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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120814336-3249-01]

RIN 0648-BC27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes approval of, and regulations to implement, measures in Framework Adjustment 48 to the NE Multispecies Fishery Management Plan (FMP). Framework 48 is the first of two parallel actions developed by the New England Fishery Management Council (Council) as part of the biennial review process to respond to updated stock information and to adjust other management measures in the NE multispecies (groundfish) fishery. Framework 48 proposes new status determination criteria for Gulf of Maine (GOM) cod, Georges Bank (GB) cod, and Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, based on new benchmark assessments completed for these stocks in 2012 and 2013. Framework 48 would also establish allocations of SNE/MA windowpane flounder and GB yellowtail flounder for exempted fisheries, and modify the allocation of GB yellowtail flounder to the scallop fishery, to address increased bycatch of these species. In addition, Framework 48 would amend existing accountability measures (AMs) for GOM/GB and SNE/MA windowpane

flounders, ocean pout, and Atlantic halibut and establish new "reactive" AMs for Atlantic wolffish and SNE/MA winter flounder. These measures would make way for the other parallel action, Framework 50, which would set acceptable biological catches (ABCs) and annual catch limits (ACLs) for fishing years (FY) 2013-2015. Framework 48 also contains several measures intended to improve the administration of the fishery and enhance fishing opportunities for groundfish vessels to mitigate potential negative economic impacts from reductions in catch limits proposed by Framework 50. These measures include: Clarification of the goals and performance standard for sector monitoring programs; elimination of dockside monitoring requirements; cost-sharing of monitoring costs between the industry and NMFS; reduction of the minimum fish size for several stocks; and allowing groundfish sectors to petition the Regional Administrator for limited access to groundfish mortality closures. This rule also proposes several regulatory changes to correct inadvertent errors in the NE multispecies regulations.

DATES: Comments must be received by [insert date 15 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0050, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2013-0050, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.
- Fax: (978) 281-9135; Attn: Melissa Hooper.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of FW 48, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the Council are available from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The FW 48 EA/RIR/IRFA are also accessible via the Internet at http://www.nefmc.org/nemulti/index.html or http://www.nero.noaa.gov. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Melissa Hooper, Fishery Policy Analyst, phone: 978-281-9166, fax: 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP specifies management measures for 16 species of groundfish in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout; and large-mesh species (also referred to as "regulated species") include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as "regulated species," are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex of 20 stocks managed under the NE Multispecies FMP.

Amendment 16 to the FMP (Amendment 16) established a process for setting ABCs and ACLs for regulated species and ocean pout, as well as distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established AMs for these 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 44 to the FMP (Framework 44) set the ABCs and ACLs for FYs 2010-2012. In 2011, Framework 45 to the FMP (Framework 45) revised the ABCs and ACLs for five stocks for FYs 2011-2012. Framework 47 to the FMP (Framework 47) updated specifications for most stocks for FYs 2012-2014 and modified management measures in the fishery after more than 1 year under ACLs and AMs.

In June 2012, the Council initiated development of Framework 48 to respond to benchmark and assessment updates completed for all groundfish stocks in 2012. Updated information in these assessments requires revisions to the status determination criteria for GOM cod, GB cod, and SNE/MA yellowtail flounder and implementation of updated ABCs and ACLs for most stocks for FYs 2013-2015. These measures are necessary to prevent overfishing and

facilitate the rebuilding of groundfish stocks as required by the FMP. Because of the need to end overfishing, substantial reductions in catch limits are being proposed for some stocks. To mitigate negative economic impacts anticipated for groundfish vessels and their communities, the Council developed several measures in Framework 48 intended to increase fishing opportunities and improve profitability in the groundfish fishery. Framework 48 also proposes AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder in response to a Court Order and remand in Oceana v. Locke et al. that held that so-called "reactive" AMs had not been developed for the 6 stocks not allocated to sectors ("non-allocated stocks") in Amendment 16. Framework 48 recommends reactive AMs for 3 of these stocks, for which reactive AMs have not been established since Amendment 16.

At its December 2012 meeting, the Council voted to split the framework in order to provide more time to consider new catch limits. Proposed specifications for FY 2013-2015 were put into Framework 50, which was approved by the Council for submission at its January 2013 meeting. The Council took final action on all non-ACL measures in Framework 48 at its December meeting. As a result, the measures in Framework 48 and considered in this proposed rule would make administrative changes to the FMP to make way for Framework 50, which would specify ABCs and ACLs for all stocks for FY 2013-2015 in a separate proposed and final rule. Implementation of both actions is targeted for the start of the 2013 fishing year on May 1, 2013.

Proposed Measures

The measures proposed by Framework 48 are described below. The proposed regulations implementing measures in Framework 48 were deemed by the Council to be consistent with Framework 48, and necessary to implement such provisions pursuant to section 303(c) of the

Magnuson-Stevens Act through a March 13, 2013, letter from the Council Chairman to the NMFS Regional Administrator.

1. Status Determination Criteria for GOM and GB Cod, and SNE/MA Yellowtail Flounder

Amendment 16 updated the status determination criteria for NE regulated species and ocean pout stocks based on the best available scientific information as determined by the 2008 Groundfish Assessment Review Meeting (GARM III). Framework 45 updated the status determination criteria for pollock to reflect the results of a new pollock stock assessment conducted in 2010, and Framework 47 updated the status determination criteria for the three winter flounder stocks and GOM cod based on assessments completed for those stocks in 2011.

An assessment for SNE/MA yellowtail flounder was completed in June 2012. New assessments were also completed for GOM and GB cod in December 2012 and for white hake in February 2013. Framework 48 proposes to update the status determination criteria for SNE/MA yellowtail flounder, GOM and GB cod, to incorporate the results of these recent stock assessments into the FMP. The proposed revisions are based on the best scientific information available.

The December 2011 assessment for GOM cod indicated that overfishing was occurring and the stock was overfished. In response to new information, including revised discard mortality rates and updated recreational data, another assessment for GOM cod was conducted in December 2012. Two population assessment models were accepted at the 55th Stock Assessment Review Committee (SARC) in December 2012. One assessment model assumes that the natural mortality rate (M) is 0.2 (M=0.2 model). The second assessment model assumes that M has increased from 0.2 to 0.4 in recent years (M_{ramp} model). The results of both of these models indicate that overfishing is occurring and the stock is overfished. In addition, the December

2012 stock assessment for GB cod indicates that overfishing is occurring and the stock is overfished.

The previous assessment conducted for SNE/MA yellowtail flounder in 2008 (GARM III) determined that this stock was experiencing overfishing and was overfished. A new benchmark assessment (SARC 54) was completed for this stock in June 2012. The SARC considered two stock recruitment scenarios used in the assessment, which would lead to very different conclusions about stock status. A "recent recruitment" scenario, which assumed that a possible change in productivity has reduced the size of incoming year classes since 1990, would lead to the conclusion that the stock is not experiencing overfishing, is not overfished, and is rebuilt to a new, much lower biomass target. Alternately, a "two-stanza" scenario assumed that recruitment over the entire time series was a function of spawning stock biomass (SSB), and would lead to the conclusion that the stock continues to experience overfishing, is overfished, and would not be expected to rebuild even if the fishing mortality were held to zero. While neither scenario could be ruled out, the SARC concluded that the evidence was 60:40 in favor of the "recent recruitment" scenario. Based on the new assessment results, the Council's Scientific and Statistical Committee (SSC) and the Northeast Fisheries Science Center support the "recent recruitment" scenario for use as the best available scientific information to manage the stock. Therefore, the new stock status determinations for the stock resulting from SARC 54 is that the stock is not experiencing overfishing, is not overfished, and is rebuilt.

The final results of the white hake assessment are not yet available. GARM III was the last benchmark assessment conducted for white hake. This assessment indicated that overfishing was occurring for white hake and the stock was overfished. Final results from the February 2013 benchmark assessment for white hake are scheduled to become available in mid-March, around

the approximate time of the publication of this proposed rule. In anticipation of this new information, the Council recommended updating the status determination criteria for white hake among its preferred alternatives in Framework 48, with the actual updated status determination criteria to be determined pending the results of the assessment. As with GOM and GB cod, the Council anticipated that this information would be available in time for NMFS to propose the revised status determination criteria recommended by the assessment in this Framework 48 proposed rule. However, as the assessment results were not available in time for publication of this proposed rule, the Council's proposed changes to the status determination criteria for white hake are incomplete. Therefore, NMFS is not proposing any changes to the white hake status determination criteria through this rulemaking.

There is preliminary information from the February 2013 assessment for white hake, however, that may justify a higher ABC than is proposed in Framework 50. This stock is important for the commercial groundfish fishery, and any potential increase in the FY 2013 ABC for this stock would benefit groundfish vessels. If new stock information becomes available this spring that shows the FY 2013 ABC for white hake could be increased, and the Council requests that NMFS take emergency action to incorporate this new information, NMFS could consider an emergency action for FY 2013.

The revised status determination criteria proposed in this rule are presented in Table 1. Numerical estimates of these criteria are presented in Table 2. There are two sets of status determination criteria for GOM cod because two models were accepted at the benchmark assessment in December 2012, as described above. Although two assessment models were approved, there is only one numerical estimate proposed for the maximum fishing mortality

threshold for GOM cod. The SARC did not conclude that M would remain at 0.4 in perpetuity, and therefore, did not provide reference points for this scenario.

Table 1—Proposed Status Determination Criteria for SNE/MA Yellowtail Flounder, GOM and GB Cod

Stock	Biomass Target	Minimum Biomass Threshold	Maximum Fishing Mortality Threshold
SNE/MA yellowtail flounder	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$
GOM cod	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$
GB cod	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$

SSB = spawning stock biomass; MSP = maximum spawning potential; B = biomass; F = fishing mortality rate; MSY = maximum sustainable yield

Table 2—Numerical Estimates of the Proposed Status Determination Criteria for SNE/MA Yellowtail Flounder, GOM and GB Cod

Stock	Biomass Target (mt)	Maximum Fishing Mortality Threshold	MSY (mt)
SNE/MA yellowtail flounder	2,995	0.31	773
GOM cod (M=0.2 model)	54,743	0.18	9,399
GOM cod (M_{ramp} model)	80,200		13,786
GB cod	186,535	0.18	30,622

2. SNE/MA Windowpane Flounder sub-ACLs

The catch limit for each stock is divided among the various fishery components (e.g., commercial groundfish fishery, recreational groundfish fishery, scallop fishery, state waters). Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. "ACL sub-components" represent the expected catch by components of the fishery that are not subject to AMs (e.g., state waters). Currently, only the common pool fishery has a sub-ACL for SNE/MA windowpane flounder. The stock is not allocated to sectors, and therefore, all sector and common pool catch is attributed to the common pool sub-ACL. Framework 48 proposes to allocate a sub-ACL of SNE/MA windowpane

flounder to the scallop fishery and rename the other sub-component the "other fisheries sub-ACL."

Scallop Fishery sub-ACL

The sub-ACL of SNE/MA windowpane flounder allocated to the scallop fishery would be 36 percent of the ABC. This allocation is based on the 90th percentile of the scallop fishery catches (as a percent of the total catch) for calendar years (CYs) 2001 through 2010. GARM III and the 2012 Assessment Update for SNE/MA windowpane flounder only included catches from limited access scallop dredge and trawl vessels. The 90th percentile of these catches (as a percent of the total catches) from CYs 2001-2010 is 32 percent. However, this does not account for catches of SNE/MA windowpane flounder by General Category scallop vessels. From 2001 to 2003, there was limited observer coverage of General Category scallop dredge and trawl vessels. From 2004-2011, the average General Category catch of this stock was 22 mt. As a result, 22 mt was added to the limited access scallop dredge and trawl vessel catch for each year (CYs 2001-2010). The combined total is 36 percent. The scallop fishery's sub-ACL would be calculated by reducing the portion of the ABC allocated to the scallop fishery (sub-ABC) to account for management uncertainty. The management uncertainty buffer is determined each time the groundfish specifications are set.

If this measure is approved, AMs for the scallop fishery would be developed in a future management action during 2013 through the Atlantic Sea Scallop FMP. AMs would be implemented in time to be effective by the start of scallop FY 2014 (i.e., March 1, 2014), and would be retroactively applied to FY 2013. If the scallop fishery exceeds its sub-ACL for SNE/MA windowpane in FY 2013, the AMs adopted in a future management action would be triggered. Also, similar to the measure adopted in Framework 47 for the scallop fishery's

SNE/MA and GB yellowtail flounder sub-ACLs, the scallop fishery AM for SNE/MA windowpane flounder would only be triggered if the total ACL is exceeded and the scallop fishery's sub-ACL is also exceeded, or if the scallop fishery exceeds its sub-ACL by 50 percent or more.

The total ACL for SNE/MA windowpane was exceeded by more than 100 percent in FY 2010 and FY 2011. In both years, total catch by sector and common pool vessels was below the common pool sub-ACL for this stock, and scallop vessels accounted for more than 25 percent of the total catch in FY 2011, and almost 50 percent of the catch in FY 2010. However, because the scallop fishery is not currently allocated a sub-ACL, it was not subject to an AM. Instead, the AM that was triggered in both years as a result of the ACL overage only applied to common pool vessels. Scallop vessel catch of SNE/MA windowpane flounder is large enough to undermine the effectiveness of the ACL and AM for this stock. Therefore, a sub-ACL for the scallop fishery would help prevent overfishing and would ensure catches of windowpane flounder by the scallop fishery are constrained. In addition, this measure would ensure equity and hold the component of the fishery responsible for an overage accountable for its catch.

Other sub-Components sub-ACL

In addition to large catches of SNE/MA windowpane flounder by the scallop fishery in recent years, other non-groundfish fisheries have accounted for approximately half of the total SNE/MA windowpane flounder catch in FY 2010 and FY 2011. Currently, any overages of the total ACL caused by this component of the fishery are applied to the commercial groundfish fishery (and only to common pool vessels prior to FY 2012), and the AM does not apply to non-groundfish vessels. As a result, there are no measures in place to constrain catches of SNE/MA

windowpane flounder by these vessels, which could undermine the effectiveness of the ACL and AM for this stock.

This action proposes to make the "other sub-component" an "other fisheries sub-ACL." Because "sub-components" of the fishery are not subject to AMs, this administrative measure makes it possible to adopt an AM that applies to those non-groundfish fisheries that fish with gear responsible for most of the catch of this stock in the "other" sub-component. The AM for SNE/MA windowpane flounder that would apply to commercial vessels is described in Item 6 of this preamble. This measure would prevent overfishing of SNE/MA windowpane flounder and ensure all components of the fishery are accountable for their catches of this stock.

3. Scallop Fishery sub-ACL for GB Yellowtail Flounder Based on Estimated Catch

Currently, the scallop fishery's allocation of GB yellowtail flounder is determined each time groundfish specifications are set. There is no established allocation scheme, though in recent years, the scallop fishery's sub-ACL for this stock was based on the projected GB yellowtail flounder needed to fully harvest the scallop sub-ACL. The scallop fishery was allocated 100 percent of its projected need in FY 2010, and 90 percent of its projected need in FY 2011 and FY 2012.

This action proposes to allocate a fixed percentage of the U.S. ABC for GB yellowtail flounder to the scallop fishery. For FY 2013 only, 40 percent of the U.S. ABC for GB yellowtail flounder would be allocated to the scallop fishery. Beginning in FY 2014, 16 percent of the U.S. ABC for this stock would be allocated to the scallop fishery. The allocation to the scallop fishery would be 16 percent of the U.S. ABC each year from FY 2014 onward. The scallop fishery sub-ACL would be calculated by reducing the scallop fishery's portion of the ABC (sub-ABC) to account for management uncertainty.

The percentage allocation for the scallop fishery beginning in FY 2014 forward is based on recent catch history by the scallop fishery from CYs 2002 through 2011. This measure would simplify the specification of the scallop fishery's GB yellowtail flounder allocation each year. In addition, allocating a fixed percentage of the ABC to the scallop fishery would further incentivize avoiding yellowtail flounder while maximizing the catch of scallops.

Although the scallop fishery would be allocated a fixed percentage of GB yellowtail flounder, this action would not modify the existing regulation that requires NMFS to re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If the scallop fishery is projected to catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop allocation. Overages will be calculated based on the revised sub-ACLs for the commercial groundfish fishery and the scallop fishery, and any applicable AMs would be triggered.

GB yellowtail flounder is managed jointly with Canada. In addition to the ACLs and AMs that the U.S. uses to manage the fishery, the Transboundary Resource Sharing Understanding (Understanding) also specifies that any overage of the U.S. total allowable catch (TAC) for GB yellowtail flounder would result in a pound-for-pound reduction of the U.S. TAC in the following fishing year. Therefore, if a component of the fishery exceeds its sub-ACL, which causes an overage of the U.S. TAC, the necessary reduction required by the Understanding would be taken from the sub-ACL of the fishery component that caused the overage.

4. Small-Mesh Fisheries sub-ACL for GB Yellowtail Flounder

Currently, the quota for GB yellowtail flounder is only allocated to the commercial groundfish fishery and the scallop fishery. If catches by the "other" sub-component (non-groundfish fisheries) cause an overage of the ACL, any AMs that are triggered only apply to the commercial groundfish and scallop fisheries. Framework 48 proposes to allocate a sub-ACL of GB yellowtail flounder to the small-mesh bottom trawl fisheries, which are defined as vessels fishing with bottom otter trawl with a codend mesh size of less than 5 inches (12.7 cm). Small-mesh bottom trawl vessels fishing on GB typically target whiting and squid.

This action would allocate 2 percent of the U.S. ABC for GB yellowtail flounder to the small-mesh fisheries. This allocation is based on the median catch of GB yellowtail flounder by the small-mesh fisheries from CYs 2004 through 2011. Observer coverage of small-mesh fisheries was limited prior to 2004, which is why the time period (CYs 2004-2011) was selected. The small-mesh fishery sub-ACL would be calculated by reducing the portion of the ABC allocated to the small-mesh fisheries (2 percent) to account for management uncertainty. Each time the groundfish specifications are set, the management uncertainty buffer necessary for these small-mesh fisheries would be determined. If the small-mesh fisheries catch of GB yellowtail flounder exceeds the sub-ACL, the pertinent AMs would be triggered. If this measure is approved, AMs would need to be developed for those fisheries (e.g., Atlantic Mackerel, Squid, and Butterfish; Small-Mesh Multispecies) as soon as possible to be effective for any overage in FY 2014.

Although small-mesh fishery catches of GB yellowtail flounder have generally been less than 100 mt in recent years, the U.S. ABC for the stock has been declining. As a result, the small-mesh fishery catches account for an increasing percentage of the total U.S. catch. This measure would help ensure that small-mesh fishery catches would be constrained and prevent

overages of the annual quota. In addition, because GB yellowtail flounder is jointly managed with Canada, keeping U.S. catches within the U.S. TAC is important to achieve the management and conservation objectives of the Understanding. A sub-ACL for small-mesh fisheries, and associated AMs, would help ensure the component of the fishery that causes an overage would be held accountable. This proposed measure would also likely prevent inequities that would occur if the commercial groundfish and scallop fisheries were held accountable for overages caused by the small-mesh fisheries.

5. Recreational Fishery AM

This action proposes to revise the recreational AM. The current recreational AM is reactive and requires the Regional Administrator to modify recreational management measures in the year following an overage of a recreational sub-ACL to ensure that recreational catch does not exceed the sub-ACL again. The recreational fishery currently only has a sub-ACL for GOM cod and for GOM haddock. Framework 48 proposes to modify the recreational AM so that the Regional Administrator may proactively adjust recreational management measures to ensure the recreational fishery will achieve, but not exceed, its sub-ACL. To the extent possible, any changes to the recreational management measures would be made prior to the start of the fishing year and adopted through procedures consistent with the Administrative Procedure Act (APA). In addition, the Regional Administrator would consult with the Council, or the Council's designee, and would tell the Council, or its designee, what recreational measures are under consideration for the upcoming fishing year. If time allows, the Council would also provide its Recreational Advisory Panel (RAP) an opportunity to meet and discuss the proposed management measures.

The Council provided guidance on its preference of measures that NMFS should consider if additional recreational effort controls are necessary to reduce GOM cod or GOM haddock catches, though this guidance does not restrict NMFS's discretion in selecting management measures that would best achieve, but not exceed, the recreational sub-ACL. If additional effort controls are necessary to reduce cod catches, the Council's non-binding preference is that NMFS first consider increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits. If additional effort controls are necessary to reduce haddock catches, the Council's non-binding preference is that NMFS first consider increases to minimum size limits, then changes to bag limits, and adjustments to seasons last.

The current recreational AM only allows management measures to be adjusted if the recreational sub-ACL is exceeded; however, there is no mechanism to adjust recreational measures for the upcoming fishing year if it is projected that the recreational fishery would exceed, or not fully harvest, its quota. This action would allow measures to be proactively adjusted, which would help prevent overages of the recreational sub-ACL, and prevent substantial underharvests of the recreational sub-ACL. In addition, the requirement for NMFS to consult with the Council while developing measures allows increased opportunity for public comment, and provides states more opportunity to coordinate their recreational measures with NMFS.

If this measure is adopted, any adjustments to recreational measures that are necessary for FY 2013 would be announced as soon as possible and implemented on or about the start of the fishing year. Due to timing constraints, development of recreational measures for FY 2013 began prior to this proposed rule. To expedite the consideration of recreational measures for FY 2013, the Council delegated the recommendation of adjustments to these measures to the RAP.

The Council's RAP met in early February 2013 to discuss potential measures for FY 2013, and the Council forwarded the RAP's recommendations to NMFS. Recreational management measures for FY 2013 will be announced in a separate rulemaking.

6. Commercial Groundfish Fishery AMs

AMs are required to help prevent overfishing and ensure accountability in the fishery. Proactive AMs are intended to prevent ACLs from being exceeded, and reactive AMs are meant to correct or mitigate overages of ACLs if they occur. Amendment 16 implemented AMs for all of the groundfish stocks; however, upon approving Amendment 16, NMFS notified the Council that the AMs developed for the non-allocated stocks lacked sector-specific AMs. NMFS recommended that the Council develop appropriate AMs for these stocks in a future action, and as a result, Framework 47 modified the AMs for these stocks in 2012.

During development of Framework 47, there was ongoing litigation on Amendment 16. Oceana, an environmental organization, challenged Amendment 16 partially because it lacked sector-specific AMs for the non-allocated stocks. On December 20, 2011, the U.S. District Court for the District of Columbia upheld most of Amendment 16, but found that the Amendment's lack of sector-specific reactive AMs, that is AMs that are triggered after an ACL is exceeded, for non-allocated stocks (GOM/GB and SNE/MA windowpane flounders, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder) violated the Magnuson-Stevens Act. The Court remanded the issue to NMFS and the Council for further action. Because the Council took final action on Framework 47 in November 2011, before the Court decided the case, it did not specifically or fully address the Court's remand in Framework 47.

Amendment 16 adopted a prohibition on possession for all of the non-allocated stocks, except for Atlantic halibut, which has a one-fish per trip possession limit. Framework 47

adopted reactive AMs for ocean pout, both stocks of windowpane flounder, and Atlantic halibut for sector and non-sector ("common pool") vessels that would be triggered if the total ACL is exceeded. For ocean pout and both stocks of windowpane flounder, if the total ACL is exceeded in the fishing year, gear-restricted areas would apply to both sector and common pool vessels in the second year following the overage, and would remain in place for the entire fishing year. For Atlantic halibut, if the total ACL is exceeded the possession limit for sector and common pool vessels would be reduced to zero (from one fish per trip) in the second year following the overage. Framework 47 identified the prohibition on possession of SNE/MA winter flounder and Atlantic wolffish as AMs for these two stocks. The Court subsequently held that these AMs, which were described as "proactive" AMs, were not sufficient and that "reactive" AMs were needed as well.

Upon approval of Framework 47, in light of the Court's remand, NMFS notified the Council that the zero-possession reactive AM for Atlantic halibut was not, by itself, an adequate AM. Additionally, NMFS notified the Council that although prohibition on possession for SNE/MA winter flounder and Atlantic wolffish may act as a proactive AM, the Court found that to be inconsistent with the National Standard 1 guidelines, and reactive AMs are needed for all stocks. Despite these concerns, NMFS approved these AMs in Framework 47 even though the prescribed AMs for these stocks were not sufficient, because approval of the framework was preferable to disapproval and because it removed a potential inequity for common pool vessels. The AM implemented through Amendment 16 only applied to common pool vessels, although common pool vessels generally take less than 10 percent of the total commercial catch for these stocks. With respect to the delayed implementation of the reactive AMs (the second year following an overage), NMFS also recommended that these AMs be implemented as soon as

possible after an overage occurs, when catch data, including final discard estimates, reliably show an overage of the ACL, and not be bound by an AM that can only be implemented in the second year following an overage. If reliable data indicate an overage of the total ACL, the AM should be implemented in the fishing year immediately following the overage. As a result of Framework 47 approval, the Council developed revised AMs for Atlantic halibut, SNE/MA winter flounder, and Atlantic wolffish in Framework 48, as well as revisions to the timing of AM implementation for non-allocated stocks.

Change to AM Timing for Non-Allocated Stocks

To improve the effectiveness of AMs adopted through Framework 47 and 48 for the non-allocated stocks, this action proposes to change the timing of the AMs. As described above, the current AMs for these stocks are implemented in the second year following an overage of the total ACL. For example, if the total ACL for ocean pout is exceeded in Year 1, the AM would be implemented in Year 3 under the current regulations. Because this delay may not be needed in all cases, this action proposes that if reliable information is available during the fishing year that shows the total ACL has been exceeded, the respective AM for the stock would be implemented at the start of the next fishing year (Year 2). After the AM is implemented, if updated catch information shows that the total ACL was not exceeded, the AM would be rescinded consistent with the APA.

The Council has noted concerns that final catch data for the non-allocated stocks, which include catch from state waters and non-groundfish fisheries, could not be reliably available in time to trigger an AM in Year 2, or earlier. This action would modify the timing of the AMs so that should reliable information be available (e.g., the commercial groundfish fishery catches exceed the total ACL for a stock), the AM could be implemented more quickly. This increases

the effectiveness of the AM and would help prevent overfishing in consecutive years. The need for greater effectiveness is balanced with the need for fishing businesses to plan for the upcoming fishing year, and therefore, any applicable AMs for the non-allocated stocks would only be implemented at the start of a fishing year. If this measure is approved, and implemented on or before May 1, 2013, and reliable information shows that the total ACL for a non-allocated stock is exceeded in FY 2012, then the respective AM would be implemented on May 1, 2013, for sector and common pool vessels.

Area-Based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder

This action proposes area-based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. If the total ACL is exceeded for any of these stocks by an amount greater than the management uncertainty buffer, gear restrictions would be triggered in designated areas that have been identified as hotspots for catches of these stocks. For overages of the Atlantic halibut and Atlantic wolffish ACLs, trawl vessels would be required to use approved selective gear, and sink gillnet and longline vessels would not be allowed to fish in the applicable AM area. For overages of the SNE/MA winter flounder ACL, only trawl gear would be restricted in the applicable AM area. As previously adopted in Framework 47, possession of non-allocated stocks would also be prohibited at all times, except for Atlantic halibut would be reduced from one fish to zero if the total ACL is exceeded by an amount greater than the management uncertainty buffer. Approved selective trawl gears include the separator trawl, Ruhle trawl, mini-Ruhle trawl, rope trawl, and other gear authorized by the Council in a management action or approved for use consistent with the process defined in § 648.85(b)(6).

These area-based AMs, as well as the AMs implemented for ocean pout and the windowpane stocks by Framework 47, are triggered by an overage exceeding the amount of the

management uncertainty buffer between the total ACL and the ABC for a non-allocated stock (i.e., when the ABC is exceeded). This is because the area-based AMs were designed to account for only overages of approximately 5-20 percent of the ACL. The Council's Groundfish Plan Development Team (PDT) was not able to design an effective area-based AM that would account for an overage of only a few percent. Any AM that would account for such a small amount of catch, could be easily undermined by a shift in effort to another hotspot. On the other hand, triggering an area-based AM that covers overages of up to 20 percent, for an overage of only a few percent, would be punitive. Currently, the management uncertainty buffer for these stocks is 7 percent at the sub-ACL level for the commercial groundfish fishery and "other" fisheries, and 3 percent for the scallop fishery. Because management uncertainty is not deducted from the state waters and other fisheries sub-components, this results in an effective management uncertainty buffer at the overall ACL level of 3-7 percent for non-allocated stocks, depending upon the stock. The management uncertainty buffer can be changed each time groundfish specifications are set. Because these AM areas are designed to account for an ACL overage of up to 20 percent, if the total ACL is exceeded by 20 percent or more for one of these stocks, the AM would still be implemented, but the measure would be reviewed in a future management action. In addition, should a sub-ACL be allocated to other fisheries in a future action, and AMs developed for those fisheries, the AM for any fishery would be implemented only if the total ACL for the stock is exceeded, and the fishery also exceeds its sub-ACL.

Framework 50 is proposing to allocate SNE/MA winter flounder to sectors and allow landings. If this measure is approved in Framework 50, sector-specific inseason AMs would be implemented, coupled with a pound-for-pound payback of any overage from a sector's allocation

in the next fishing year. In this case, the area-based AM would apply only to common pool vessels if the common pool exceeds its sub-ACL for the stock.

Revised AM for SNE/MA Windowpane Flounder

Currently, the AM for SNE/MA windowpane flounder only applies to commercial groundfish vessels. However, the commercial groundfish fishery has typically accounted for less than 25 percent of the total SNE/MA windowpane flounder catch in recent years. A large portion of the total SNE/MA windowpane flounder catch is caught by trawl vessels in non-groundfish fisheries fishing with mesh size of 5 inches (12.7 cm) or greater. Thus, the current AM may not effectively restrict catches of this stock if the total ACL is exceeded, which increases the likelihood of consecutive overages in future fishing years.

As a result, this action proposes to modify the AM so that it would also apply to the other sub-component (see Item 2 in this preamble). If the total ACL for this stock is exceeded by an amount greater than the management uncertainty buffer, and the "other sub-component" sub-ACL is also exceeded, then the area-based AM, described above, would apply to all trawl vessels using a codend with a mesh size of 5 inches (12.7 cm) or larger. This measure would only be adopted if a SNE/MA windowpane flounder sub-ACL is allocated to the other sub-component of the fishery, as described above in this preamble. This revision would help ensure that, in the event of an overage, catches would be effectively restricted to prevent overfishing. In addition, this action would remove potential inequities that could occur if only the commercial groundfish fishery was subject to an AM for SNE/MA windowpane flounder, even though its catches represent a small portion of the total catch for this stock.

As implemented in Framework 47, the area-based AM for commercial groundfish vessels would be implemented only if the commercial groundfish fishery exceeds its sub-ACL and the

total ACL is also exceed by an amount greater than the management uncertainty buffer. Similarly, if a sub-ACL is allocated to the scallop fishery (see Item 2 in this preamble), the scallop fishery's AM would only be implemented if the total ACL is exceeded and the scallop fishery sub-ACL is also exceeded.

Revised Handgear Permit AMs

Amendment 16 implemented AMs for the common pool fishery that divide the annual common pool sub-ACL for allocated stocks into trimester TACs. When 90 percent of the trimester TAC for a stock is projected to be caught, the area where the stock is predominately caught will be closed, for the remainder of the trimester, to gear capable of catching that stock. Currently, hook gear is subject to the trimester TAC provisions for cod, haddock, white hake, and pollock. However, hook gear very rarely catches white hake, and makes up less than 1 percent of the total common pool catch of this stock each year. Therefore, this action proposes to exempt Handgear A and Handgear B permits from the white hake trimester TAC AM. This exemption would remain effective unless a future action modified this AM. Handgear A and B common pool vessels would still be subject to the trimester TAC for cod, haddock, and pollock.

Framework 48 also proposes to authorize the Regional Administrator to exempt Handgear A and Handgear B common pool vessels from the trimester TAC provisions for other stocks if catch by these vessels is less than 1 percent of the total common pool catch of that species or stock. This determination would be made prior to the start of the fishing year, and would be implemented through procedures consistent with the APA. The trimester TAC AMs were designed to apply only to gear types that caught the pertinent stock. Therefore, this measure would allow modifications to the trimester TAC AMs in the future, should new information become available that shows handgear vessels rarely catch a stock or species, or the

combined catch of these vessels is less than 1 percent of the total common pool catch. This would increase the effectiveness of the common pool AMs, and would prevent potential inequities that may occur by applying an AM to vessels not responsible for catching, or exceeding, a trimester TAC.

7. Commercial Fishery Minimum Fish Sizes

Framework 48 also proposes to reduce the minimum fish sizes for several groundfish stocks to reduce regulatory discards and increase revenue from catch. In the groundfish fishery, all catch, including landings and discards, are counted against ACLs. In the sector fishery, sector vessels are required to land all legal-sized fish of allocated stocks, but discards of sub-legal-sized fish are extrapolated from observed fishing trips and are also debited from a sector's ACEs. Similarly, regulatory discards on common pool trips are extrapolated from observed trips and counted against common pool trimester and annual catch limits. Commercial discards for most stocks are assumed to have 100-percent mortality, so 100 percent of discards for these stocks are deducted from quota allocations; thus, discards are lost revenue for groundfish vessels. Framework 48 proposes to reduce the minimum fish size for several groundfish stocks to reduce waste and allow the commercial industry to recoup some revenue from fish that would otherwise be discarded. This is intended partly as a measure to mitigate expected reductions in catch limits. The minimum size limits proposed in Table 3 are based on an analysis conducted by the Groundfish PDT of the size of discarded fish in trawl gear in recent years and the length at 50-percent maturity. The proposed changes would be expected to reduce many discards associated with the current minimum size restrictions, while allowing many fish to reach spawning age before being caught.

Table 3—Proposed Changes to Minimum Fish Sizes Limits for Groundfish Stocks

Species	Current Size (inches)	Proposed FW 48 Size (inches)
Cod	22 (55.9 cm)	19 (48.3 cm)
Haddock	18 (45.7 cm)	16 (40.6 cm)
Pollock	19 (48.3 cm)	No change
Witch flounder (gray sole)	14 (35.6 cm)	13 (33 cm)
Yellowtail flounder	13 (33.0 cm)	12 (30.5 cm)
American plaice (dab)	14 (35.6 cm)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)	No change
Winter flounder (blackback)	12 (30.5 cm)	No change
Redfish	9 (22.9 cm)	7 (17.8 cm)

Biological impacts that might result from reduced minimum fish sizes depend on whether selectivity in the fishery shifts to smaller fish. If small fish become a greater proportion of total catch, yield per recruit, and Maximum Sustainable Yield (MSY) could decline and rebuilding progress could slow. To discourage targeting of smaller fish, this measure only reduces minimum sizes, rather than eliminating them altogether, and would not change minimum mesh size requirements. If this measure is approved, it is not clear whether state agencies would follow suit. Commercial groundfish vessels would continue to be subject to the most restrictive measure of state and federal minimum fish size requirements.

8. Sector Monitoring Programs

Framework 48 proposes to revise the monitoring program requirements for groundfish sectors. Amendment 16 included requirements for sectors to design, implement, and pay for independent third-party monitoring programs to monitor sector catch at-sea and shoreside. Sectors were required to implement a dockside monitoring program to validate dealer-reported landings, with 50-percent coverage of sector trips in FY 2010, and 20-percent coverage each year thereafter. Dockside monitoring was also set to be implemented for common pool vessels in FY 2012. Amendment 16 also required sectors to establish an at-sea monitoring program beginning

in FY 2012 with a coverage level to be specified by NMFS, but less than 100 percent of sector trips.

To date, NMFS has voluntarily funded these programs for sectors. NMFS implemented its own at-sea monitoring program to monitor sectors and the common pool that has operated annually since FY 2010. In 2010, NMFS also reimbursed sectors for the costs of dockside monitoring. Shortly after the implementation of Amendment 16, the Council became concerned that the industry would not be able to support full responsibility for the costs of monitoring programs, beginning with dockside monitoring in 2011 and at-sea monitoring in 2012. Through Framework 45, the Council suspended the dockside monitoring requirements until FY 2013 and required dockside monitoring only to the extent that NMFS could fund it. In 2011, NMFS made the determination that dockside intercepts by enforcement personnel were sufficient to monitor sector landings and reprioritized financial support for dockside monitoring to alleviate general sector operating costs.

Delay Industry At-sea Monitoring Cost Responsibility

Currently, sectors are responsible for implementing industry-funded at-sea monitoring programs to monitor their fishing activities beginning May 1, 2013. With the substantial catch reductions proposed in Framework 50, the Council is concerned that the industry will not be able to support this cost burden in FY 2013. Framework 48 proposes to delay the industry's responsibility for at-sea monitoring costs to FY 2014 to mitigate the expected negative economic impacts of lower catch limits in FY 2013. Coverage levels would instead be set at the level that NMFS can fund. This measure is being proposed for only 1 year so that the Council may further modify this requirement in the future as more information becomes available on the appropriate

monitoring levels, costs of those programs, and implementation of electronic monitoring systems.

NMFS understands fishermen's concerns about their ability to endure this cost burden, in part or in full, particularly at catch levels proposed by Framework 50. NMFS is committed to assisting the industry through this difficult time to the extent that it is able and is working on a plan to cover as much of these costs as possible. NMFS cannot definitively commit to fully funding sector monitoring, because of the high degree of uncertainty around a fiscal year 2013 budget. NMFS projects that if effort levels go down next year, NMFS would be able to fund sector at-sea monitoring. If effort remains the same, NMFS would only be able to fund at-sea monitoring by using funds currently slated for research to develop electronic monitoring in the Northeast.

With respect to the proposed measure, however, NMFS has serious concerns that it does not meet the requirements of the FMP and the Magnuson-Stevens Act, as previously expressed in letters and at Council meetings. Relying on NMFS appropriations to determine an at-sea monitoring coverage rate does not ensure that coverage will be sufficient to monitor sector annual catch entitlements (ACEs) or to meet the purpose and goals for sector monitoring described in Amendment 16 and proposed by Framework 48. This same measure was proposed in Framework 45 and it was disapproved based on these same concerns. In a letter to the Council dated April 11, 2011, the Regional Administrator cited concerns that NMFS funding alone would not be sufficient to support coverage levels needed to monitor sector ACEs. NMFS did not have a 2012 budget at that time and sufficient NMFS appropriations could not be guaranteed. Without additional appropriations to support sector monitoring specifically, NMFS remains very concerned that relying solely on the Federal Government to provide sector at-sea

monitoring coverage will undermine not only sector catch monitoring but also other programs. Inadequate coverage would also potentially affect the Standard Bycatch Reporting Methodology (SBRM) coverage requirements and information used to assess Northeast fish stocks by spreading existing resources too thin. Thus, NMFS has very serious concerns about the approvability of this measure. For that reason, NMFS has analyzed the needed at-sea monitoring coverage level for FY 2013 assuming that this measure is not approved.

At-sea Monitoring Cost-Sharing

Framework 48 also proposes a mechanism for sharing of at-sea monitoring costs between sectors and NMFS. Framework 48 proposes that the industry would only ever be responsible for paying the direct costs of at-sea monitoring, specifically the daily salary of the at-sea monitor. All other programmatic costs would be the responsibility of NMFS, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management and security; data quality assurance and control; administrative costs; maintenance of monitoring equipment; at-sea monitor recruitment, benefits, insurance and taxes; logistical costs associated with deployment; and at-sea monitor travel and lodging. This measure would increase profitability for sectors and sector vessels by reducing the cost burden of at-sea monitoring.

This measure raises concerns about sharing payment of government obligations with private entities. Given this, the proposed at-sea monitoring cost sharing measure may not be sufficiently developed to approve at this time. NMFS believes that this approach to cost-sharing, however, could be viable if restructured and could be pursued through a future action. NMFS is currently working with the New England and Mid-Atlantic Councils' joint Herring-Mackerel PDT/Fishery Management Action Team (FMAT) to pursue cost-sharing options such as this one

for those fisheries for FY 2014. The Council may want to consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.

Eliminate Dockside Monitoring

Framework 48 also proposes to eliminate the dockside monitoring program for both the sectors and common pool. Like at-sea monitoring, the Council is concerned about the industry's ability to support this cost burden in FY 2013 and future years. Dealer-reported fish weights are used as the principle source to monitor commercial landings. Thus, dockside monitor reports may be redundant and not needed for landings information. Dealer reporting combined with dockside intercepts by enforcement personnel are potentially sufficient to monitor landings of sector catch at this time. Eliminating the program would reduce costs and increase profitability of the commercial industry in future years.

Framework 48 proposes eliminating the dockside monitoring program, but it is not clear if this includes removing the current dockside monitoring hail requirements. NMFS believes it is important to maintain the trip-start and trip-end hail requirements for sector vessels at this time to facilitate the monitoring and enforcement of sector operations and landings. Amendment 16 required vessels to issue hails to their dockside monitoring providers at the start and end of a trip in order to facilitate the deployment of dockside monitors. Since then, however, hails have become a useful tool for both NMFS and sector managers to monitor sector vessels' activities, including the use of certain sector exemptions, and to facilitate dockside intercepts by enforcement personnel. Framework 45 maintained the trip-end hail requirement strictly for enforcement purposes, while suspending all other dockside monitoring requirements. It was not clear from Framework 45 whether trip-start hails may also be maintained when dockside

monitoring requirements are eliminated. Trip-start hails are currently only required when using certain sector exemptions, as instructed by a vessel's sector operations plan or sector Letter of Authorization. If the dockside monitoring program is eliminated, NMFS intends to maintain this use of trip-start hails on an as-needed basis. Framework 45 also stipulated that NMFS is to reduce unnecessary duplication of hail reports with any other reporting requirements, to the extent possible. NMFS is clarifying the regulatory text of this proposed rule at § 648.10(k)(1), consistent with this provision, so that hails may be modified in the future to be streamlined with other reporting requirements that collect similar fishery data, such as Vessel Trip Reports (VTRs) and Vessel Monitoring System (VMS) catch reports.

Sector Monitoring Goals and Performance Standard

Framework 48 also proposes to clarify the goals and objectives, and performance standard, established for sector monitoring programs by Amendment 16. Amendment 16 did not lay out explicit goals for sector monitoring, but described several general purposes for the programs, including to provide accurate estimates of sector catch and to verify area and gear fished, to ensure sector allocations are not exceeded. Framework 48 proposes to clarify and elaborate the goals and objectives for existing and future groundfish monitoring programs, to help the Council and NMFS to implement monitoring requirements consistent with the goals of the FMP and to evaluate the program in the future. Framework 48 proposes that groundfish monitoring programs improve documentation of catch, determining total catch and effort of regulated species, and achieve a coverage level sufficient to minimize effects of potential monitoring bias to the extent possible, while enhancing fleet viability. Monitoring programs should also reduce the cost of monitoring, streamlining data management and eliminating redundancy, exploring options for cost-sharing, while recognizing the opportunity costs of

insufficient monitoring. Other goals and objectives include incentivizing reducing discards, providing additional data streams for stock assessments, reducing management and/or biological uncertainty, and enhancing the safety of the monitoring program. It would also be an explicit goal of such programs to periodically evaluate them for effectiveness. A detailed list of all the objectives for groundfish monitoring programs is available in Section 4.2.2.2 of Framework 48.

Amendment 16 specified a performance standard that coverage levels must be sufficient to at least meet the coefficient of variation (CV) specified in SBRM (a CV of 30 percent). Since the implementation of the much expanded sector program in FY 2010, there have been questions raised about what level the CV standard is to be applied to – discard estimates at the stock level for all sectors, or for each combination of sector and stock. The former would result in lower coverage rates than the latter. Framework 48 proposes to clarify that the CV standard is intended to apply to discard estimates at the overall stock level for all sectors combined. The Council and NMFS believe this level is sufficient as a minimum standard for monitoring ACLs, consistent with the goals of Amendment 16 and the FMP. NMFS would use this standard to help determine the minimum coverage rates for sector at-sea monitoring programs in future fishing years. Note that, although the Framework 48 document discusses the clarified standard with respect to "allocated stocks," the proposed regulatory text would apply the CV standard to all groundfish stocks, allocated and non-allocated. This error was identified at the December 20th Council meeting, when the Council selected its preferred alternative. It was not clear at that time why the description of the CV standard was limited to allocated stocks, and the Council and NMFS have since been unable to identify a Council motion or other reason that would suggest the Council intended the CV standard not to apply to non-allocated stocks. NMFS and the Council have

concluded that this was a simple oversight in the document and, thus, the Council has deemed the corrected regulatory text as consistent with its intent.

Because Amendment 16 did not provide clear goals and objectives and a clear performance standard for sector monitoring programs, there is a lack of specific direction and specification about the appropriate level needed to "accurately monitor sector operations." As described above, in addition to specifying the level to which the CV standard should be applied, Framework 48 proposes to clarify and specify what other factors should be taken into account in determining the appropriate level of coverage for groundfish monitoring programs. NMFS interprets these provisions as guidance based on a practicability standard for determining the level of at-sea monitoring coverage that is appropriate for monitoring sector operations to help ensure that overall catch by sector vessels does not exceed ACEs and ACLs. NMFS is proposing to revise the regulatory text with respect to sector monitoring requirements to reflect the clarified goals and performance standard for sector monitoring programs, and to take into account the National Standards and other requirements of the Magnuson-Stevens Act. NMFS is proposing to revise the regulatory text at § 648.87(b)(1)(v)(B) to read that coverage levels must at least meet the CV standard at the overall stock level and be sufficient to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels.

In addition to the revised goals and objectives in Framework 48, NMFS will specifically take into account National Standards 2, 7, and 8 in making its determination of the appropriate level of at-sea monitoring coverage for sectors on an annual basis. These National Standards specifically speak to using the best scientific information available, minimizing costs and avoiding unnecessary duplication where practicable, taking into account impacts on fishing communities, and minimizing adverse economic impacts to the extent practicable. NMFS

explains how it has made its determination of the at-sea monitoring coverage for FY 2013 in the proposed rule to approve sector operations plans (78 FR 16220; March 14, 2013) and in a summary document posted at http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf

Reduce At-sea Monitoring for Monkfish Trips

Lastly, Framework 48 proposes to implement a lower at-sea coverage rate for sector vessels fishing on a monkfish day-at-sea (DAS) in the SNE Broad Stock Area with extra-large mesh gillnets. Currently, sector monitoring requirements are defined to apply to any trip where groundfish catch counts against a sector's ACE. Because the Skate and Monkfish FMPs require the use of a DAS, including a groundfish DAS, to target these species, sector vessels fishing for monkfish and skates are charged ACE for any landings or discards of groundfish and are subject to sector at-sea monitoring coverage on these trips. When truly targeting monkfish or skates, however, sector vessels often use gear that has little or no bycatch of groundfish. With limited resources for at-sea monitoring, covering trips targeting skate or monkfish is arguably a waste of resources and does not contribute to improving the overall precision and accuracy of discard estimates. Framework 48 proposes to exempt a subset of sector trips that are declared into the SNE Broad Stock Area on a monkfish DAS and using extra-large mesh gillnets from the standard at-sea monitoring coverage rate. NMFS would instead specify some lower coverage rate for these trips on an annual basis when determining coverage rates for all other sector trips. This measure would reduce at-sea monitoring costs to sectors, particularly to gillnet vessels that fall in this category. Lower coverage rates for this subset of trips could result in less precise discard estimates. The benefit of reducing at-sea monitoring coverage for these trips is that

resources would be diverted to monitor trips that catch more groundfish, which could improve discard estimates for directed groundfish trips, and all other sector trips would still be required to meet the CV standard at a minimum.

At a minimum, these trips would get Northeast Fishery Observer Program (NEFOP) coverage. At this time, NMFS has determined that sampling by NEFOP observers should be sufficient to monitor this subset of sector trips in FY 2013. NMFS will not be requiring any additional at-sea monitoring coverage on this sub-set of sector trips. A review of the data analyzed by the Groundfish PDT and in Framework 48 showed little to no catch of groundfish on sector trips under a monkfish DAS in the SNE Broad Stock Area and using extra-large mesh gillnets. A total of 1,209 lb (548 kg) of all groundfish species were landed, and 16,670 lb (7,561 kg) discarded, across all sector trips using extra-large mesh gillnets in SNE in FY 2010 and 2011 combined. NMFS believes that the same level of coverage provided to vessels on monkfish trips not burning a groundfish DAS, which use the same gear in the same areas at the same time with little catch of groundfish, should be sufficient to monitor this exemption. It is possible that changes in stock size or fishing behavior on these trips could change the amount of groundfish bycatch in future fishing year. However, given the type of gear used on these trips, a large change is unlikely. NMFS would use the data collected from this first year of coverage in determining the appropriate coverage level for this subset of trips for future fishing years. Because this subset of trips would have a different coverage level than other sector trips in the SNE Broad Stock Area, NMFS is intending to create separate discard strata for each stock caught on trips meeting the exemption criteria in order to ensure the different coverage levels do not bias discard estimates.

To facilitate deploying appropriate coverage levels, a sector vessel would have to notify NEFOP as to whether it intends to fish on a monkfish DAS. Sector vessels already declare gear type and Broad Stock Area to be fished in the Pre-Trip Notification System (PTNS) and a modification to this system may be made to allow sector vessels to declare their DAS type. At this time, NMFS is still determining how the notification for this exemption would be made. If this measure is approved, NMFS will specify the method of notification in the final rule and in a Fishery Bulletin sent to all sector vessels. NMFS will make every effort to ensure it does not create duplicative reporting burdens for individual vessels. This measure would also require that NMFS develop a method for identifying these trips in the fishery dependent datasets in order to ensure they are appropriately stratified in stock assessments. The NMFS Northeast Regional Office is working with the Northeast Fisheries Science Center to identify the appropriate method to transmit this information to assessment scientists. To assist NMFS in identifying these trips for appropriate stratification in discard estimates, NMFS is proposing to require sector vessels intending to use this exemption to submit a trip-start hail declaring their intent to NMFS before departing port. If this measure is approved, detailed instructions for submitting hails would be specified in a Fishery Bulletin distributed to sector vessels.

To minimize the possibility that this measure would be used to avoid at-sea monitoring coverage, only vessels meeting the criteria and intending to fish exclusively in the SNE Broad Stock Area would be eligible for lower coverage. Vessels declaring multi-Broad Stock Area trips would not be eligible for the lower selection probability. In addition, a vessel is already prohibited from changing its fishing plan for a trip once a waiver from coverage has been issued. NMFS is proposing to revise the pre-trip notification regulations at § 648.11(k)(1) to make clear

that a vessel's fishing plan includes the area to be fished, whether a monkfish DAS will be used, and gear type to be used.

9. GB Yellowtail Flounder Management Measures

Framework 48 proposes to change the stratification of discard estimates for sectors for GB yellowtail flounder. Both landings and discards are counted against sector ACEs, and once a sector reaches an ACE, it must cease fishing in the stock area for that particular stock until it can acquire more ACE through a transfer. Discards by sector vessels are estimated using an extrapolation from observed discards on observed trips. A discard rate is calculated for each "stratum," or each combination of gear type and stock area for each sector. During the development of Framework 48, substantial quota reductions were being contemplated for GB yellowtail flounder and the Council became concerned that a low quota could be constraining on sectors. Even if some sector vessels were able to fish in deeper water, where little yellowtail flounder is caught, to reduce their GB yellowtail discards, GB yellowtail discards by vessels in the same sector fishing on other parts of GB would impact the discard rate for all vessels in the sector. Framework 48 proposes to split the GB yellowtail flounder discard strata between statistical area 522 and statistical areas 525/561/562, so that sector discard rates more accurately reflect fishing effort in these areas. Sector vessels fishing in deeper water in statistical area 522 to avoid GB yellowtail flounder would get a GB yellowtail flounder discard rate generated from observed discards of GB yellowtail flounder on other vessels in their sector fishing in area 522. This could extend the fishing season for sector vessels fishing this area, and thereby increase profits. On the other hand, change to stratification could increase GB yellowtail flounder discard rates for other parts of GB (statistical areas 525/561/562), reducing revenues for vessels fishing in these areas. There is a potential for this measure to create an incentive for sector vessels

fishing inside and outside area 522 to misreport GB yellowtail catch from outside area 522 as from inside area 522, potentially inflating area 522 GB yellowtail discard estimates and, thereby, negating any benefit of this measure.

This measure proposes to make this change for all groundfish gears, although this is primarily an issue for trawl vessels. Framework 48 would allow the Regional Administrator to determine whether this stratification is unnecessary for other gears. For FY 2013, NMFS has determined that this finer stratification would not be practical or analytically sound for other gear types in sectors and is proposing to continue to calculate discard rates for non-trawl gear types for the entire GB yellowtail flounder stock area. NMFS reviewed VTR and dealer data from sector trips in the GB yellowtail flounder stock area using gillnets, longlines, and handgear from FY 2010 to the present. NMFS found that all trips utilizing gillnet gears occurred in statistical area 522 and, therefore, a separate stratum for gillnets would not change the estimated discard rates for area 522. In FY 2009, some gillnet trips occurred in other parts of GB, but re-estimating the discard rate for the areas 525/561/562 using this data would be based on past performance of vessels, which is not representative of the current sector fishing behavior. There have been a small number of trips inside and outside of area 522 using handgear and longline gear and the amounts of GB yellowtail flounder discarded from those trips have been minimal. From FY 2010 to date, there have been between 3 and 92 trips with an estimated 0.2 to 34 lb (0.09-15.4 kg) GB yellowtail discards total across all trips. NMFS believes further stratifying these small trip counts and discard amounts would result in less precise estimates of discards than the current stratification scheme for non-trawl gears. Common pool discard rates for GB yellowtail flounder would also continue to be calculated for the entire GB yellowtail flounder stock area because the small number of these trips would likely not be sufficient to estimate an

in-season discard rate. This change is only being proposed for inseason quota monitoring of sector allocations and would not affect discard estimates used for stock assessments.

10. List of Allowable Sector Exemption Requests

Amendment 16 allowed a sector to make requests to the Regional Administrator for exemption from some NE multispecies regulations as part of its annual sector operations plan. Exemption requests are considered in the review and approval of sector operations plans annually through a proposed and final rule. The proposed rule proposing approval of FY 2013 sector operations plans published in the Federal Register on March 14, 2013 (78 FR 16220). The rationale for allowing this, and typically for the approval of exemption requests by the Regional Administrator, is that sectors are subject to a hard TAC that limits overall fishing mortality resulting from sector operations, making certain other mortality or effort controls redundant. Removing redundant effort controls would provide operational flexibility and efficiency for sector vessels and possibly increase profitability. Amendment 16, and later Framework 47, identified a list of FMP measures that sectors could not request exemption from, including: Year-round closure areas; permitting restrictions (e.g., vessel upgrade limits, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs for non-allocated stocks. Sectors were prohibited from requesting these exemptions because they serve multiple purposes and not necessarily act exclusively as mortality controls. Amendment 16 allowed for this list to be modified through framework action.

Framework 48 proposes a change to the FMP that would allow sectors to submit limited requests for exemption from portions of year-round closure areas. Specifically, sectors could request exemption from the year-round groundfish mortality closures, except for where they overlap current or proposed habitat closed areas. These areas are defined as the existing habitat

closed areas specified at § 648.81(h) and the Fippennies Ledge area under consideration as a potential habitat management area in the Omnibus EFH Amendment currently under development by the Council. This limitation would maintain the purpose of existing habitat areas to minimize the adverse effects of fishing on EFH, and preserve the consideration of additional habitat areas, until such time as the Council chooses to modify them through implementation of the Omnibus EFH Amendment. Sectors also would not be exempt from the Western GOM Closed Area, where it overlaps with a GOM Rolling Closure Area in effect. At this time, the GOM Rolling Closure Area III overlaps the northeast corner of the Western GOM Closed Area, so sectors would not be allowed to request access to this portion of the Western GOM Closed Area during May. The Council further limited sector exemption requests to Closed Area I and II to February 16th through April 30th to protect spawning groundfish. This measure is proposed to help mitigate the expected reductions in FY 2013 catch limits by allowing sectors to potentially increase access to healthy groundfish stocks such as GB haddock, pollock, and redfish that may be more abundant in these areas.

Council members, members of the public, the fishing industry, and environmental groups expressed a number of concerns during the development of Framework 48 with allowing additional access to groundfish closed areas. Some comments concerned the potential for this measure and any proposed sector exemptions to undermine measures under consideration in the Omnibus EFH Amendment. Concerns were also raised about impacts to protected species, spawning groundfish, and to other commercial species, like lobsters, from opening these areas to additional fishing effort. Some commenters also raised concerns that allowing groundfish vessels into these areas, mainly Closed Area II could increase gear conflicts between mobile and lobster gear. To address some of these issues, the Council imposed the limitations described

above, excluding existing and potential habitat closed areas to preserve the process under way to evaluate these areas in the Omnibus EFH Amendment. The Council also took steps to continue protections for spawning groundfish by including seasonal restrictions on any sector exemptions.

Framework 48 does not actually approve the exemptions needed to fish in these closed areas. The impacts of any actual fishing effort, including the concerns raised in public comments during the development of Framework 48, would be evaluated through the annual review and approval of sector operations plans and exemption requests for each fishing year. The Council has already asked that the specific issues raised during public comments be evaluated by NMFS in the consideration of any specific sector exemption requests. The sector exemption review and approval process also provides better opportunity to address specific concerns with the potential impact of actual sector proposals. The Regional Administrator may include stipulations and constraints on specific exemptions to facilitate the monitoring and enforcement of sector operations or as mitigation measures to address specific potential impacts.

The Council's Closed Area Technical Team (CATT), which has been charged with working on permanent changes to the groundfish mortality closures to be included in the Omnibus EFH Amendment, conducted a comprehensive literature and data review of groundfish closed areas, which was used as the basis for the analysis of this administrative change in Framework 48. Due to data limitations and the fact that sector fishing effort is driven more by Catch Per Unit of Effort (CPUE) and market conditions than effort controls, the CATT was unable to quantitatively model potential changes in fishing effort. The CATT conducted a qualitative assessment of probable effects on species that are likely to be affected by the proposed action, using swept-area estimates of biomass and other data collected from literature. The analysis concluded that there could be neutral to low negative impacts to some groundfish

stocks that have derived benefits from the closed areas (i.e., haddock, winter flounder, cod) or where stock biomass was low and a substantial fraction of the stock would become vulnerable to fishing (i.e., cod and yellowtail flounder). Impacts to habitat and protected species are difficult to quantify, but would be expected to be neutral. Potentially allowing sector vessels to access these areas could have positive economic impacts to sector vessels and their communities, particularly if haddock catch can increase and provide additional revenue. However, increasing fishing effort in the closed areas could negatively impact future productivity. The CATT concluded that the magnitude of any change in fishing effort or catch that might result from potential sector exemption requests is difficult to predict and, therefore, the benefits and costs are highly uncertain.

In anticipation of this change being approved for FY 2013, sectors submitted requests for exemptions from portions of the groundfish mortality closures in their FY 2013 operations plans this fall. Due to the need for additional time to analyze these new exemptions adequately, NMFS would be considering sector requests for exemption from closed areas in a separate rulemaking from the general approval of sector operations plans for FY 2013, if the proposed change in Framework 48 is approved. The closed area exemption requests would be considered as amendments to the sector operations plans through a proposed and final rule that would be available for public comment with an accompanying National Environmental Policy Act (NEPA) analysis. Any closed area exemption requests, if approved, would not be in place until after the start of the 2013 fishing year.

11. Requirement to Stow Trawl Gear While Transiting

The regulations currently specify that fishing gear must be stowed in a specific way, as described at § 648.23(b), when transiting closed areas to facilitate the enforcement of closed

areas at sea. This measure proposes to remove this requirement for only trawl vessels on a groundfish trip. The Council believes that, with the use of VMS on all limited access multispecies vessels, the gear stowage requirements are no longer necessary for enforcement at sea. Groundfish vessels using non-trawl gear and vessels in other fisheries would still be required to stow their gear in accordance with § 648.23(b) when transiting closed areas. This requirement would also still apply for stowing gear smaller than the minimum mesh size when transiting the Regulated Mesh Areas.

The Groundfish Committee considered this measure after the Council's VMS/Enforcement Committee forwarded a recommendation to make modifications to the gear stowage requirements. What the Groundfish Committee put forward in Framework 48, however, was not the option that was proposed by the Council's VMS/Enforcement Committee and is in fact contrary to the VMS/Enforcement Committee's recommendations. The VMS/Enforcement Committee discussed removing gear stowage requirements entirely, among several other alternatives, at its October 20 and November 29, 2011 meetings and, with input from the U.S. Coast Guard and NMFS enforcement personnel and General Counsel for Enforcement, concluded that gear stowage requirements are still necessary to enforce closed areas at sea. Thus, the VMS/Enforcement Committee recommended only modifications to the gear stowage regulations to address safety concerns and improve their effectiveness. Furthermore, the Council recommended the VMS/Enforcement Committee's recommended modifications, and not the measure proposed here in Framework 48, to the Mid-Atlantic Council for consideration in Mid-Atlantic FMPs. If the Mid-Atlantic Council were to act on the New England Council's letter, it could also result in inconsistent gear stowage requirements across FMPs, regardless of whether

the proposed measure in Framework 48 is approved or not, due to the overlapping jurisdiction of the two Councils.

NMFS has serious concerns about being able to enforce closed areas at sea without consistent and effective gear stowage provisions. Removing these requirements for only groundfish trawlers through Framework 48 would create inconsistent gear stowage requirements across FMPs, complicating enforcement and compliance. For example, it is not clear what requirements a vessel is supposed to follow when it is fishing under the regulations of multiple FMPs on the same trip, such as a joint monkfish/groundfish or scallop/groundfish DAS trip. The Coast Guard and NMFS enforcement personnel commented to the VMS/Enforcement Committee that VMS is not sufficient to enforce the prohibition on fishing in closed areas without the gear stowage provisions. Abuse of this exemption by groundfish vessels or vessels participating in other fisheries could undermine the conservation objectives of closed areas, calling into question whether this measure is consistent with the FMP and the National Standards. It is also not clear why the Council exempted only groundfish vessels from the trawl gear stowage requirements and did not extend this exemption to vessels participating in its other FMPs. Applying this change to only groundfish vessels without a clear rationale for doing so raises equity concerns. NMFS specifically seeks comment on whether it should approve the proposed removal of the gear stowage requirement for trawl vessels in closed areas.

12. Correction to Eastern U.S./Canada Quota Monitoring

Through this rule, NMFS is proposing a correction to the regulations governing fishing activity in the Eastern U.S./Canada Area. This change is only a regulatory correction and is unrelated to the measures proposed by Framework 48. The regulations at § 648.85(a)(3)(ii)(A) currently state that all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes

both inside and outside of the Eastern U.S./CA Area shall apply to the U.S./CA TACs (in the case of cod and haddock, the Eastern U.S./CA TACs). This method for quota monitoring was implemented through Framework 42 as a conservative way to estimate catch to ensure U.S./CA TACs would not be exceeded, while allowing vessels the flexibility to fish both inside and outside the Eastern U.S./CA Area on the same trip. Since the implementation of Framework 42, NMFS refined its quota monitoring methods to apportion catch inseason consistent with Framework 42 in order to determine when the Eastern U.S./CA Area should be closed, but then to re-apportion those catches of cod, haddock, and yellowtail flounder at the end of the fishing year using VTRs and VMS catch reports, when determining whether a U.S./CA TAC had been exceeded. With the implementation of Amendment 16, each sector and the common pool received allocations of Eastern U.S./CA stocks. Although Amendment 16 did not specifically address how allocations of Eastern U.S./Canada stocks should be monitored in this new quota regime, NMFS' interpretation of Amendment 16 was that it intended statistical areas reported on VMS catch reports and VTRs to be used to apportion catch to specific stock allocations. Thus, NMFS began monitoring sector and common pool catch of GB cod, haddock, and yellowtail in this way beginning in FY 2010. Despite being clear about NMFS' interpretation in the Amendment 16 preamble, the original provision implemented by Framework 42 was inadvertently left in the regulations at § 648.85 by the Amendment 16 final rule. NMFS is proposing to revise the regulations to remove the text that states all cod, haddock, and yellowtail flounder on multi-area trips must be applied to Eastern U.S./CA allocations. NMFS has made the Council aware of its intent to correct the regulations (at a Groundfish Committee meeting and through this proposed rule), but the full Council has not had an opportunity to comment as to whether it believes this change is consistent with Amendment 16. Therefore, NMFS is

specifically requesting comment from the public on this proposed correction to the regulations in this proposed rule.

13. Additional Corrections

In addition to the changes specified above, the following changes are being proposed to the regulations to correct incorrect references and to further clarify the intent of the Council.

In § 648.4(a)(1)(ii), this rule would correct a misspelling of the word "multispecies."

In § 648.80(a)(3)(vii), this rule would clarify that rockhopper and roller gear requirements of the GOM/GB Inshore Restricted Roller Gear Area apply only to groundfish vessels on a NE multispecies DAS or sector trip. This correction is being made at the request of the Council, in response to a letter sent April 30, 2012.

In § 648.82(k)(2), language prohibiting sector vessels from leasing DAS would be removed. This language is left over from Amendment 13 and should have been removed in the final rule implementing Amendment 16, which allowed sectors vessels to lease DAS among themselves.

In § 648.82(n)(2)(i), the rule would clarify that common pool trimester TAC area closures are intended to apply to common pool vessels using gear capable of catching groundfish only when on a NE multispecies DAS, and not when participating in exempted fisheries.

In § 648.82(n)(2)(ii)(A), this rule would correct the coordinates for the GB Cod Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 521, 522, 525, and 561. However, the coordinates used to define the GB Cod Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and included statistical area 562; this would be rectified by this action.

In § 648.82(n)(2)(ii)(B), Points 4 and 5 incorrectly list the N. Lat. as 43°20', and this action would correct them to read 43°10'.

In § 648.82(n)(2)(ii)(H) and (I), the original coordinate AP8 was unnecessary and would be removed by this action.

In § 648.82(n)(2)(ii)(J), this rule would correct the coordinates for the GB Winter Flounder Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 522, 525, 561, and 562. However, the coordinates used to define the GB Winter Flounder Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and did not include statistical areas 525 and 561; this would be rectified by this action.

In § 648.84(e), this rule would add a regulatory definition for the rope separator trawl. The definition for the rope separator was inadvertently removed from the regulations by the Framework 47 final rule. This rule would add the regulatory definition back into the regulations.

In § 648.85(a)(3)(ii)(A), the requirement to apply all catch of cod and haddock from a trip both inside and outside the Eastern US/CA area against the Eastern US/CA TACs would be removed. This method for quota monitoring was implemented through Framework 42 to ensure Eastern US/CA TACs would not be exceeded. With the implementation of Amendment 16, sectors received individual allocations of Eastern US/CA stocks and catch was to be apportioned to specific stocks using statistical areas reported on VTRs. This measure was inadvertently left in the regulations by the Amendment 16 final rule and does not reflect the intent of Amendment 16 or how NMFS is currently monitoring Eastern US/CA TACs.

In 648.85(a)(3)(iv)(E), the regulations allow for the Regional Administrator to close the Eastern U.S./Canada Area to all vessels subject to a particular TAC allocation if that particular TAC allocation is projected to be caught. This proposed rule would clarify that this is only to

apply to allocations to sectors and common pool vessels, and not the scallop fishery or other ACL components. Amendment 16 and Framework 48 clarified that inseason and reactive accountability measures for sub-ACLs for non-groundfish components of ACLs are to be developed and administered by those respective FMPs.

In § 648.85(b)(7)(iv)(H) and (b)(8)(v)(F), an explicit reference to possession limits for other groundfish stocks, including stocks prohibited from being landed, in § 648.86 would be added in the description of landings limits for the Closed Area I Hook Gear Haddock SAP and Eastern U.S./Canada Haddock SAP.

In § 648.85(b)(8)(v)(C), the timing of the pre-trip notification to the observer program for a US/CA trip would be revised from 72 hr to 48 hr. Prior to Amendment 16, vessels taking trips into the U.S./Canada were required to notify the observer program of their intent to take a trip 72 hr prior to departure. With the implementation of Amendment 16, NMFS established a standardized call-in requirement to the observer program that reduced this lead time to 48 hr.

In § 648.85(d), a period that was incorrectly inserted after "NE" would be removed.

In § 648.86(a)(3)(ii), periods that were incorrectly inserted after "NE" would be removed.

In § 648.86(a)(3)(ii)(A)(3), the table title for the GB Herring Haddock AM Area was incorrectly published as the GOM area. This rule would correct the table title.

In § 648.87(b)(1)(ii), sector stock area coordinates that were to be implemented by Framework 44 but were inadvertently left out of the regulations would added through this rule as paragraphs (A) through (F).

In § 648.90(a)(5)(iii), a period that was incorrectly inserted after "NE" would be removed.

In § 648.201(a)(2), the prohibition on landing of haddock is clarified to apply only to the haddock stock area for which the AM has been triggered. An explicit reference was added to the haddock possession restrictions in the NE multispecies regulations at § 648.86(a)(3)(ii)(A).

Classification

Except for those measures identified as being problematic, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the NE Multispecies FMP, Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or ‘‘takings’’ implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in FW 48 and its accompanying EA/RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

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

The Small Business Administration (SBA) defines a small business as one that is: independently owned and operated; not dominant in its field of operation; has annual receipts not

in excess of $4.0 million in the case of commercial harvesting entities, or $7.0 million in the case of for-hire fishing entities; or if it has fewer than 500 employees in the case of fish processors, or 100 employees in the case of fish dealers. This framework action impacts mainly commercial harvesting entities engaged in the limited access groundfish, as well as both the limited access general category and limited access scallop fisheries. Ownership data are available for the four primary sub-fisheries potentially impacted by the proposed action from 2010 onward. These are the sector and common pool segments in the groundfish fishery and the limited access general category and limited access scallop fisheries. However, current data do not support a common ownership entity data field across years. For this reason, only 1 year's gross receipts are reported, and calendar year 2011 serves as the baseline year for this analysis. Calendar year 2012 data are not yet available in a fully audited form.

In 2011 there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small and 58 are large entities as per SBA guidelines. These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries, and are not dependent on any one fishery. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. A definition of dependence as deriving greater than 50 percent of gross sales from sales of either regulated groundfish or from scallops was used to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, 135 entities are groundfish-dependent, with 131 small and 4 large. Forty-seven entities are scallop-dependent, with 39 small and 8 large.

Measures Proposed to Mitigate Adverse Economic Impacts of the Proposed Action and Economic Impacts of Alternatives to the Proposed Action

The measures proposed by Framework 48 include revision of status determination criteria, modification of management measures for GB yellowtail flounder, modification of management measures for at-sea monitoring, allowance of exemption requests from sectors to year-round closures, changes to minimum size restrictions for allocated fish, and modifications to AMs. Assuming all impacts to vessels are also applicable to ownership entities, all of the alternatives have the potential to impact a large number of small entities, and while some of the options may significantly alter profitability, none of them would have a disproportionate impact on small entities.

The alternative to adopt new status determination criteria would impact the catch limits set for each species. If the revised status determination criteria result in much lower catch limits than under the no action alternative, then this alternative would likely significantly reduce fishing revenues. In order to be consistent with the Magnuson-Stevens Act, however, it is necessary to incorporate the best available scientific information. The no action alternative would be inconsistent with the Magnuson-Stevens Act because it would continue to use outdated stock assessment data; therefore, it is not the preferred alternative.

Establishing sub-ACLs for SNE/MA windowpane flounder and for GB yellowtail flounder would impact both the groundfish and scallop fisheries by shifting accountability for overages or changing the method of sub-ACL calculation. SNE/MA windowpane sub-ACLs for the scallop and other sub-components fisheries would reduce the likelihood of an overage and overfishing, leading to lower operating costs and higher future revenues. The specific economic impacts to each respective fishery are dependent on the allocation received and details of the

associated AMs, which have not been determined for the scallop fishery. If sub-ACLs are set below average yearly landings for a given fishery, and if AMs are severely restrictive, the impacted vessels could experience a substantial reduction in their profitability.

The proposed modifications to the scallop fishery GB yellowtail flounder sub-ACL would use a fixed percentage to determine the scallop fishery allocation of the GB yellowtail – 40 percent in FY 2013 and 16 percent in each subsequent year. The economic impacts to fishing businesses would depend on the overall GB yellowtail flounder ABC and the probability of an overage, both of which are currently unquantifiable. The 16-percent fixed rate may be prohibitive to maximizing the value from scallop landings. In the worst-case scenario, if an overage occurred that closed a valuable access area to the scallop fishery, the scallop industry could suffer a $16.9 million dollar loss in economic benefits. An alternative to the proposed action would use a set 90 percent of estimated scallop catch as the determinant of the scallop sub-ACL. Since the allocation method of the alternative does not adjust for changes in the ABC, it could lead to a very low groundfish fishery sub-ACL for GB yellowtail flounder.

The proposed measure to establish a small-mesh fishery sub-ACL for GB yellowtail flounder would use a fixed percentage, based on previous catch history, to set the allocation. This measure is expected to have similar impacts and unknowns as the other sub-ACLs, but with respect to the small-mesh groundfish vessels.

Modifying the groundfish sector monitoring requirements would impact all sector vessels. The no action alternative would have a significant impact on sector vessels because they would be responsible for the full costs of operating at-sea and dockside monitoring programs in FY 2013, absent any additional funding assistance from NMFS. As discussed in Section 7.4.3.2 of the Framework 48 EA, had sector vessels been responsible for full monitoring costs in FY

2011, they would have seen aggregate vessel owners' shares of net revenue decrease by a range of 2 to 12 percent, and average net revenue per vessel decrease by a range of 1 to 12 percent. The highest percent reductions in net revenue were expected to occur in the 30 to 50 ft (9.1-15.2 m) vessel category. Since profitability of individual vessels is unknown, the effects of this option on participation levels could not be estimated, but it is likely that vessels operating close to the margin would be forced to exit the industry or lease their quota. The proposed measures are designed to minimize the economic impact of monitoring requirements to sector vessels. The alternative to delay industry at-sea monitoring requirements for 1 year would provide short-term relief to sector vessels until FY 2014. The measure to reduce at-sea monitoring coverage for a subset of trips that catch little groundfish would be expected to lower the costs of those trips, and thus increase net revenues. The proposed cost-sharing provision is intended to reduce the overall cost of at-sea monitoring paid for by the industry. In FY 2010, the direct at-sea costs accounted for approximately 75 percent of the total per day costs for at-sea monitoring. Finally, removing dockside monitoring entirely in FY 2013 is expected to have a substantial positive economic impact on sector vessels by lowering operating costs and thus increasing profitability. The magnitude of this impact would vary with coverage rates and labor costs.

Modifying the minimum size limits for commercially allocated groundfish species would be expected to significantly impact sector vessels. The preferred alternative will lower the minimum size restrictions allowing a portion of previously wasted regulated discards to become landings. This alternative would be expected to a positive economic impact on net trip revenues, as more fish will be landed for the same amount of expended quota as under the no action alternative. The proposed action is preferred because it allows for increased revenues from slightly smaller fish, while minimizing the likelihood that vessels will target smaller fish when

compared to the full retention option. Under either the reduced minimum sizes or full-retention alternative, there could potentially be unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue. Maintaining minimum mesh sizes may help to mitigate some of this effect. Modifying sector discard strata for GB yellowtail flounder in Federal statistical area 522 has potential positive impacts on revenue for large trawl vessels that predominantly fish this area. Conversely, vessels that fish in the remaining areas of GB may experience reduced profitability because of higher discard rates.

The proposed measure that would modify the timing of AMs for stocks not allocated to sectors would help to prevent overfishing, which could create long-term positive impacts. Under this option, AMs would not be implemented mid-season, which would be beneficial to business planning. There is, however, the potential for short-term decreases in revenue based on faster implementation of AMs. The proposed action would also create area–based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. In the event these AMs are triggered, trawl vessels would be forced to use selective gears within designated closure areas and fixed-gear vessels would be forced to cease fishing entirely inside designated closure areas. There is a detailed analysis provided in Section 7.5.3.7 of the draft Framework 48 EA. To summarize, the closed areas for halibut and wolffish generated estimated revenues in the range of $4 million to $5 million dollars in FY 2010 for trawl vessels, and around $1 million for fixed-gear vessels. However, given the uncertainty of VTR data used to conduct this analysis and the number of factors that affect effort re-distribution, it is not possible to quantify the net economic impact of this option currently. The proposed action would also exempt common pool vessels using handgear or tub trawls from inseason trimester closures for white hake, allowing them to continue fishing in closed areas. Depending on catch rates in the closed areas, the cost of fishing

elsewhere, and the likelihood of AMs being triggered, this could increase revenues for these common pool vessels over the no action alternative.

The proposed action and alternatives are described in detail in Framework 48, which includes an EA, RIR, and IRFA (SEE ADDRESSES).

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

The proposed action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

This action proposes to adjust the sector at-sea monitoring pre-trip notification and NEFOP notification implemented through Amendment 16. This rule would add a question to allow fishermen to indicate what fishery they intend to participate in. This change is necessary to identify monkfish trips in Southern New England that may qualify for the exemption from sector at-sea monitoring coverage, in order to deploy at-sea monitors appropriately to achieve the coverage levels required by the FMP. Currently, all groundfish vessels make these notifications to the NEFOP through the PTNS or via an online form, a telephone call, or email to NEFOP. When sector at-sea monitoring programs become established, the pre-trip notification may be made to NEFOP or other at-sea monitoring provider, via a telephone call or email or through a secure database. The proposed change would only add a question to these notifications and would not affect the number of entities required to comply with these notification. Therefore, the proposed change would not be expected to increase the time or cost burden associated with either requirement.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 20, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

1. In § 648.4, revise paragraph (a)(1)(ii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(ii) Open access permits. A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an "open access multispecies", "handgear", or "charter/party" permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

2. In § 648.7, remove and reserve paragraph (a)(4), remove paragraph (h); and redesignate paragraph (i) as paragraph (h), and revise paragraph (e)(3) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(e) * * *

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

* * * * *

3. In § 648.10, revise paragraph (k)(1)(iii) and add paragraph (k)(1)(iv) to read as follows:

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

* * * * *

(k) * * *

(1) * * *

(iii) Trip-start hail report. If instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c), the operator of a vessel must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or NMFS of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; an estimate of the date and time of arrival to port; and any other information as instructed by the Regional Administrator. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. The trip-start hail report may be submitted via VMS or some other method, as instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c). If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the sector manager or NMFS, the operator must contact the intended receiver to confirm the trip-start hail report via an independent back-up system, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-start hail report with any other applicable reporting requirements..

(iv) Trip-end hail report. Upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited

access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-end hail reports with any other applicable reporting requirements.

* * * * *

4. In § 648.11, revise paragraphs (k)(1) and (2), and add paragraph (l) to read as follows:

§ 648.11 At-sea sampler/observer coverage.

* * * * *

(k) * * *

(1) Pre-trip notification. Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE

multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) Vessel selection for observer coverage. NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector

trip with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the operator, owner, or manager of the vessel.

(l) NE multispecies monitoring program goals and objectives. Monitoring programs established for the NE multispecies are to be designed and evaluated consistent with the following goals and objectives:

(1) Improve documentation of catch:

(i) Determine total catch and effort, for each sector and common pool, of target or regulated species; and

(ii) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(2) Reduce the cost of monitoring:

(i) Streamline data management and eliminate redundancy;

(ii) Explore options for cost-sharing and deferment of cost to industry; and

(iii) Recognize opportunity costs of insufficient monitoring.

(3) Incentivize reducing discards:

(i) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(ii) Collect information by gear type to accurately calculate discard rates.

(4) Provide additional data streams for stock assessments:

(i) Reduce management and/or biological uncertainty; and

(ii) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(5) Enhance safety of monitoring program.

(6) Perform periodic review of monitoring program for effectiveness.

5. In § 648.14, revise paragraph (e)(1); remove paragraph (k)(14)(x); redesignate paragraphs (k)(14)(xi) and (xii) as paragraphs (k)(14)(x) and (xi), respectively; revise the newly redesignated paragraphs, remove and reserve paragraphs (k)(18)(i)(B) through (D); and revise paragraphs (k)(19) introductory text, (k)(19)(i), and (k)(20), to read as follows:

§ 648.14 Prohibitions.

* * * * *

(e) * * *

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

* * * * *

(k) * * *

(14) * * *

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(5)(iii)(A).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(5)(iv)(A).

* * * * *

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

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

* * * * *

(20) AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

* * * * *

6. In § 648.80, revise paragraph (a)(3)(vii) to read as follows:

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

* * * * *

(a) * * *

(3) * * *

(vii) Rockhopper and roller gear restrictions. For all trawl vessels fishing on a NE multispecies DAS or sector trip in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

Inshore Restricted Roller Gear Area

Point	N. Latitude	W. Longitude
1	42°00’	([1])
2	42°00’	([2])
3	42°00’	([3])
4	42°00’	69°50’
5	43°00’	69°50’
6	43°00’	70°00’
7	43°30’	70°00’
8	43°30’	([4])

([1]) Massachusetts shoreline.
([2]) Cape Cod shoreline on Cape Cod Bay.
([3]) Cape Cod shoreline on the Atlantic Ocean.
([4]) Maine shoreline.

* * * * *

7. In § 648.81, revise paragraphs (b)(2)(iv), (h)(2)(i), (j)(2)(i), (k)(2)(i), (l)(2)(i), and (m)(2)(i) to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(iv) Transiting the area on a NE multispecies DAS or sector trip with only trawl gear onboard, or with its gear stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(h) * * *

(2) * * *

(i) Transiting.—(A) Unless otherwise restricted or specified in this paragraph (h)(2)(i)(A) or (h)(2)(i)(B), a vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, the EFH Closure Areas, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), and (o)(1) of this section, respectively, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(1) of this section, in accordance with paragraph (b)(2)(iv) of this section. Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (o)(1) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning Protection Area and has been gutted and stored.

(B) A trawl vessel on a NE multispecies DAS or sector trip may transit these areas without stowing its gear.

* * * * *

(j) * * *

(2) * * *

(i) Mobile gear. From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(k) * * *

(2) * * *

(i) Mobile gear. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(l) * * *

(2) * * *

(i) Mobile gear. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. A vessel with mobile gear on board may transit this area, provided

that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(m) * * *

(2) * * *

(i) Mobile gear. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

8. Section 648.82 is amended as follows:

A. Remove paragraph (n)(2)(iv);

B. Redesignate paragraphs (n)(2)(v) and (n)(2)(vi) as paragraphs (n)(2)(iv) and (n)(2)(v);

C. Revise paragraphs (k)(2)(i), (n)(1) introductory text, (n)(2)(ii) introductory text, (n)(2)(ii)(A) and (B), (n)(2)(ii)(H) through (J), and (n)(2)(ii)(M); and

D. Revise newly redesignated paragraph (n)(2)(v).

The revised text read as follows:

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

* * * * *

(k) * * *

(2) * * *

(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively.

* * * * *

(n) * * *

(1) Differential DAS counting AM for fishing years 2010 and 2011. Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year, once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(H)(2). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters

outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If, based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or

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

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

* * * * *

(2) * * *

(ii) Stock area closures. Unless otherwise specified in this paragraph (n)(2)(ii), if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred to all common pool vessels on a NE multispecies DAS using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the

Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred. Common pool vessels holding either a Handgear A or B permit and fishing with handgear or tub trawls are exempt from stock area closures for white hake. The Regional Administrator may exempt Handgear A and B permitted vessels from stock area closures for other stocks pursuant to this paragraph (n)(2)(ii) if it is determined that catches of the respective species or stock by these vessels are less than 1 percent of the common pool catch of that species or stock. The Regional Administrator shall make such determination prior to the start of the fishing year through a notice published in the Federal Register, consistent with the Administrative Procedure Act, and any such determination shall remain in effect until modified.

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

GB Cod Trimester TAC Area

Point	N. Latitude	W. Longitude
1	42° 20’	70° 00’
2	42° 20’	([1])
3	41° 50’	([1])
4	41° 50’	67° 40’
5	41° 10’	67° 40’
6	41° 10’	67° 10’
7	41° 00’	67° 10’
8	41° 00’	67° 00’
9	40° 50’	67° 00’
10	40° 50’	66° 50’
11	40° 40’	66° 50’
12	40° 40’	66° 40’
13	39° 50’	66° 40’
14	39° 50’	68° 50’
15	41° 00’	68° 50’
16	41° 00’	69° 30’
17	41° 10’	69° 30’

18	41° 10’	69° 50’
19	41° 20’	69° 50’
20	41° 20’	([2])
21	([3])	70° 00’
22	([4])	70° 00’
23	([5])	70° 00’

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

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

GOM Cod Trimester TAC Area

Point	N. Latitude	W. Longitude
1	([1])	69° 20’
2	43° 40’	69° 20’
3	43° 40’	69° 00’
4	43° 10’	69° 00’
5	43° 10’	69° 10’
6	43° 00’	69° 10’
7	43° 00’	69° 20’
8	42° 50’	69° 20’
9	42° 50’	69° 40’
10	42° 20’	69° 40’
11	42° 20’	70° 00’
12	([2])	70° 00’

([1]) Intersection with ME shoreline.
([2]) North-facing shoreline of Cape Cod, MA.

* * * * *

(H) American Plaice Trimester TAC Area. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area

shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

American Plaice Trimester TAC Area

Point	N. Latitude	W. Longitude
1	([1])	68° 00’
2	44° 10’	67° 50’
3	44° 00’	67° 50’
4	44° 00’	67° 40’
5	([2])	67° 40’
6	42° 53.1'	67° 44.4'
7	([2])	67° 40’
8	41° 10’	67° 40’
9	41° 10’	67° 10’
10	41° 00’	67° 10’
11	41° 00’	67° 00’
12	40° 50’	67° 00’
13	40° 50’	66° 50’
14	40° 40’	66° 50’
15	40° 40’	66° 40’
16	39° 50’	66° 40’
17	39° 50’	68° 50’
18	41° 00’	68° 50’
19	41° 00’	69° 30’
20	41° 10’	69° 30’
21	41° 10’	69° 50’
22	41° 20’	69° 50’
23	41° 20’	([3])
24	([4])	70° 00’
25	([5])	70° 00’

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

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

Witch Flounder Trimester TAC Area

Point	N. Latitude	W. Longitude
1	([1])	68° 00’
2	44° 10’	67° 50’
3	44° 00’	67° 50’
4	44° 00’	67° 40’
5	([2])	67° 40’
6	42° 53.1'	67° 44.4’
7	([2])	67° 40’
8	41° 10’	67° 40’
9	41° 10’	67° 10’
10	41° 00’	67° 10’
11	41° 00’	67° 00’
12	40° 50’	67° 00’
13	40° 50’	66° 50’
14	40° 40’	66° 50’
15	40° 40’	66° 40’
16	39° 50’	66° 40’
17	39° 50’	68° 50’
18	41° 00’	68° 50’
19	41° 00’	69° 30’
20	41° 10’	69° 30’
21	41° 10’	69° 50’
22	41° 20’	69° 50’
23	41° 20’	([3])
24	([4])	70° 00’
25	([5])	70° 00’

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

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

GB Winter Flounder Trimester TAC Area

Point	N. Latitude	W. Longitude

1	42° 20’	68° 50’
2	42° 20’	([1])
3	40° 30’	([1])
4	40° 30’	66° 40’
5	39° 50’	66° 40’
6	39° 50’	68° 50’

([1]) U.S./Canada maritime boundary

* * * * *

(M) White Hake Trimester TAC Area. For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawls, within the area bounded by straight lines connecting the following points in the order stated:

White Hake Trimester TAC Area

Point	N. Latitude	W. Longitude
1	([1])	69°20’
2	43°40’	69°20’
3	43°40’	69°00’
4	43°20’	69°00’
5	43°20’	67°40’
6	([2])	67°40’
7	42°53.1’	67°44.4’
8	([2])	67°40’
9	41°20’	67°40’
10	41°20’	68°10’
11	41°10’	68°10’
12	41°10’	68°20’
13	41°00’	68°20’
14	41°00’	69°30’
15	41°10’	69°30’
16	41°10’	69°50’
17	41°20’	69°50’
18	41°20’	([3])
19	([4])	70°00’
20	([5])	70°00’

(1) Intersection with ME shoreline.
(2) U.S./Canada maritime boundary.
(3) East-facing shoreline of Nantucket, MA.

(4) North-facing shoreline of Nantucket, MA.
(5) South-facing shoreline of Cape Cod, MA.

* * * * *

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

* * * * *

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

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

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

Minimum Fish Sizes (TL) for Commercial Vessels

Species	**Size (inches)**
Cod	19 (48.3 cm)
Haddock	16 (40.6 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder	12 (30.5 cm)
American plaice (dab)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	7 (17.8 cm)

* * * * *

10. In § 648.84, add paragraph (e) to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

* * * * *

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

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

(2) Separator panel. The separator panel must consist of parallel lines made of fiber rope, the ends of which are attached to each side of the net starting at the forward edge of the square of the net and running aft toward the extension of the net. The leading rope must be attached to the side panel at a point at least 1/3 of the number of meshes of the side panel above the lower gore, and the panel of ropes shall slope downward toward the extension of the net. For example, if the side panel of the net is 42 meshes tall, the leading rope must be attached at least 14 meshes above the lower gore. The forward 2/3 of the separator ropes that comprise the separator panel must be

no farther than 26 inches (66 cm) apart, with the after 1/3 of the separator ropes that comprise the separator panel being no farther than 13 inches (33 cm) apart. The ends of the aftermost rope shall be attached to the bottom belly at a point 1/6 of the number of meshes of the after end of the bottom belly below the lower gore. The separator ropes should be of sufficient length not to impinge upon the overall shape of the net without being too long to compromise the selectivity of the net. The separator ropes may not be manipulated in any way that would inhibit the selectivity of the net by causing the separator ropes to dip toward the bottom belly of the net and obscure the escape opening, as defined in paragraph (e)(3) of this section.

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

11. In § 648.85, revise paragraphs (a)(2)(ii) and (iii), (a)(3)(ii)(A), (a)(3)(iv)(E), and (a)(3)(vii), (b)(8)(v)(C), (b)(8)(v)(F), and (d) to read as follows:

§ 648.85 Special management programs.

(a) * * *

(2) * * *

(ii) Adjustments to TACs. Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage in the following fishing year and may be subject to the overall groundfish AM provisions as specified

in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

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

(3) * * *

(ii) * * *

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (4) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip,

provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (3) of this section.

* * * * *

(iv) * * *

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

closure of the Eastern U.S./Canada Area, trawl vessels on a NE multispecies DAS or sector trip may transit through this area as described in paragraph (a)(1)(ii) of this section. All other vessels may transit through this area, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

* * * * *

(vii) Transiting. A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations in § 648.23(b), unless otherwise specified under this part.

(b) * * *

(8) * * *

(v) * * *

(C) Observer notifications. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 48 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

* * * * *

(F) Landing limits. Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited. Possession limits for all other stocks are as specified in § 648.86.

* * * * *

(d) Haddock incidental catch allowance for some Atlantic herring vessels. The haddock incidental catch allowance for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

* * * * *

12. In § 648.86, revise paragraphs (a)(3)(ii)(A)(1), (a)(3)(ii)(A)(3) and (4), to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(1) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.85(d), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

* * * * *

(3) The Herring GB Haddock Accountability Measure Area. The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

Herring GB Haddock Accountability Measure Area

Point	N. Latitude	W. Longitude
1	42° 20’	70° 00’
2	42° 20’	([1])
3	40° 30’	([1])
4	40° 30’	66° 40’
5	39° 50’	66° 40’
6	39° 50’	68° 50’
7	([2])	68° 50’
8	41° 00’	([3])
9	41° 00’	69° 30’
10	41° 10’	69° 30’
11	41° 10’	69° 50’
12	41° 20’	69° 50’
13	41° 20’	([4])
14	([5])	70° 00’
15	([6])	70° 00’
16	([7])	70° 00’

([1]) The intersection of the U.S./Canada maritime boundary.
([2]) The intersection of the boundary of Closed Area I and 68° 50’ W. long.
([3]) The intersection of the boundary of Closed Area I and 41° 00’ N. lat.
([4]) The intersection of the east-facing shoreline of Nantucket, MA, and 41° 20’ N. lat.
([5]) The intersection of the north-facing shoreline of Nantucket, MA, and 70° 00’ W. long.
([6]) The intersection of the south-facing shoreline of Cape Cod, MA, and 70° 00’ W. long.
([7]) The intersection of the north-facing shoreline of Cape Cod, MA, and 70° 00’ W. long.

(4) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1-April 30), which differs from the herring fishing year (January 1-December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(2) or (3) of this section, shall be

in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011-April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012-April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE. multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

* * * * *

13. Section 648.87 is amended as follows:

A. Remove paragraph (b)(4)(iii) and (b)(5);

B. Redesignate paragraph (b)(4)(iv) as paragraphs (b)(4)(iii);

C. Redesignate paragraph (b)(6) as paragraph (b)(5);

D. Revise paragraph (b)(1)(v)(B), (b)(1)(vi)(B), (b)(2)(xi), (b)(4) introductory text, (b)(4)(i)(F) and (G), (b)(4)(i)(I) and (J); (b)(4)(ii), and (c)(2)(i);

E. Revise newly redesignated paragraph (b)(5); and

F. Add paragraphs (b)(1)(ii)(A) through (F), (b)(1)(v)(A)(1) and (2), and (c)(2)(i)(A) and (B).

The added and revised text reads as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) CC/GOM Yellowtail Flounder Stock Area. The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by rhumb lines connecting the following points in the order stated:

CC/GOM Yellowtail Flounder Stock Area

Point	N. Latitude	W. Longitude
1	([1])	70° 00'
2	([2])	70° 00'
3	41° 20'	([3])
4	41° 20'	69° 50'
5	41° 10'	69° 50'
6	41° 10'	69° 30'
7	41° 00'	69° 30'
8	41° 00'	68° 50'
9	42° 20'	68° 50'
10	42° 20'	([4])

([1]) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.
([2]) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.
([3]) Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.
([4]) U.S./Canada maritime boundary.

(B) SNE/MA Yellowtail Flounder Stock Area. The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by rhumb lines connecting the following points in the order stated:

SNE/MA Yellowtail Flounder Stock Area

Point	N. Latitude	W. Longitude
1	35° 00'	([1])
2	35° 00'	([2])
3	39° 00'	([2])

4	39° 00'	69° 00'
5	39° 50'	69° 00'
7	39° 50'	68° 50'
8	41° 00'	68° 50'
9	41° 00'	69° 30'
10	41° 10'	69° 30'
11	41° 10'	69° 50'
12	41° 20'	69° 50'
13	41° 20'	([3])
14	([4])	70° 00'
15	([5])	70° 00'

([1]) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. lat.
([2]) U.S./Canada maritime boundary.
([3]) Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.
([4]) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.
([5]) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.

(C) GOM Haddock Stock Area. The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM Haddock Stock Area

Point	N. Latitude	W. Longitude
1	([1])	70° 00’
2	42° 20’	70° 00’
3	42° 20’	67° 40’
4	([2])	67° 40’
5	([3])	67° 40’
6	43° 50’	67° 40’
7	43° 50’	([4])
8	([4])	67° 00’
9	([5])	67° 00’

([1]) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00’ W. long.
([2]) U.S./Canada maritime boundary (southern intersection with 67° 40’ W. long.).
([3]) U.S./Canada maritime boundary (northern intersection with 67° 40’ W. long.).
([4]) U.S./Canada maritime boundary.
([5]) Intersection of the south-facing ME coastline and 67° 00’ W. long.

(D) GB Haddock Stock Area. The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

GB Haddock Stock Area

Point	N. Latitude	W. Longitude
1	([1])	70° 00’
2	42° 20’	70° 00’
3	42° 20’	([2])

([1]) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00’ W. long.
([2]) U.S./Canada maritime boundary.

(E) Redfish Stock Area. The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a rhumb line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) GOM Winter Flounder Stock Area. The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM Winter Flounder Stock Area

Point	N. Latitude	W. Longitude
1	([1])	70° 00’
2	42° 20’	70° 00’
3	42° 20’	67° 40’
4	([2])	67° 40’
5	(3)	67° 40’
6	43° 50’	67° 40’
7	43° 50’	([4])
8	([4])	67° 00’
9	([5])	67° 00’

([1]) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00’ W. long.
([2]) U.S./Canada maritime boundary (southern intersection with 67° 40’ N. lat.)
([3]) U.S./Canada maritime boundary (northern intersection with 67° 40’ N. lat.)
([4]) U.S./Canada maritime boundary
([5]) Intersection of the south-facing ME coastline and 67° 00’ W. long.

* * * * *

(v) * * *

(A) * * *

(1) GB yellowtail flounder discards. For the purpose of counting discards of GB yellowtail flounder against a sector’s ACE pursuant to paragraph (b)(1)(v)(A), GB yellowtail flounder discards shall be calculated for two separate GB areas for each gear type, unless otherwise specified in this paragraph (b)(1)(v)(A)(1): Statistical area 522, and statistical areas 525/561/562. This provision does not change the methods used to estimate discards of other groundfish stocks or to estimate discards used in the GB yellowtail stock assessment. If the Regional Administrator determines this finer stratification is only appropriate for trawl gear, then the Regional Administrator may exclude other, non-trawl gears from this stratification method in a manner consistent with the Administrative Procedure Act.

(2) [Reserved].

(B) Independent third-party monitoring program. A sector must comply with any at-sea monitoring program specified by NMFS beginning in fishing year 2013. By fishing year 2014

(May 1, 2014), a sector must develop and implement an at-sea or electronic monitoring program to verify area fished, as well as catch and discards by species and gear type, and that is consistent with the goals and objectives of groundfish monitoring programs at § 648.11(l). A sector may elect to develop an at-sea/electronic monitoring program before fishing year 2014. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(1) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(1) Coverage levels. Except as specified in paragraph (b)(1)(v)(B)(1)(i) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(1) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea monitoring program shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(1)(i) of this section, but shall be less than

100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board.

(i) At-sea/electronic monitoring. For fishing year 2013, NMFS shall determine the level of coverage for any NMFS-sponsored at-sea monitoring program specified pursuant to paragraph (b)(1)(v)(B)(1) of this section, based on available funding. Unless otherwise specified in this paragraph (b)(1)(v)(B)(1)(i), beginning in fishing year 2014, coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. In making its determination, NMFS shall take into account the goals and objective of groundfish monitoring programs at § 648.11(l), the National Standards and requirements of the Magnuson-Stevens Act, including but not limited to the costs to sector vessels and NMFS, and any other relevant factors. For FYs 2013 and beyond, NMFS shall specify a separate coverage rate, lower than the coverage rate for all other sector trips, for sector trips fishing with 10-inch (25.4-cm) mesh or larger gillnets on a monkfish DAS, pursuant to § 648.91(c)(1)(iii), and only in the SNE Broad Stock Area, as defined at § 648.10(k)(3)(iv).

(2) Hail reports. For the purposes of the at-sea monitoring requirements specified in paragraph (b)(1)(v)(B) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering at-sea monitoring services. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the

Regional Administrator for any at-sea or electronic monitoring program required by paragraph (b)(1)(v)(B) of this section, or specified in the annual sector operations plan, consistent with paragraph (b)(5) of this section.

(3) Notification of service provider change. If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(4) At-sea monitoring cost responsibility. During fishing year 2013, none of the costs associated with any NMFS-sponsored at-sea monitoring program specified pursuant to paragraph (b)(1)(v)(B) of this section shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2014, a sector shall be responsible for paying the direct costs of at-sea monitoring coverage implemented pursuant to paragraph (b)(1)(v)(B) of this section, specifically the daily salary of the at-sea monitor. NMFS shall be responsible for all other costs associated with a sector's at-sea monitoring program, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management, and security; data quality assurance and control; administrative costs; maintenance of monitoring equipment; monitor recruitment, benefits, insurance, and taxes; logistical costs associated with deployment; and monitor travel and lodging.

(vi) * * *

(B) Weekly catch report. Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

* * * * *

(2) * * *

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for

safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

* * * * *

(4) Independent third-party monitoring provider standards. Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) * * *

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training); vessel owner; and service provider;

* * * * *

(I) Proof that the service provider's at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and

* * * * *

(ii) Service provider performance requirements. At-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provide must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(2) A service provider must be able to deploy at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(3) A service provider must report at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(4) A service provider must assign at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels

other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(5) A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(6) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy an at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(1) If the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(2) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(4) Failure to pay for previous deployments of at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) At-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

* * * * *

(5) At-sea/electronic monitoring operational standards. In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B) of this section must meet the following operational standards to be approved by NMFS:

(i) Gear. Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) Vessel selection protocol. An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic

monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(1) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) Reporting/recordkeeping requirements —(A) Vessel requirements. In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(1) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(1) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) At-sea/electronic monitoring service provider requirements —(1) Confirmation of pre-trip notification. Upon receipt of a pre-trip notification pursuant to paragraph (b)(5)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(5)(ii) of this section.

(2) At-sea/electronic monitoring report. A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) Safety hazards —(A) Vessel requirements. The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(1) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(B) At-sea/electronic monitoring service provider requirements. An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) Adjustment to operational standards. The at-sea/electronic monitoring operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) * * *

(2) * * *

(i) Regulations that may not be exempted for sector participants. The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) Fippennies Ledge Area. The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

Fippennies Ledge Area

Point	N. Latitude	W. Longitude
1	42°50.0’	69°17.0’
2	42°44.0’	69°14.0’
3	42°44.0’	69°18.0’
4	42°50.0’	69°21.0’

(B) [Reserved].

* * * * *

14. In § 648.89, revise paragraph (f)(2), and add paragraph (f)(3) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(f) * * *

(2) Reactive AM adjustment. If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the Federal Register no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

(3) Proactive AM adjustment. When necessary, the Regional Administrator, after consultation with the New England Fishery Management Council, may adjust recreational

measures to ensure the recreational fishery achieves, but does not exceed any recreational fishery sub-ACL in a future fishing year. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the Federal Register prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the Council: for cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

15. Section 648.90 is amended as follows:

A. Revise paragraphs (a)(4)(iii) introductory text, (a)(4)(iii)(B), (C) and (E), (a)(4)(iv)(B) and (a)(5); and

B. Add paragraphs (a)(4)(iii)(F) through (H).

The added and revised text reads as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(iii) ABC/ACL distribution. The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (H) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a),

the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (H) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

* * * * *

(B) Regulated species or ocean pout catch by exempted fisheries. Unless otherwise specified in paragraphs (a)(4)(iii)(F) or (G) of this section, regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) Yellowtail flounder catch by the Atlantic sea scallop fishery. Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial

adjustment process specified in paragraph (a)(2) of this section. The Atlantic sea scallop fishery shall be allocated 40 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013, and 16 percent in fishing year 2014 and each fishing year thereafter, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section. Based on information available, NMFS shall project the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(iii)(H)(1) of this section.

* * * * *

(E) SNE/MA windowpane flounder catch by the Atlantic sea scallop fishery. SNE/MA windowpane flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. The Atlantic sea scallop fishery shall be allocated 36 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(F) SNE/MA windowpane flounder catch by exempted fisheries. SNE/MA windowpane flounder catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). The specific value of the sub-components of the ABC/ACL for SNE/MA windowpane flounder distributed to these other fisheries shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section.

(G) GB yellowtail flounder catch by small mesh fisheries. GB yellowtail flounder catch by bottom trawl vessels fishing with a codend mesh size of less than 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(H) Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries. Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (G) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial

and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(H).

(1) Recreational allocation. Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(H)(1) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(i) Stocks allocated. Unless otherwise specified in this paragraph (a)(4)(iii)(H)(1), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(ii) Process for determining if a recreational allocation is necessary. A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(2) Commercial allocation. Unless otherwise specified in this paragraph (a)(4)(iii)(H)(2), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(H)(1) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the

ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(H)(2) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(3) Revisions to commercial and recreational allocations. Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) * * *

(B) Discards. Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to § 648.87(b)(1)(v)(A).

(v) * * *

(5) AMs. Except as specified in paragraphs (a)(4)(iii)(A) through (G) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available

catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) AMs for the NE multispecies commercial and recreational fisheries. If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(H) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) Excessive catch by common pool vessels. If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(2) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by

common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for common pool vessels.

(B) Excessive catch by sector vessels. If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for that sector.

(C) Excessive catch by the NE multispecies recreational fishery. If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(1) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(1) of this section, then no AMs shall take effect for the recreational fishery.

(D) AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, or SNE/MA winter flounder was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as

specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

(1) Windowpane flounder and ocean pout. If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(1), by any amount greater than the management uncertainty buffer, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the

process defined in § 648.85(b)(6). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(2) of this section, the applicable AM Area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of overages of both the groundfish fishery and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are otherwise developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Northern Windowpane Flounder and Ocean Pout Small AM Area

Point	N. Latitude	W. Longitude
1	41°10’	67°40’

2	41°10’	67°20’
3	41°00’	67°20’
4	41°00’	67°00’
5	40°50’	67°00’
6	40°50’	67°40’
1	41°10’	67°40’

Northern Windowpane Flounder and Ocean Pout Large AM Area

Point	N. Latitude	W. Longitude
1	42°10’	67°40’
2	42°10’	67°20’
3	41°00’	67°20’
4	41°00’	67°00’
5	40°50’	67°00’
6	40°50’	67°40’
1	42°10’	67°40’

Southern Windowpane Flounder and Ocean Pout Small AM Area

Point	N. Latitude	W. Longitude
1	41°10’	71°30’
2	41°10’	71°20’
3	40°50’	71°20’
4	40°50’	71°30’
1	41°10’	71°30’

Southern Windowpane Flounder and Ocean Pout Large AM Area 1

Point	N. Latitude	W. Longitude
1	41°10’	71°50’
2	41°10’	71°10’
3	41°00’	71°10’

4	41°00’	71°20’
5	40°50’	71°20’
6	40°50’	71°50’
1	41°10’	71°50’

Southern Windowpane Flounder and Ocean Pout Large AM Area 2

Point	N. Latitude	W. Longitude
1	([1])	73°30’
2	40°30’	73°30’
3	40°30’	73°50’
4	40°20’	73°50’
5	40°20’	([2])
6	([3])	73°58.5’
7	([4])	73°58.5’
8	40°32.6’ ([5])	73°56.4’ ([5])
1	([1])	73°30’

([1]) The southern-most coastline of Long Island, NY at 73°30′ W. longitude.
([2]) The eastern-most coastline of NJ at 40°20′ N. latitude, then northward along the NJ coastline to Point 6.
([3]) The northern-most coastline of NJ at 73°58.5′ W. longitude.
([4]) The southern-most coastline of Long Island, NY at 73°58.5′ W. longitude.
([5]) The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(2) Atlantic halibut. If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(2), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight

lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Atlantic Halibut Trawl Gear AM Area

Point	N. Latitude	W. Longitude
1	42°00’	69°20’
2	42°00’	68°20’
3	41°30’	68°20’
4	41°30’	69°20’

Atlantic Halibut Fixed Gear AM Area 1

Point	N. Latitude	W. Longitude
1	41°40’	69°40’
2	41°40’	69°30’
3	41°30’	69°30’
4	41°30’	69°40’

Atlantic Halibut Fixed Gear AM Area 2

Point	N. Latitude	W. Longitude
1	43°10’	69°40’
2	43°10’	69°30’
3	43°00’	69°30’
4	43°00’	69°40’

(3) Atlantic wolffish. If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(3), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e.,

the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Atlantic Wolffish Trawl Gear AM Area

Point	N. Latitude	W. Longitude
1	42°30’	70°30’
2	42°30’	70°15’
3	42°15’	70°15’
4	42°15’	70°10’
5	42°10’	70°10’
6	42°10’	70°20’
7	42°20’	70°20’
8	42°20’	70°30’

Atlantic Wolffish Fixed Gear AM Area 1

Point	N. Latitude	W. Longitude
1	41°40’	69°40’
2	41°40’	69°30’
3	41°30’	69°30’
4	41°30’	69°40’

Atlantic Wolffish Fixed Gear AM Area 2

Point	N. Latitude	W. Longitude
1	42°30’	70°20’
2	42°30’	70°15’
3	42°20’	70°15’
4	42°20’	70°20’

(4) SNE/MA winter flounder. If NMFS determines the overall ACL for SNE/MA winter flounder is exceeded, as described in this paragraph (a)(5)(i)(D)(4), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more,

the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the SNE/MA Winter Flounder Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for SNE/MA winter flounder is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

SNE/MA Winter Flounder Trawl Gear AM Area 1

Point	N. Latitude	W. Longitude
1	41°10’	71°40’ ([1])
2	41°10’	71°20’
3	41°00’	71°20’
4	41°00’	71°40’

([1]) Point 1 connects to Point 2 along 41°10’N or the southern coastline of Block Island, RI, whichever is further south.

SNE/MA Winter Flounder Trawl Gear AM Area 2

Point	N. Latitude	W. Longitude
1	41°20’	70°30’
2	41°20’	70°20’
3	41°00’	70°20’
4	41°00’	70°30’

SNE/MA Winter Flounder Trawl Gear AM Area 3

Point	N. Latitude	W. Longitude
1	41°20’	69°20’
2	41°20’	69°10’
3	41°10’	69°10’
4	41°10’	69°20’

SNE/MA Winter Flounder Trawl Gear AM Area 4

Point	N. Latitude	W. Longitude
1	41°20’	69°20’
2	41°20’	([1])
3	([1])	69°00’
4	41°00’	69°00’
5	41°00’	69°10’
6	41°10’	69°10’
7	41°10’	69°20’

([1]) The southwest-facing boundary of Closed Area I.

(E) [Reserved].

(ii) AMs if the overall ACL for a regulated species or ocean pout stock is exceeded. If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (G) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery

to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(iii) AMs if the incidental catch cap for the Atlantic herring fishery is exceeded. At the end of the NE multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the Federal Register, accordance with the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage occurred, if possible, or as soon as possible

thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

* * * * *

16. In § 648.201, revise paragraph (a)(2) to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(a) * * *

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, i.e., the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3) of this part, may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area, for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

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