16.00
NEFS 4	49	8.63	8.80
NEFS 5	29	0.09	0.09
NEFS 6	19	2.48	2.53
NEFS 7	20	0.43	0.44
NEFS 8	20	0.50	0.51
NEFS 9	61	1.74	1.77
NEFS 10	54	5.99	6.11
NEFS 11	41	11.22	11.44
NEFS 12	11	2.43	2.47
NEFS 13	38	0.75	0.76
New Hampshire State-Operated Permit Bank	4	1.14	1.16
Port Clyde Community Groundfish Sector	42	4.54	4.63
Sustainable Harvest Sector 1	114	19.35	19.73
Sustainable Harvest Sector 3	19	0.56	0.57
Tri-State Sector	18	0.36	0.37
Total	**1,475**	**100.00**	**100.00**

Table 4. Preliminary ACE (in tons), by stock, for each sector and state-operated permit bank for FY 2012.*^

Name	Permit Count	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
Common Pool	630	3	88	89	36	109	5	3	185	30	63	26	24	26	38	29	91
Fixed Gear Sector	105	51	1,387	90	482	1,440	10	0	3	22	20	13	1	17	266	212	1,093
Maine Permit Bank Sector	11	0	11	39	3	10	7	0	0	4	38	11	0	7	74	59	237
NCCS	28	0	8	30	9	27	2	2	6	7	5	3	3	7	40	31	63
NEFS 2	79	10	288	743	882	2,636	119	4	12	220	287	204	118	144	1,457	227	1,686
NEFS 3	83	2	62	638	11	33	71	0	3	106	154	48	1	84	126	174	983
NEFS 4	49	7	202	351	403	1,204	60	5	20	58	335	135	26	40	608	290	811
NEFS 5	29	3	86	4	254	758	2	15	185	7	41	21	67	1	22	7	36
NEFS 6	19	5	140	101	222	662	27	6	43	33	137	81	53	29	487	142	457
NEFS 7	20	8	215	17	284	848	4	22	33	31	123	49	425	7	50	27	95
NEFS 8	20	11	301	20	434	1,296	2	26	47	74	60	41	544	27	49	18	83
NEFS 9	61	26	718	71	908	2,712	35	66	68	123	303	133	1,598	19	543	151	590
NEFS 10	54	2	58	244	24	71	19	0	5	168	76	59	1	232	52	35	211
NEFS 11	41	1	19	456	3	8	17	0	0	24	49	23	0	15	86	85	898
NEFS 12	11	0	1	99	0	1	6	0	0	6	27	10	0	2	97	90	412
NEFS 13	38	12	335	30	1,048	3,131	6	40	118	40	136	76	201	13	356	62	302
New Hampshire State-Operated Permit Bank	4	0	0	46	0	0	0	0	0	0	1	0	0	0	2	3	15
Port Clyde Community Groundfish Sector	42	0	5	185	3	8	18	0	6	11	268	80	0	11	228	154	518
Sustainable Harvest Sector 1	114	33	919	787	2,442	7,296	304	30	68	147	1,428	549	594	75	4,574	1,814	5,306
Sustainable Harvest Sector 3	19	1	21	23	28	83	2	1	24	27	29	19	6	20	20	8	10
Tri-State Sector	18	1	33	15	110	328	3	17	11	15	34	14	72	11	0	1	5
All Sectors and State-Operated Permit Banks	845	175	4,810	3,989	7,547	22,552	715	237	652	1,123	3,550	1,570	3,709	762	9,139	3,590	13,812

*The data in this table are based on signed roster contracts as of December 1, 2011. 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 the table represent the total allocations to each sector and state-operated permit bank.

Table 5. Preliminary ACE (in metric tons), by stock, for each sector for FY 2012.*^

Name	Permit Count	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
Common Pool	630	3	79	81	33	99	5	3	168	27	57	24	22	24	34	27	82
Fixed Gear Sector	105	46	1,258	82	437	1,306	9	0	2	20	18	12	1	16	242	192	992
Maine Permit Bank Sector	11	0	10	35	3	9	7	0	0	3	34	10	0	6	67	54	215
NCCS	28	0	8	27	8	25	2	2	6	6	5	3	2	6	37	28	57
NEFS 2	79	10	261	674	800	2,391	108	4	11	199	260	185	107	131	1,321	206	1,529
NEFS 3	83	2	56	579	10	30	65	0	3	97	140	43	1	77	115	158	892
NEFS 4	49	7	183	319	366	1,092	54	5	18	53	304	123	24	37	552	263	736
NEFS 5	29	3	78	3	230	688	2	14	168	7	38	19	61	1	20	6	33
NEFS 6	19	5	127	92	201	601	25	6	39	30	125	74	48	26	442	128	415
NEFS 7	20	7	195	16	257	769	4	20	30	28	112	44	385	6	45	24	87
NEFS 8	20	10	273	18	393	1,175	1	24	43	67	54	37	493	24	45	17	75
NEFS 9	61	24	651	64	823	2,461	31	60	62	111	275	121	1,450	17	493	137	535
NEFS 10	54	2	53	221	21	64	17	0	4	152	69	54	1	210	47	32	191
NEFS 11	41	1	17	414	2	7	15	0	0	22	44	21	0	14	78	77	815
NEFS 12	11	0	1	90	0	1	6	0	0	5	25	9	0	2	88	82	373
NEFS 13	38	11	304	28	951	2,840	6	36	107	36	123	69	182	11	323	56	274
New Hampshire State-Operated Permit Bank	4	0	0	42	0	0	0	0	0	0	1	0	0	0	2	3	14
Port Clyde Community Groundfish Sector	42	0	5	167	3	8	16	0	5	10	243	72	0	10	207	140	470
Sustainable Harvest Sector 1	114	30	833	714	2,215	6,619	276	27	61	133	1,295	498	539	68	4,149	1,646	4,814
Sustainable Harvest Sector 3	19	1	19	20	25	75	2	1	22	24	26	17	6	18	18	7	9
Tri-State Sector	18	1	30	13	100	298	3	16	10	14	30	12	65	10	0	1	4
All Sectors and State-Operated Permit Banks	845	159	4,364	3,618	6,847	20,459	648	215	592	1,019	3,221	1,424	3,365	691	8,291	3,256	12,530

*The data in this table are based on signed roster contracts as of December 1, 2011. 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 the table represent the total allocations to each sector and state-operated permit bank.

Sector Operations Plans and Contracts

NMFS received 19 sector operations plans and contracts by the September 1, 2011, deadline, and subsequently received preliminary rosters by the December 1, 2011, deadline for FY 2012. Each sector elected to submit a single document that is both the sector's contract and the sector's operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds the sector's members to the sector and its operations plan.

Each sector conducts fishing activities according to its approved operations plan; however, each operations plan and sector member must comply with the regulations governing sectors, which are found at § 648.87. 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 inactive 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 are required to comply with all applicable Federal fishing regulations, except as specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator. 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 are included in updated LOAs issued to sector members and through amendments to the approved operations plan.

NMFS allocates to sectors, and state-operated permit banks, all large-mesh groundfish stocks for which member permits have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder. NMFS does not allocate Atlantic halibut, northern windowpane flounder, southern windowpane flounder, Atlantic wolffish, SNE/MA winter flounder, and ocean pout because these stocks have small ACLs, and permits have limited landings history. Instead, these stocks are managed with trip limits. Allocating these stocks would complicate monitoring of sector operations and would require a different scheme for determining each permit's potential sector contribution.

Sector vessels are required to retain all legal-sized allocated groundfish, unless NMFS grants the sector an exemption allowing the sector's vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels counts 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) will have their groundfish catch (including discards) on those trips debited against the sector's ACE. Ratios to calculate discards on unobserved sector trips are determined by NMFS based on observed trips.

Sectors must not exceed any ACE during the FY. Amendment 16 required sectors to develop independent third-party dockside monitoring (DSM) programs 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. FW 45 sets the required coverage level for DSM to the level that NMFS funds. For FY 2012, NMFS will not fund a DSM program; therefore, the DSM level for FY 2012 is zero. Amendment 16 also required that sectors design, implement, and fund an at-sea monitoring (ASM) program beginning in FY 2012. However, for 2012, NMFS will fund and operate an ASM program for all sectors. The details of the ASM program run by NMFS are included in Appendix 3 of *Sector Operations Plan, Contract, and Environmental Assessment Requirements Fishing Year 2012* (copies available from NMFS, see **ADDRESSES**). The ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the Northeast Fishery Observer Program (NEFOP). These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. As discussed later, NMFS has determined that this level of observer coverage is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Sectors are required to monitor their landings and available ACE, and submit weekly catch reports to NMFS. In addition, the sector manager is required to provide NMFS with aggregate sector reports on a daily basis after reaching a threshold (specified in the operations plan). Once a sector catches its ACE for a particular stock, the sector is required to cease all fishing operations in that stock area until it acquires additional ACE for that stock. Sectors may transfer ACE between themselves, but sectors may not transfer ACE to or from common pool vessels. Each sector must 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 operations plan and contract. Sector members may be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector operations plan submitted for FY 2012 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 2012, each sector plans to allocate each sector member an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE, minus a reserve.

In order to comply with the National Environmental Policy Act (NEPA) in an efficient manner, a single EA was prepared analyzing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16 and the EA prepared for Framework Adjustment 45. The summary findings of the EA conclude that each sector will likely produce similar effects that will result in non-significant impacts. An analysis of aggregate sector impacts was also conducted and the Regional Administrator has issued a Finding of No Significant Impact for the sector EA.

Amendment 16 contains several ''universal'' regulatory exemptions that apply to all sectors. These universal exemptions apply to: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when

fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas (RCA).

Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Regulations prohibit sectors from requesting exemptions from year-round closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). If NMFS grants an exemption to a sector, NMFS issues each sector vessel a LOA authorizing the exemption for each such vessel.

Approved FY 2012 Exemptions

A total of 49 exemptions from the NE multispecies regulations were requested by sectors through their FY 2012 operations plans. This final rule authorizes 20 exemptions (see Table 6) for the sectors that requested them, after NMFS thoroughly reviewed and considered public comments on the exemption requests.

In FY 2011, sectors were exempted from the following 16 requirements; and these exemptions are again approved for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding legal-size unmarketable fish; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72°30′ W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA).

NMFS has also approved new exemptions for FY 2012 from the following four requirements: (17) Prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (18) 6.5-inch (16.5-cm) minimum mesh size requirement for trawl nets (to allow 6-inch (15.2-cm) mesh); (19) prohibition on a vessel hauling another vessel's hook gear; and (20) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (with an effective date to be determined).

Disapproved Exemptions for FY 2012

NMFS has denied new exemptions from the following five requirements in FY 2012, which were proposed for approval: (21) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (22) seasonal restriction for the CA II Yellowtail Flounder/Haddock SAP; (23) maximum ACE carry-over provision; (24) ACE buffer provision; and (25) minimum fish size provisions for haddock. The reasons for these denials are detailed later in this preamble.

NMFS has denied exemptions from the following 13 requirements because they are prohibited by FMP regulations: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) all hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

NMFS has denied exemptions from the following eight requirements because they were previously rejected, and sector applicants provided no new information that would warrant an exemption: (39) Minimum fish sizes to allow 100-percent retention; (40) minimum fish sizes to retain 12-inch (30.5-cm) yellowtail flounder; (41) VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) prohibition on pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) sector roster submission by the December 1 deadline.

NMFS has denied exemptions from the following three requirements because they may jeopardize rebuilding of the GOM cod stock, which is overfished and experiencing overfishing: (47) the April GOM Rolling Closure Area; (48) the May GOM Rolling Closure Area; and (49) the June GOM Rolling Closure Area.

This final rule implements approved FY 2012 exemptions only for sectors that requested those exemptions through their sector operations plans (see Table 6). The accompanying EA has analyzed all approved exemption requests as if all sectors had requested all exemptions. Therefore, sectors not granted an approved exemption in this final rule may request any of the approved exemptions at any time during the FY, except the discarding exemption, and could add these exemptions to their operations plans through amendments to those plans. Approved amendments to operations plan will be posted on the Northeast Regional Office Web site at: *http://www.nero.noaa.gov/sfd/sfdmultisectorinfo.html* under 'Other Resources.' NMFS also issues sector vessels updated LOAs reflecting any approved amendments to their sector's operations plan.

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Table 6. Exemptions Granted to FY 2012 Sectors

	Exemption	FGS	MEPBS	NCCS	NEFS 2	NEFS 3	NEFS 4	NEFS 5	NEFS 6	NEFS 7	NEFS 8	NEFS 9	NEFS 10	NEFS 11	NEFS 12	NEFS 13	PCS	SHS1	SHS 3	TSS
1	120 Day Gillnet Block out of the Fishery	X		X		X			X	X			X	X	X	X	X	X	X	X
2	20 Day Spawning Block	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
3	Limits on the Number of Gillnets for Day Gillnet Vessels	X				X			X	X			X	X	X	X	X	X	X	X
4	Prohibition on a vessel's hauling another Vessel's gillnet gear	X			X	X			X	X			X	X	X	X	X	X	X	X
5	Limits on the Number of Gillnets that May be Hauled on GB when fishing on a Groundfish/Monkfish DAS	X				X			X	X			X	X	X	X	X	X	X	X
6	Limits on the Number of Hooks that May be Fished	X		X		X			X	X			X	X	X			X	X	X
7	DAS Leasing Program Length and Horsepower Restrictions	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
8	GOM Sink Gillnet Mesh Exemption January Through April	X				X			X	X			X	X	X	X	X	X	X	X
9	Extension of the GOM Haddock Sink Gillnet Program Through May	X				X			X	X			X	X	X	X	X	X	X	X
10	Prohibition on Discarding	X												X	X			X	X	
11	Daily catch reporting by Sector Managers for Sector vessels that fish in the CA I Hook Gear Haddock SAP	X		X		X			X	X			X	X	X	X		X	X	X
12	Gear Requirements in the US/CA Management Area	X			X	X		X	X	X	X	X	X	X	X	X		X	X	X
13	Powering VMS While at the Dock*	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
14	DSM Requirements for Vessels Fishing West of 72°30' W. Long.	X			X	X		X	X	X	X	X	X			X		X	X	X
15	DSM requirements for Handgear A-permitted Sector Vessels	X			X	X			X	X	X		X					X	X	X
16	DSM Requirements for Monkfish Trips in the Monkfish SFMA	X			X	X		X	X	X	X	X	X			X		X	X	X

Table 6 Continued. Exemptions Granted to FY 2012 Sectors

	Exemption	FGS	MEPBS	NCCS	NEFS 2	NEFS 3	NEFS 4	NEFS 5	NEFS 6	NEFS 7	NEFS 8	NEFS 9	NEFS 10	NEFS 11	NEFS 12	NEFS 13	PCS	SHS1	SHS 3	TSS
17	Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip	X							X	X		X	X			X		X	X	X
18	6.5-Inch Minimum Mesh Size Requirement to Allow 6-Inch Mesh for Targeted Redfish Trips	X			X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
19	Prohibition on a Vessel Hauing Another Vessel's Hook Gear	X				X			X	X			X			X		X	X	
20	Requirement to declare intent to fish in the Eastern US/CA SAP and CA II YT/haddock SAP from the dock	X						X	X	X	X	X	X			X		X	X	X

* The sector vessel may only powerdown its VMS if the vessel does not hold other permits requiring continuous VMS operation, and must send the VMS power down declaration before turning off power to the VMS unit.

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Approved FY 2012 Sector Exemption Requests—Regulations That Were Previously Exempted for FY 2011

In FY 2011, sectors were exempted from the following 16 requirements; and these exemptions are again approved for FY 2012: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limits on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) the GOM Sink Gillnet Mesh Exemption January through April; (9) extension of the GOM Sink Gillnet Mesh Exemption through May; (10) prohibition on discarding legal-size unmarketable fish; (11) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (12) gear requirements in the U.S./Canada Management Area; (13) powering vessel monitoring systems (VMS) while at the dock; (14) DSM for vessels fishing west of 72°30′ W. long.; (15) DSM for Handgear A-permitted sector vessels; and (16) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA). Details of these exemptions and the rationale for approving them can be found in the proposed rule for this action, and the final rule for FY 2011, and are not repeated in this final rule. Comments on these exemptions are addressed in detail below.

Approved Exemption Requests—New Exemptions for FY 2012

17. Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip

FW 40A established the CA I Hook Gear Haddock SAP to allow additional access to healthy stocks on a category B DAS using selective gears. This SAP had quotas for groundfish stocks to prevent overfishing. Under the rules implementing FW 40A, NE multispecies vessels fishing on a trip within this SAP were prohibited from deploying fishing gear outside of the SAP on the same trip when they declared into the SAP (§ 648.85(b)(7)(iv)(G)). This restriction was established to avoid potential quota monitoring and enforcement complications that could arise when a vessel fishes both inside and outside the SAP on the same trip.

This final rule grants an exemption from the prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP on the same trip for FY 2012. However, to ensure accurate accounting of catch in this SAP, vessels using this exemption are prohibited from towing a trawl, or setting fixed gear, across the border of the SAP. The intent is that each tow or haul of gear occurs entirely inside, or entirely outside, the SAP boundaries. NMFS proposed requiring vessels using this exemption to send NMFS a VMS catch report that specifically identifies GB haddock (and any other shared allocation) catch from inside the SAP prior to the end of the trip, or within 24 hr of landing, to identify catch from inside and outside the SAP on the same trip. However, sector vessels participating in this SAP are already required to send a daily VMS catch report. Therefore, to streamline reporting, NMFS will use the daily VMS catch report from vessels participating in this SAP to identify catch from inside the SAP separately from catch outside the SAP on the same trip. Vessels fishing both inside and outside this SAP on the same trip must report only catch within the SAP in their daily VMS catch report. Vessels will send their daily VMS catch report to NMFS if their sector is also granted an exemption from the requirement for daily catch reporting by the sector manager for vessels participating in the CA I Hook Gear Haddock SAP (#11 above). This exemption will increase sector operational flexibility and efficiency. NMFS has no reason to believe that this particular catch report would be any less accurate than the existing sector catch reports; however, the Regional Administrator reserves the right to revoke this exemption if it is determined that the exemption negatively impacts monitoring.

18. 6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

An exemption from the 6.5-inch (16.5-cm) minimum mesh size for trawl net cod ends to allow sector vessels to use 6-inch (15.2-cm) mesh codends on trawl nets in all regulated mesh areas to target redfish is approved for FY 2012. The exemption is intended to increase the catch of redfish, increase the operational flexibility of sector vessels, and increase the profit margins of sector fishermen. Sector vessels participating in the directed redfish fishery under this exemption will be required to declare their intention to the Sector Manager at least 48 hr prior to departure, comply with the pre-trip notification system (PTNS) requirements, and may only use this exemption on trips carrying either an at-sea monitor or NEFOP observer to monitor catch and bycatch. Daily catch reports must be submitted to the Sector Manager to ensure that all catch is harvested within the sector's ACE. The Regional Administrator reserves the right to revoke this exemption if it is determined the exemption is negatively impacting spawning fish or populations of stocks the current minimum mesh sizes were intended to protect.

The 6.5-inch (16.5-cm) minimum mesh size was initially adopted through interim rules in 2001 and 2002 (67 FR 21140, April 29, 2002; 67 FR 50292, August 1, 2002), and made permanent through Amendment 13. FW 42 further modified the mesh regulations in the SNE and MA regulated mesh areas (RMA) to reduce discards of yellowtail flounder. 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. Minimum mesh size restrictions have been used with other management measures to reduce overall mortality on groundfish stocks, as well as to reduce discarding, and improve survival, of sub-legal groundfish. These requirements were intended to protect spawning fish and increase the size of targeted fish. Mesh selectivity is only one of a number of factors that influences the overall selection pattern in a fishery. Fishermen can influence the size of the fish they catch by fishing at different times of the year, in different locations, or by using different gear or techniques.

Although a codend minimum mesh size of 6 inches (15.2 cm) is smaller than the current legal size for standard trawl gear, it is the same size codend mesh currently authorized for use on GB by sector vessels using selective gears. Available mesh selectivity studies show that 6-inch (15.2-cm) mesh is unlikely to increase sub-legal catch for cod and haddock, but information is lacking for other stocks and mesh sizes. For this reason, NMFS will monitor this exemption to ensure that this exemption does not result in a greater retention of sub-legal groundfish, as well as non-allocated species and bycatch. If an exemption from the 6.5-inch (16.5-cm) minimum mesh size restriction increases sub-legal groundfish bycatch by sector vessels, then juvenile escapement, stock age structure, and overall mortality reduction objectives could be undermined. Further, equity may be a concern if sub-legal bycatch triggered management actions affecting the entire fishery, including non-sector vessels. The LOA issued to sector vessels that qualify for this exemption

will specify the requirements for using 6-inch (15.2-cm) mesh to help ensure the provision is enforceable.

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, social and economic experts, and managers. This approach includes investigating success of various mesh sizes within the fishery. It is anticipated that results from that research will be available in the near future and would be used in further evaluating requests for exemption from the minimum mesh size requirements.

19. Prohibition on a Vessel Hauling Another Vessel's Hook Gear

An exemption from the prohibition on a vessel hauling another vessel's hook gear is approved for FY 2012. This exemption will allow fishermen from within the same sector to haul each other's hook gear. The exemption from hook limits and implementation of ACE as a mortality control make it unnecessary to prevent a vessel from hauling another vessel's gear as an effort control. Consistent with the exemption approved for community gillnets, all vessels utilizing community hook gear will be jointly liable for any violations associated with that gear. This joint liability would assist in the enforcement of regulations. Additionally, each member intending to haul the same gear will be required to mark the gear, consistent with §§ 648.14(k)(6)(ii)(B) and 648.84(a).

Current regulations prohibit one vessel from hauling another vessel's hook gear (§ 648.14(k)(6)(ii)(B)). The regulations were developed to facilitate the enforcement of existing hook regulations that were created as effort and mortality controls, and no provisions exist in the regulations allowing for multiple vessels to haul the same gear. The increased flexibility afforded by this exemption may increase efficiency.

20. Requirement To Declare Intent To Fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP Prior To Leaving the Dock

An exemption from the requirement to declare intent to fish in the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock is granted for FY 2012. This exemption will allow sector vessels to declare their intent to fish in these SAPs while at sea. This exemption will not be effective until such time that the VMS system is modified to accommodate making these declarations at sea. Sectors granted this exemption will be notified by electronic mail when this exemption takes effect, and sector vessels will be issued new LOAs explaining how to make declarations using this exemption and including any additional requirements for using this exemption.

NE multispecies vessels are required to declare that they will be fishing in either the Eastern U.S./Canada Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock (§§ 648.85(b)(8)(v)(D) and 648.85(b)(3)(v)). This measure was included in the final rule implementing Framework 40A to ensure that vessels fishing exclusively in those areas could be credited DAS for their transit time to and from these SAPs. Because sector catch is limited by ACE, DAS credit for trips in these SAPs is no longer necessary.

Disapproved Exemption Requests—New Exemptions Requests That Were Proposed for Approval

21. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP

SAPs allow access to year-round closed areas in order to facilitate access to groundfish stocks that can support an increase in mortality. The Eastern U.S./Canada Haddock SAP was implemented with a sunset date by FW 40A in 2004 to provide an opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The SAP required vessels to use gear that reduced the catch of cod and other stocks of concern. The SAP had a season of May 1 through December 31 to reduce effort during periods of groundfish spawning. In 2006, FW 42 implemented this SAP permanently and shortened the season to August 1 through December 31 to reduce cod catch. Subsequent actions approved additional gear types for use in this SAP.

For sector vessels, the only benefit of this SAP is that it provides access to the northern tip of CA II. Amendment 16 exempts sectors from the gear requirements of this SAP because sector catch is constrained by ACEs, but sectors are still required to comply with reporting requirements and the restricted season for access from August 1 through December 31 (§ 648.85(b)(3)(iv)). Sectors argue that their catch is restricted by ACE and their access to the SAP area in the northern tip of CA II should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC). However, NMFS is concerned that this exemption may have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the Council's current prohibition on allowing exemptions from closed areas applies to SAPs. No comment was received from the Council regarding its intent. This exemption is denied because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons or if their intent was to prohibit such exemptions because it is a year-round closed area.

22. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP

SAPs allow access to year-round closed areas in order to facilitate access to groundfish stocks that can support an increase in fishing mortality. The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II on a Category B DAS. Vessels were required to use either a flounder net or other gear types approved for use in the Eastern U.S./Canada Area. The SAP season ran from June 1 through December 31. In 2005, FW 40 B made this SAP permanent and shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Amendment 16 further revised this SAP by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open to allow targeting of GB yellowtail flounder. Sectors are required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When open only to target haddock, the flounder net is not authorized and only approved trawl gears or hook gear may be used. The gear requirements were implemented to avoid catching yellowtail flounder when the SAP was open only to the targeting of haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail

Flounder/Haddock SAP provides access to a large area in CA II. Sectors are required to use the same approved gears as the common pool to reduce the advantage sector vessels have over common pool vessels. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted.

The seasonal restriction on this SAP was put in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the summer and spawning groundfish in the spring. Impacts to the physical environment and EFH would be negligible because any increase in effort would be minor and the portion of CA II included in this SAP is outside any HAPC. However, NMFS is concerned that this exemption could have negative effects on allocated stocks by increasing effort in a time and place where those stocks, particularly haddock, aggregate to spawn.

Amendment 16 prohibits sectors from being granted exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the Council's current prohibition on allowing exemptions from closed areas applies to SAPs. No comment was received from the Council regarding its intent. This exemption is denied because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons or if their intent was to prohibit such exemptions because it is a year-round closed area.

23. Maximum ACE Carryover Provision

Each sector is allowed to carry over up to 10 percent of its original ACE allocation of each stock from one FY to the next, with the exception of GB yellowtail flounder (§ 648.87(b)(1)(i)(C)). Allowing a sector to carry over a portion of its allocation reduces concern that a sector may leave ACE uncaught to avoid accidentally exceeding its ACE. Sectors requested an exemption to carry over up to 50 percent of unused ACE into the following FY. Allowing sectors to carry over ACE would provide greater flexibility in when and how they fish during a given FY.

NMFS conducted a limited preliminary analysis of increasing the current ACE carryover limits and the resultant potential for overfishing in the subsequent year. This analysis was included in the draft EA published with the proposed rule for this action. Based on the preliminary analysis, the Regional Administrator proposed to allow sectors to carry over 11–30 percent of each stock's ACE (except GOM cod and GB yellowtail flounder) from FY 2011 to FY 2012. NMFS provided the analysis to the Council with a request that its Scientific and Statistical Committee (SSC) review it and recommend to NMFS whether or not to allow increased carryover for any stocks, and if so, what level above 10 percent would be appropriate. NMFS is concerned that an increase in ACE carryover could allow a substantial increase in catch beyond what has been analyzed in setting the FY 2012 ACLs. In a letter dated January 20, 2012, the Council raised a number of questions (see proposed rule) about the preliminary analysis and the legality of such carryovers in light of Magnuson-Stevens Act requirements. This final rule denies this exemption, and the final EA lists this exemption as considered, but rejected, because the important scientific and legal issues raised by the Council remain unresolved. A future action could grant this exemption if the issues are resolved and the resolution supports granting this exemption.

24. ACE Buffer Provision

Amendment 16 implemented the ACE buffer provision to ensure that each sector would have 20 percent of its ACE available to account for any potential overage from the previous year. At the beginning of each FY, NMFS withholds 20 percent of a sector's ACE for each stock for up to 61 days (i.e., through June 30), or longer (§ 648.87(b)(1)(iii)(C)). This hold gives NMFS time to finalize sector catch and ACE trades that take place after the end of the FY, and to apply any overage penalties to a sector that exceeded its ACE. Sectors are requesting to be exempted from this 20-percent ACE buffer restriction when a sector manager reports that the sector has not exceeded any of its ACE. Sectors sought this exemption to increase operational flexibility and efficiency to bring additional revenue into the sector.

This exemption is denied because NMFS does not have the ability to verify whether a sector manager's report is accurate until the annual reconciliation process, as discussed above, is complete. Due to this time lag, it is possible that sectors could potentially exceed their ACE in a subsequent FY after an overage has occurred before the second year's ACE is reduced by the first year's overage. For example, if a sector was allocated 100 mt of a stock in year 1, but caught 120 mt, the sector would be required to pay back 20 mt in year 2. However, if the sector fished its complete allocation for year 2 before NMFS discovered the overage from year 1, the sector would then also have overfished the reduced year 2 allocation.

25. Minimum Fish Size Provisions for Haddock

Commercial haddock catch must be at least 18 inches (45.7 cm) to be retained by a vessel (§ 648.83(a)(1)). This restriction includes whole fish or any part of a fish while possessed on board a vessel, with the exception of a small amount of fish (up to 25 lb (11.3 kg)) that each person on board may retain for at-home consumption (§ 648.83(a)(2)). The 18-inch (45.7-cm) minimum size for haddock was first implemented by an interim action in 2009 (74 FR 17030, April 13, 2009). This was a reduction from the previous minimum size of 19 inches (48.3 cm), designed to reduce discards and increase yield. The 18-inch (45.7-cm) minimum size was made permanent by Amendment 16.

Sectors requested an exemption from the minimum fish size regulation for the purpose of landing headed and gutted haddock that are less than 18 inches (45.7 cm) as a headed and gutted haddock provide a value-added product. This exemption request is intended to allow legal-sized fish that were previously landed whole to be landed headed, or headed and gutted, without a change to the actual size composition of the catch.

This exemption has been denied by NMFS because of enforceability concerns and issues with properly monitoring catch for this stock that could potentially have negative impacts on the stock assessments. There are no accepted conversion factors to accurately determine the whole weight or length of headed and gutted haddock. Therefore, it would not be possible to accurately track that catch against sector ACEs, and it would be impossible for enforcement to determine whether the headed fish came from legal-sized fish. In addition, increases in the proportion of fish landed without heads would negatively impact stock assessment work because biological samples (ages and lengths) cannot be obtained from fish landed without heads.

Disapproved Exemption Requests—Exemptions Denied Because They Are Prohibited

Amendment 16 contains several ''universal'' exemptions applicable to all sectors and authorized sectors to request additional exemptions from NE multispecies regulations through their sector operations plans. However, Amendment 16 also 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). Exemptions were requested by several sectors that are specifically prohibited (e.g., access to permanent closed areas) or that fall outside of the NE multispecies regulations (e.g., Eastern U.S./Canada in-season actions).

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 ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), 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 include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM, ACE monitoring, VTR regulations, or counting of discards against ACE.

NMFS has denied exemptions from the following 13 requirements because they are prohibited: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access to the Western GOM Closure Area; (30) extrapolation of discarded fish pieces across strata; (31) authorization to use video monitoring in place of ASM; (32) hail requirements; (33) year-round access to the Eastern U.S./Canada Area; (34) ASM for sector vessels; (35) ASM for trips targeting dogfish; (36) ASM for hook-only and Handgear A vessels; (37) ASM for extra-large mesh gillnet vessels; and (38) the ASM standard for random trip selection.

Disapproved Exemption Requests—Exemptions Denied Because They Were Previously Rejected and No New Information Was Provided

NMFS has denied exemptions from the following eight requirements because they were previously rejected, and sectors provided no new information in support: (39) Minimum fish sizes, to allow 100-percent retention; (40) minimum fish sizes, to retain 12-inch (30.5-cm) yellowtail flounder; (41) that VMS messages be sent directly to NMFS; (42) weekly catch report requirements; (43) no pair trawling; (44) minimum hook size; (45) 6.5-inch (16.5-cm) minimum mesh size for trawls to allow 5-inch (12.7-cm) mesh when targeting redfish; and (46) submitting a roster by the deadline. Exemptions 39 through 46 are not analyzed in the EA because no new information was available to change the analyses previously published in past EAs. The details of these exemption requests, analysis of these exemptions, and the reasons they were previously denied are contained in the final rules approving sectors for FYs 2010 and 2011, and their accompanying EAs. The requesting sectors provided no new information, justification, rationale, or mitigation to address these concerns.

Disapproved Exemption Requests—Exemptions Denied Because They May Jeopardize Rebuilding of the GOM Cod Stock

NMFS has denied exemptions from the following three requirements because they may jeopardize rebuilding of the GOM cod stock, which a new stock assessment has determined is overfished and experiencing overfishing: (47) April GOM Rolling Closure Area; (48) May GOM Rolling Closure Area; and (49) June GOM Rolling Closure Area.

NMFS denied requests for additional exemptions from GOM Rolling Closure Areas in FYs 2010 and 2011 because of concerns that directly targeting spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. In addition, those requests were disapproved because the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine mammals.

In response to requests for additional exemptions from GOM Rolling Closure Areas (including new exemption requests that would exclude gillnet gear) and discussions about increasing access to these areas at the Council's Lessons Learned Sector Workshop, the Regional Administrator considered proposing partial exemption from some of the closures as a short-term solution while the Council considered the long-term future of these closures as part of the pending omnibus habitat amendment. Options considered for possible exemptions would have required trawl vessels to use selective trawl gears, excluded gillnet gear, and prohibited hook gear from using squid or mackerel as bait. However, given the new status of the GOM cod stock, NMFS has denied additional exemptions from the GOM RCAs, and these exemptions are listed as considered, but rejected, in the final EA.

Disapproved Provisions of Operations Plans

NMFS has disapproved a provision proposed in the NEFS 5, NEFS 7, and NEFS 13 operations plans that would allow their members to participate in a fishery for bait skate, regardless of whether the sectors had ACE available for all allocated stocks, from June 1 through December 1, in waters off southern Massachusetts, Rhode Island, Connecticut, and New York. Currently, the majority of the area in the proposed provision lies within the Mid-Atlantic Exemption Area, where vessels that are issued a valid Skate Bait LOA may participate in the skate bait fishery when not on a declared groundfish trip. Although this provision as a whole has been denied, sector (and common pool) vessels may currently participate in the skate bait fishery in the entire Mid-Atlantic Exemption Area.

NMFS is currently considering a request, submitted by NEFS 5, for an exempted fishery identical in description to the denied skate bait provision in the operations plans of NEFS 5, NEFS 7, and NEFS 13. A fishery exemption may be approved if the Regional Administrator determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, and that such exemption will not jeopardize fishing mortality objectives. Unlike the GOM haddock sink gillnet program that was denied for the fishery as a whole, but granted to sectors as an exemption because their ACEs controlled their overall catch, the bait skate fishery provision requested in these three operations plans specifically requests authorization to fish without the sector being accountable for its vessels' groundfish catch. Without ACE accountability, participation by sector vessels would not be substantially different from participation by common pool vessels. Therefore, NMFS has not approved this provision of the sectors' operations plans, because this exempted fishery request is currently being considered for all appropriately permitted vessels under separate rulemaking.

Comments and Responses

Eight letters, many addressing multiple issues, were submitted from several entities: Oceana, the Massachusetts Division of Marine Fisheries (DMF), the Council, the Northeast Sector Service Network (NESSN), Associated Fisheries of Maine, and three individuals. Only comments that were within the scope of this rulemaking, including the analyses used to support these measures, are responded to below.

General Comments

Comment 1: One fisherman commented that sectors have negatively impacted his business operations.

Response: The commenter was not specific about the nature or cause of the negative impacts to his business. However, he is free to participate in the common pool and fish under DAS, rather than participating in a sector. Sectors are temporary, voluntary, fluid associations of vessels that can join together to take advantage of flexibilities and efficiencies that sectors are afforded. Vessel owners may choose to join a sector or not, and can change their decision from one year to the next, based on what they believe are the best opportunities for them at that point in time. The proposed rule announced that some sector rosters will be opened until April 30, allowing additional opportunity for each eligible NE multispecies permit holder to evaluate their personal best option for FY 2012.

Comment 2: One individual commented that all exemption requests should be denied because fish stocks do not belong to sectors.

Response: Groundfish stock ownership is not relevant to exemption request decisions. Unlike an individual fishing quota or individual transferable quota, sectors are allocated quotas on an annual basis and do not own either a groundfish stock or access to a groundfish stock. Annual allocations are determined based on the ACL and annual voluntary membership of the sector. The FMP grants sectors universal exemptions from some effort control measures, and allows sectors the opportunity to request additional exemptions from existing regulations, but not from a sector's ACE. The approved exemptions will allow sector members greater flexibility in harvesting their allocation and additional opportunities to attempt to obtain optimum yield from the fishery without jeopardizing the rebuilding plans for overfished stocks.

Comment 3: NESSN and the AFM supported granting the 16 exemptions that were approved for FY 2011.

Response: NMFS approved the 16 exemptions from the NE multispecies regulations in FY 2011 because many of the regulations were designed to limit fishing mortality by controlling fishing effort. These regulations are no longer necessary because sectors are restricted to an ACE for each groundfish stock that limits overall fishing mortality. Other exemptions were granted from dockside monitoring requirements to exclude trips and vessels that landed minimal amounts of groundfish. No contrary information has been provided about the effect of the exemptions used in FY 2011. The rationales for approving the exemptions for FY 2011 continue to apply in FY 2012; therefore, all exemptions granted in FY 2011 have been approved for FY 2012.

Comment 4: AFM supported granting the nine novel exemptions proposed for approval for FY 2012.

Response: NMFS has approved four of the novel exemptions proposed for approval, and denied the remaining five. Exemptions are approved or denied individually, and the rationale for each decision is discussed in this preamble and in responses to specific comments.

SAP Seasons

Comment 5: AFM supported granting an exemption from the seasonal restrictions for both the Eastern U.S./Canada Haddock SAP and the CA II Yellowtail Flounder/Haddock SAP, stating that this was not in conflict with the regulations and that an increase in effort on spawning haddock is not a concern due to the robust condition of GB haddock and underharvest of the GB haddock ACL. One anonymous commenter opposed the requests due to concern for GB cod spawning, and stated that the Council specifically did not exempt sectors from the seasons of these SAPs.

Response: Amendment 16 prohibits granting sectors exemptions from year-round closed areas. NMFS requested comment on whether it is appropriate to exempt sectors from a SAP season, given that the portion of the SAP in the closed area is already open part of the year, or if the current prohibition on allowing exemptions from closed areas applies to SAPs. The Council did not comment regarding its intent for this provision. Therefore, NMFS denied this exemption because it is unclear whether the Council meant for sectors to be allowed exemptions from SAP seasons within closed areas or if sectors should be prohibited from such exemptions because it is a year-round closed area.

Haddock Minimum Size

Comment 6: NESSN supported exemption from the minimum fish size provisions for haddock. They further stated that NMFS's experience in implementing similar regulations for monkfish should provide an adequate knowledge base to determine appropriate ways to address their concerns about enforcement issues at sea.

Response: NMFS denied an exemption request from the minimum fish size requirements in FY 2010, stating that it would present significant enforcement concerns by allowing different fish sizes in the market place and because of concerns that the exemption could potentially increase the targeting of juvenile fish. This exemption is being denied again for FY 2012 for similar reasons.

Unlike the monkfish fishery, there are no currently accepted conversion factors to accurately determine the whole weight or length of headed and gutted haddock. Given this, it would not be possible to accurately track that catch against sector ACEs, and it would be problematic to enforce that the headed fish came from legal-sized fish. Increases in the proportion of fish landed without heads would also negatively impact stock assessment work because biological samples (ages and lengths) cannot be obtained from fish landed without heads. These issues are not comparable to the monkfish fishery. That fishery has a separate minimum size for monkfish tails, accepted conversion factors to determine whole weight from tail weight, and monkfish are best aged using vertebrae, unlike haddock, which are aged using otoliths located in the head.

ACE Buffer Provision

Comment 7: AFM and NESSN supported granting an exemption from the 20-percent ACE buffer provision. NESSN supported granting the exemption on a sector-by-sector basis if the sector has actively engaged throughout the year to address elements impacting the accuracy of that sector's reports. Further, NESSN commented that NMFS could release some portion of ACE buffer prior to the end of reconciliation, based on outstanding data elements and their possible impact on final ACE balance.

Response: This exemption was denied because NMFS has no ability to verify whether a sector manager's report is accurate until the annual reconciliation process is complete. NMFS anticipates completing FY 2011 reconciliation weeks faster than FY 2010 reconciliation due to improvements to the process and the cooperation of sectors, which would mitigate the commenters' concerns.

Requirement To Declare Intent To Fish in SAPs Prior To Leaving the Dock

Comment 8: AFM and NESSN supported granting an exemption from the requirement that a vessel declare its intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock to reduce administrative burden and cost for vessels.

Response: NMFS agrees and this exemption is granted for FY 2012. This exemption allows sector vessels to declare their intent to fish in the Eastern U.S./Canada SAP and the CA II Yellowtail Flounder/Haddock SAP while at sea. The effective date of this exemption is being delayed until the VMS system is modified to accommodate making these declarations at sea. NMFS will notify the sectors once this modification is finalized.

6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets

Comment 9: The Council, NESSN, and AFM all supported an exemption from the 6.5-inch (16.5-cm) minimum mesh size to allow the use of 6-inch (15.2-cm) codends on trawl nets when targeting redfish. The Council supported this exemption to more fully utilize the available ACLs of the healthy redfish stock and to enable the achievement of optimum yield. NESSN referenced studies in 2008 and 2009, which demonstrated that 6.5-inch (16.5-cm) mesh is inefficient for catching redfish, and asserted that the requirement for vessels to carry an LOA would facilitate enforcement.

Response: NMFS agrees and has approved an exemption that will allow vessels to fish 6.0-inch (15.2-cm) mesh codends when targeting redfish. Sector vessels fishing under this exemption will be required to have a LOA on board the vessel, which will facilitate enforcement. This exemption will provide additional flexibility for vessels to develop techniques to better target redfish. Mesh selectivity is only one of a number of factors that influences the overall selection pattern in a fishery. Fishermen can influence the size of fish they catch by fishing at different times of the year, in different locations, or by using different gear or techniques. This exemption should increase the catch of redfish, increase the operational flexibility of sector vessels, and increase profit margins of sector fishermen. Vessels may only use this exemption when at-sea monitors or NEFOP observers are on board. This will provide information about bycatch in this fishery to better facilitate monitoring of the impact of this exemption. The Regional Administrator reserves the right to revoke this exemption if it is determined the exemption is negatively impacting spawning fish or populations of stocks the current minimum mesh sizes were intended to protect. NMFS is currently funding a study to investigate strategies and methods to sustainably harvest the redfish resource in the GOM. It is anticipated that results from that research will be available in the near future and would be used in further evaluating requests for exemption from the minimum mesh size.

ASM Coverage Level for FY 2012

Comment 10: Oceana commented that Amendment 16 requires sector operations plans to demonstrate an adequate level of ASM and asserted that the ASM program currently proposed for FY 2012 will leave the NE multispecies fishery out of compliance with the mandates of the Magnuson-Stevens Act. DMF also asserted that the ASM coverage level is unacceptably low.

Response: Amendment 16 required that sectors design, implement, and fund an ASM program beginning in FY 2012. However, for 2012, NMFS will fund and operate an ASM program for all sectors; therefore, it is unnecessary for each sector operations plan to specify the details of an ASM program for FY 2012. The details of the ASM program run by NMFS are included in Appendix 3 of *Sector Operations Plan, Contract, and Environmental Assessment Requirements Fishing Year 2012* (copies available from NMFS, see **ADDRESSES**). For FY 2012, the ASM coverage rate target is 17 percent, in addition to the expected 8-percent coverage rate of the NEFOP. These two programs are expected to result in coverage of 25 percent of all sector trips and will be the basis for calculating discards by sector vessels. This level of observer coverage is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved.

Beginning in FY 2012, Amendment 16 requires that the levels of ASM coverage shall be specified by NMFS and must be sufficient to accurately monitor sector operations and at least meet the 30-percent coefficient of variation (C.V.) specified in the Standardized Bycatch Reporting Methodology (SBRM) (73 FR 4736, January 28, 2008). This does not mean that Amendment 16 requires the discard rate for each individual sector (or every combination of sector, area and gear (stratum)), to be monitored with this level of precision. Analyses (copies available from NMFS, see **ADDRESSES**) of FY 2010 (the only complete year of data available) shows that the 25-percent coverage rate proposed for FY 2012 would be sufficient to accurately monitor sector operations and meet the 30-percent C.V., as specified in the SBRM.

Comment 11: DMF urged NMFS to reconsider approval of sector exemptions granting freedom without the accountability provided by higher levels of catch monitoring.

Response: NMFS has approved 20 exemptions for FY 2012, including many that grant increased flexibility, and believes that the current level of monitoring is sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved. Analysis of the C.V. achieved for each stock in FY 2011 cannot yet be determined because FY 2011 continues through April 30, 2012. However, as noted above, analyses of FY 2010 show that the 25-percent coverage rate proposed for FY 2012 would be sufficient to accurately monitor sector operations and meet the 30-percent C.V., as specified in the SBRM.

Limit on the Number of Gillnets for Day Gillnet Vessels

Comment 12: DMF commented that NMFS should deny or revise the exemption from net limits for Day gillnet vessels based on the impact that gillnets have on spawning aggregations. DMF cited research by Dean, *et. al.* recently published in the *North American Journal of Fisheries Management* (32:124–134, 2012).

Response: NMFS granted an exemption from the Day gillnet limits in FYs 2010 and 2011, and is granting this exemption again in FY 2012, to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA. This will provide greater operational flexibility to sector vessels in deploying gillnet gear. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because their stock ACEs limit overall fishing mortality. Data from FY 2010 (Table 4.1.4.2–2 of the EA) show that sink gillnet gear days went down by 4.66 percent from FY 2009 (prior to this sector exemption) to FY 2010 (the first year the exemption was granted).

The information DMF cites regarding the impact of fishing on spawning aggregations is not specific to the number of gillnets an individual may fish at one time, but is more generally applicable to the locations and timing of spawning closures developed by the Council. The Council's Habitat Committee is currently working on an omnibus amendment to revise all closed areas in the NE, including consideration of the location and timing of rolling closure areas.

Limits on the Number of Hooks That May Be Fished

Comment 13: DMF commented that the exemption from hook limits is

unwise because there has been a shift to targeting GOM cod from GB cod.

Response: NMFS has granted this exemption for FY 2012 because catch data show that sector ACEs continue to limit GOM cod mortality. Data from FY 2010 (EA Table 4.1.4.2–4) shows that longline gear days went up 377.48 percent from FY 2009 (prior to this sector exemption) to FY 2010 (the first year the exemption was granted). However, longline catch of groundfish went down 30 percent (EA Table 4.1.5–1) from 2009 to 2010 and remains only 2 percent (EA Table 4.1.4.2–1) of groundfish catch. Further, not all longline use targets GOM cod, or even groundfish.

GOM Rolling Closure Areas

Comment 14: DMF commented that NMFS should consider granting exemptions to the April, May, and June GOM Rolling Closures Areas, but require the sectors to implement the strategy the Northeast Seafood Coalition provided in its comments on the proposed rule for FY 2010 sector operations plans, or a modified version of the strategy.

Response: NMFS has denied this exemption for FY 2012 because of the new overfished status of the GOM cod stock and concerns that disrupting spawning aggregations can adversely impact the reproductive potential of a stock. As shown in the information cited by DMF in its comments (see Response to Comment 12), fishing activity disrupts spawning aggregations, causing impacts to the stock beyond the mortality of the individual fish caught.

The strategy proposed in 2010 by the Northeast Seafood Coalition included vessels fishing on a rotating basis to limit daily effort, limiting the percentage of cod ACEs that could be taken in April, and incorporating a sentinel vessel providing information on bycatch and spawning fish to other vessels. However, that proposed system is untested. Therefore, it is not appropriate at this time to use this strategy as the basis of an exemption to the GOM Rolling Closure Areas, given the poor condition of the GOM cod stock.

The Gulf of Maine Research Institute (GMRI) recently applied for an Exempted Fishing Permit to allow the testing of a real-time monitoring system that, if successful, could facilitate this exemption in the future. NMFS continues to work with GMRI to develop its proposal into a scientifically rigorous study. Sectors could test these strategies at any time in areas that are currently open to fishing.

Maximum ACE Carryover Provision

Comment 15: AFM supported an exemption to increase the carryover of unused ACE from the currently allowed 10 percent to the level that would not undermine rebuilding. NESSN also supported an exemption to increase the carryover of unused ACE as long as such carryover does not result in overfishing, impede rebuilding objectives, or threaten the health of a stock. In addition, NESSN suggested NMFS should preliminarily approve this exemption and actively engage sector and industry members to ensure that there is a clear understanding and agreement on what the potential short- and long-term implications of this request may be, allowing each sector to opt in or out after a clear understanding of how the exemption would be implemented.

Response: NMFS has denied this exemption, and the final EA lists this exemption as considered, but rejected, given that the important scientific and legal issues raised by the Council remain unresolved. NMFS is also concerned that an increase in ACE carryover could allow a substantial increase in catch beyond what was analyzed in setting the FY 2012 ACLs. Because of these unanswered questions, NMFS cannot conclude that the carryover would not result in overfishing, impede rebuilding objectives, or threaten the health of a stock. NMFS will continue to work on resolving the biological, legal, and policy issues associated with increasing ACE carryover. A future action could grant this exemption if all concerns are resolved.

Classification

The Administrator, Northeast Region, NMFS, determined that this annual sector approval is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Assistant Administration for Fisheries (AA) finds that there is adequate justification under 5 U.S.C. 553(d)(1) to waive the 30-day delay in effective date because this final rule relieves several restrictions. This final rule helps the NE multispecies fishery mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks, and increases the economic efficiency of vessel operations through the authorization of 19 sector operations plans for FY 2012. As explained in detail above, 20 exemptions from NE multispecies regulations have been approved for FY 2012, which provide increased flexibility to all of the sectors by exempting them from effort control restrictions and administrative burdens that would be unnecessarily onerous for fishing vessels whose fishing activity is constrained by a hard quota.

Additionally, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. Failure to waive the 30-day delay in effectiveness could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities. A delay in implementing this final rule would prevent owners who have signed up to join a sector in FY 2012 (845 permits, 57 percent of eligible groundfish permits, accounting for 99 percent of the historical commercial NE multispecies catch) from taking advantage of the flexibility in vessel operations this final rule implements, thereby undermining the intent of the rule. For example, when this final rule takes effect, sector vessels will receive exemptions from trip limits, DAS limits, and seasonal closure areas that this final rule allows, but would be prohibited from fishing for groundfish during the delayed effectiveness period. Vessels committed to a sector may not fish in both the common pool and a sector in the same FY. Consequently, vessels currently signed into a sector would be forced to cease fishing operations entirely during the delay in effectiveness to maintain their sector membership for FY 2012. If they choose to fish in the common pool (i.e., fish during the delay in effectiveness under existing regulations), they would thereby lose for the entirety of FY 2012 the mitigating economic efficiencies associated with the restrictions from which sector vessels are relieved. This would also reduce the economic efficiency of the majority of the fleet (400+ active vessels) until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels. This would be contrary not only to the interest of the fishing communities, but to the public at large; prohibiting a significant portion of the fleet from fishing reduces the availability of local seafood. For the reasons outlined above, the requirement to delay implementation of this final rule for a period of 30 days is hereby waived.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider

the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards for all for-profit economic activities or industries are in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector as a firm with receipts (gross revenues) of up to $4 million.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this final rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), the relevant portions of the proposed rule describing sector operations plans and requested exemptions, the corresponding analysis in the EA prepared for this action, the discussions, including responses to public comments included in this final rule, and this summary of the FRFA. This FRFA also incorporates by reference the IRFA prepared for the FW 47 proposed rule (77 FR 18176, March 27, 2012). In the IRFA prepared for Framework 47, sectors were used as the regulated entity for the first time as an alternative approach for analyzing the impacts of Framework 47. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Need for, and Objectives of, This Rule

Approval of sector operations plans is necessary to allocate quota to the sectors and to grant the sectors regulatory exemptions. The intended effect is to provide vessels participating in sectors with increased operational flexibility. The flexibility afforded sectors includes exemptions from certain specified regulations, as well as the ability to request additional exemptions. The objective of the action is to authorize the operations of 19 sectors in FY 2012, and to allow the permits enrolled in sectors and the New England communities where they dock and land to benefit from sector operations.

Summary of Public Comments

All public comments, including those in response to the IRFA and comments regarding the economic effects of the rule not specifically addressed to the IRFA, and our response to those comments, are contained in this preamble.

Description and Estimate of the Number of Small Entities Affected

The number of entities affected will be the number of permits enrolled in sectors for FY 2012. The maximum number of entities that could be affected by this action is 1,475, the number of permits eligible to join a sector for FY 2012. This action will likely affect about 845 entities, which represents the number of permits enrolled in sectors and state-operated permit banks as of December 1, 2011. Sector rosters for FY 2012 may change through April 30, 2012; therefore, it is not possible to know the final number of entities affected before May 1, the date on which this action takes effect. However, based on FY 2010 and FY 2011, we expect the number of entities affected to change very little. Each of these permits is a small entity, based on the definition as stated above and explained below. The economic impact resulting from this action on these small entities is positive, since the action provides additional operational flexibility to vessels participating in NE multispecies sectors for FY 2012. In addition, this action further mitigates negative impacts from the implementation of Amendment 16, FW 44, and FW 45, which placed additional effort restrictions on the groundfish fleet.

The SBA size standard for small commercial fishing entities (North American Industry Classification System code 114111) is up to $4 million in annual 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. NMFS acknowledges there are entities that qualify as large business entities based on rules of affiliation. However, reliable ownership affiliation data were not available during the analyses of Amendment 16 and FW 45. Therefore, to be consistent with those analyses, this final rule continues to consider each operating unit as a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities.

In the IRFA prepared for Framework 47, sectors were used as the regulated entity for the first time to estimate impacts of the proposed action. Sectors were used as the entity for that analysis, in part, because each vessel's PSC only becomes fishable quota if the vessel is a member of a sector. Since sectors are allocated ACE based on the cumulative PSC of each individual sector member, considering sectors as an affiliated entity provides an alternative approach for analyzing the impacts of Framework 47.

Reporting, Recordkeeping and Other Compliance Requirements

This final rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. This action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action are documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block will reduce the reporting burden for sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

Sector vessels exempt from the gillnet limit (up to 150 nets) are also exempt from current tagging requirements, and are instead required to tag gillnets with one tag per net. Compliance with the tagging requirement will not necessarily require sector vessels to purchase additional net tags, as each vessel is already issued up to 150 tags. However, sector vessels that have not previously purchased the maximum number of gillnet tags may find it necessary to purchase additional tags to comply with this requirement at a cost of $1.20 per tag.

The exemption to allow a vessel to haul another vessel's gillnet gear requires each vessel to tag all gear it is authorized to haul. Because of the existing 150-tag limit, no additional tags may be purchased.

The exemption from the limit on the number of hooks does not involve reporting requirements, but may result in increased costs for hooks and rigging (groundline, gangions, anchors) if a vessel chooses to increase the amount of gear fished. Circle hooks of the legal minimum size (12/0) cost about $0.19 each without rigging.

The GOM Sink Gillnet exemption does not involve additional reporting requirements. However, to use this exemption, sector vessels may need to purchase 6-inch (15.2-cm) mesh gillnet nets. At the time this FRFA was prepared, no cost information was available for a 6-inch (15.2-cm) mesh gillnet panel. However, the cost of a 6.5-inch (16.5-cm) mesh 300-ft (91.4-m) gillnet panel, complete with floats and break-away links, is estimated at $310. The quantity of 6-inch (15.2-cm) mesh gillnets purchased by a vessel to participate in this program will depend on the vessel's gillnet designation (a Day gillnet vessel would have a 150-net limit) and the perceived economic benefits of utilizing the exemption,

which may be based on market conditions.

Exempting sectors from the requirement to submit a daily catch report for all vessels participating in the CA I Hook Gear Haddock SAP does not change the reporting burden of individual participating vessels, as the vessels would merely change the recipient of their current daily report.

Other exemptions granted by this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements exists in the final rules implementing Amendment 16 and each approved FY 2012 sector operations plan.

Steps the Agency Has Taken To Minimize Significant Adverse Economic Impact on Small Entities

This action will create a positive economic impact for the participating sector vessels because it mitigates the impacts from restrictive management measures implemented under the NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual vessels are available. The *2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross revenue per trip and per day absent in 2010 were higher for the average sector vessel and lower for the average common pool vessel. However, the report stipulates this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will remain economically viable while adjusting to changing economic and fishing conditions. Thus, this final rule provides benefits to sector members that they would not have under the No Action Alternative. The preamble discusses reasons for approval or disapproval of each requested exemption.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, an LOA, or letter of authorization, for each permit holder enrolled in a sector that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter or bulletin, will be sent to all holders of NE multispecies permits enrolled in a sector. The guide and this final rule will be available upon request (see **ADDRESSES**).

On February 3, 2012, NMFS published final rules listing the Gulf of Maine distinct population segment (DPS) of Atlantic sturgeon as threatened, and listing the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon as endangered, effective April 6, 2012. Preliminary analysis indicates that multiple Atlantic sturgeon DPSs may be affected by the continued operation of the NE multispecies fishery and formal consultation under Section 7 of the ESA has been reinitiated and is ongoing for the NE multispecies fishery. The previous Biological Opinion for the NE multispecies fishery completed in October 2010 concluded that the actions considered would not jeopardize the continued existence of any listed species. This Biological Opinion will be updated and additional evaluation will be included to describe any impacts of the NE multispecies fishery on Atlantic sturgeon DPSs and define any measures needed to mitigate those impacts, if necessary. It is anticipated that any measures, terms and conditions included in an updated Biological Opinion will further reduce impacts to the species. It is expected that the completion of the Biological Opinion will occur before the beginning of the 2012 NE multispecies fishing year on May 1, 2012. NMFS has determined that continued operation of the fishery during the consultation period is not likely to jeopardize the continued existence of listed species.

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

Dated: April 26, 2012.

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Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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