

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648****[Docket No. 0808071078–0019–02]****RIN 0648–AW72****Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16**

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

**ACTION:** Final rule.

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

**DATES:** Effective at 0001 hr on May 1, 2010.

**ADDRESSES:** Copies of Amendment 16, its Regulatory Impact Review (RIR), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. NMFS prepared an Initial Regulatory Flexibility Act (IRFA) analysis, which was summarized in the Classification section of the proposed rule. The Final Regulatory Flexibility Act (FRFA) analysis consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide and the Record of Decision for the FEIS associated with this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298. The EIS/RIR/IRFA is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

Amendment 13 (April 27, 2004; 69 FR 22906) established a biennial adjustment process whereby the Council would review the FMP and make any changes to management measures necessary to achieve the goals and objectives of the FMP. This adjustment process provides for an update of the scientific information regarding the status of the stocks, and an evaluation of the effectiveness of the regulations. The biennial review scheduled to occur in 2008, with necessary changes to the FMP to be implemented in 2009, included a peer-reviewed benchmark assessment and a review of the biological reference points (stock status determination criteria) for each stock. This benchmark assessment and review of the biological reference points (Groundfish Assessment Review Meeting (GARM III)) was also part of the adaptive rebuilding strategy described in Amendment 13 to the FMP, which

sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks.

GARM III, completed in August 2008, concluded that 11 stocks were still subject to overfishing (i.e., the fishing mortality rate (F) was above the F at maximum sustainable yield (MSY), or  $F_{MSY}$ ), and that 11 stocks were overfished (i.e., biomass levels were less than one half of the biomass at MSY ( $B_{MSY}$ )), with 9 stocks classified as both overfished and subject to overfishing. Further survey data for pollock that became available in January 2009 indicated that pollock is also overfished and subject to overfishing. GARM III also indicated that some stocks improved in status from the previous assessment, with Gulf of Maine (GOM) haddock and Georges Bank (GB) haddock classified as rebuilt in 2000 and 2006, respectively, and GOM cod expected to be rebuilt by 2009.

Amendment 16 was developed by the Council as part of the biennial adjustment process established in the FMP to update status determination criteria for all NE multispecies stocks; adopt rebuilding programs for groundfish stocks newly classified as being overfished and subject to overfishing; and revise management measures necessary to end overfishing, rebuild overfished groundfish stocks, and mitigate the adverse economic impacts of increased effort controls based upon the results of GARM III. In addition, Amendment 16 was developed to establish a mechanism to establish ACLs and AMs for each stock managed by the FMP, to comply with the Magnuson-Stevens Act.

The Council began development of Amendment 16 in 2006, with the intent of implementing any necessary revisions to management measures based upon the results of GARM III by the start of fishing year (FY) 2009 on May 1, 2009. A notice of intent to prepare a supplemental EIS and hold scoping meetings designed to solicit public input on any revisions to management measures was published in the **Federal Register** on November 6, 2006 (71 FR 64941). In September 2008, the Council agreed to postpone implementation of Amendment 16 until the start of FY 2010 on May 1, 2010, to provide additional time to further develop Amendment 16 measures, requesting that NMFS implement an interim action for FY 2009. A proposed rule to implement interim management measures published on January 16, 2009 (74 FR 2959), with final interim measures published on April 13, 2009 (74 FR 17030), and effective on May 1,

2009. The Council adopted draft Amendment 16 management measures and an associated draft EIS (DEIS) at its February 2009 meeting. A notice of availability for the DEIS published on April 24, 2009 (74 FR 18705), with public comments accepted through June 8, 2009. Final measures for Amendment 16 were adopted by the Council at its June 2009 meeting, with revisions to the discard provisions adopted at its September 2009 meeting. A notice of availability for Amendment 16 was published in the **Federal Register** on October 23, 2009 (74 FR 54773), with public comments accepted through December 22, 2009. A separate notice of availability for the Amendment 16 FEIS, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published on October 30, 2009 (74 FR 56194). A proposed rule to implement measures in Amendment 16 was published on December 31, 2009 (74 FR 69382), with public comments accepted through January 20, 2010. The Amendment 16 proposed rule included a detailed description of the biennial adjustment process, the results of GARM III, the proposed management measures, and other factors that influenced the development of this action. A final decision to partially approve Amendment 16 was made on January 21, 2010.

Three separate, but related rulemakings associated with Amendment 16 have been published and, if approved, will be applicable to NE multispecies permit holders for FY 2010. The Amendment 16 proposed rule detailed rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing and proposed revisions to existing management measures necessary to end overfishing, rebuild overfished stocks, and mitigate adverse economic impacts of increased effort controls. That rule also proposed significant revisions to sector management measures. A second proposed rule (74 FR 68015, December 22, 2009) proposes FY 2010 operations plans and sector contracts for 17 sectors authorized by Amendment 16. A third proposed rule for Framework Adjustment (FW) 44 (75 FR 5016, February 1, 2010), proposed specifications of catch levels for FY 2010–2012, in accordance with the process approved in Amendment 16, and additional management measures to augment Amendment 16 measures.

The final rules for Amendment 16, sector operations, and FW 44 are closely

related it is necessary to implement all three rules in order for Amendment 16 to be implemented in its entirety for FY 2010, as intended by the Council. This final rule implements approved management measures in Amendment 16; the sector operations rule would authorize the operation of sectors in FY 2010, and FW 44 would set catch levels according to approved measures in Amendment 16 for FY 2010–2012. As a result, these three rulemakings have been published nearly simultaneously. Approved measures in all three actions will become effective concurrently on May 1, 2010. Therefore, NMFS suggests that interested readers review all three final rules in order to fully understand the measures being implemented.

### Disapproved Measures

#### *GOM Haddock Sink Gillnet Pilot Program*

This pilot program would have allowed all limited access NE multispecies vessels to target haddock in the GOM while using up to 30 stand-up sink gillnets (tie-down gillnets would have been prohibited) consisting of 6-inch (15.24-cm) mesh, a mesh size that is less than the minimum mesh size currently required, from January through April of each year. This pilot program would have expired after 2 years, unless otherwise renewed by the Council. The Amendment 16 FEIS and recent catch data suggest that this pilot program, implemented on a fishery-wide basis, could increase catch and, therefore, fishing mortality on GOM cod and pollock, stocks that require reductions in fishing mortality in order to rebuild under established rebuilding programs in the FMP, without substantially increasing the catch of haddock. Further, research used to support this pilot program concludes that further work must be done to reduce cod bycatch before a spring haddock gillnet fishery can be reestablished in the GOM and that, due to the low numbers of haddock caught in the study, the results of that research should not be used to support regulatory changes. Based upon this information, NMFS determined that the proposed pilot program is inconsistent with National Standards 1 and 9 of the Magnuson-Stevens Act because it could increase catch and fishing mortality, and may lead to excessive discards of overfished stocks of GOM cod and pollock. Moreover, it is inconsistent with the FMP provisions, including the special access program (SAP) provisions

in Amendment 13; and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, NMFS disapproved this measure in this action.

### Approved Measures

#### *1. Incorporation of Atlantic Wolffish Into the FMP*

Because this species was recently determined to be overfished and is occasionally caught by both the commercial and recreational NE multispecies fisheries, this action incorporates Atlantic wolffish into the FMP. Although the proposed rule indicated that the term “regulated species” would be revised to include large-mesh species, ocean pout, and Atlantic wolffish, this final rule revises that definition to only include large-mesh species and Atlantic wolffish, to accurately reflect that ocean pout will remain classified as a small-mesh species. Status determination criteria, a rebuilding plan, and management measures to rebuild this stock are also established through this action. Incorporation of this species into the FMP is consistent with section 304(e) of the Magnuson-Stevens Act, which requires the development of regulations to end overfishing and rebuild a stock within 2 years of notice that the fishery is overfished.

#### *2. Status Determination Criteria*

This final rule updates the status determination criteria (also known as biological reference points) for existing regulated species and ocean pout stocks based upon GARM III. Because this action adds Atlantic wolffish to the FMP, status determination criteria are also established for this species. Status determination criteria adopted by this action use  $F$  at 40 percent of maximum spawning potential ( $F_{40\% \text{ MSP}}$ ) as a proxy for  $F_{\text{MSY}}$  for most of the age-based stocks. Spawning stock biomasses at  $\text{MSY}$  ( $\text{SSB}_{\text{MSY}}$ ) were calculated using  $F_{40\% \text{ MSP}}$ , with an assumption on the recruitment that should occur at  $\text{SSB}_{\text{MSY}}$ . GARM III represents the best scientific information available, so these updated status determination criteria are consistent with National Standard 2 of the Magnuson-Stevens Act. Table 1 lists the approved status determination criteria, and numerical estimates of these parameters are listed in Table 2.

TABLE 1—APPROVED STATUS DETERMINATION CRITERIA

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

TABLE 2—NUMERICAL ESTIMATES FOR THE APPROVED STATUS DETERMINATION CRITERIA

| Species                     | Stock          | Biomass target ( $B_{target}$ ) in mt | Minimum biomass threshold ( $\frac{1}{2} B_{target}$ ) in mt | Maximum fishing mortality threshold ( $F_{MSY}$ or proxy) | MSY in mt |
|-----------------------------|----------------|---------------------------------------|--|---|-----------|
| Cod .....                   | GB .....       | 148,084 .....                         | 74,042 .....   | 0.25  | 31,159    |
| Cod .....                   | GOM .....      | 58,248 .....                          | 29,124 .....   | 0.24  | 10,014    |
| Haddock .....               | GB .....       | 153,329 .....                         | 76,664 .....   | 0.35  | 33,604    |
| Haddock .....               | GOM .....      | 5,900 .....                           | 2,950 .....  | 0.43  | 1,360     |
| Yellowtail flounder .....   | GB .....       | 43,200 .....                          | 21,600 .....   | 0.25  | 9,400     |
| Yellowtail flounder .....   | SNE/MA .....   | 27,400 .....                          | 13,700 .....   | 0.25  | 6,100     |
| Yellowtail flounder .....   | CC/GOM .....   | 7,790 .....                           | 3,895 .....  | 0.24  | 1,720     |
| American plaice .....       | .....          | 21,940 .....                          | 10,970 .....   | 0.19  | 4,011     |
| Witch flounder .....        | .....          | 11,447 .....                          | 5,724 .....  | 0.20  | 2,352     |
| Winter flounder .....       | GB .....       | 16,000 .....                          | 8,000 .....  | 0.26  | 3,500     |
| Winter flounder .....       | GOM .....      | 3,792 .....                           | 1,896 .....  | 0.28  | 917       |
| Winter flounder .....       | SNE .....      | 38,761 .....                          | 19,380 .....   | 0.25  | 9,742     |
| Redfish .....               | .....          | 271,000 .....                         | 135,500 .....  | 0.04  | 10,139    |
| White hake .....            | .....          | 56,254 .....                          | 28,127 .....   | 0.13  | 5,800     |
| Pollock * .....             | .....          | 2.00 kg/tow .....                     | 1.00 kg/tow .....  | 5.65 c/i  | 11,320    |
| Windowpane flounder * ..... | Northern ..... | 1.4 kg/tow .....                      | 0.7 kg/tow .....   | 0.50 c/i  | 700       |
| Windowpane flounder * ..... | Southern ..... | 0.34 kg/tow .....                     | 0.17 kg/tow .....  | 1.47 c/i  | 500       |
| Ocean pout * .....          | .....          | 4.94 kg/tow .....                     | 2.47 kg/tow .....  | 0.76 c/i  | 3,754     |
| Atlantic halibut .....      | .....          | 49,000 .....                          | 24,500 .....   | 0.07  | 3,500     |
| Atlantic wolffish .....     | .....          | 1,747–2,202 .....                     | 400–500 .....  | <0.35   | 278–311   |

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

### 3. Rebuilding Programs

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

a result, this action establishes rebuilding programs for these newly overfished stocks that begin in FY 2010. For witch flounder and GB winter flounder, the new rebuilding programs would rebuild these stocks by 2017, with a 75-percent probability of success. The rebuilding programs established for pollock and northern windowpane flounder would rebuild these stocks by 2017, but because status determination criteria for these stocks are based upon survey indices, a probability of success

cannot be calculated at this time. Previous stock assessments for Atlantic halibut were insufficient to calculate a rebuilding F. As a result, although the stock was classified as overfished, no target F was calculated. GARM III included an analytic assessment for this species that was able to calculate a rebuilding F shown in Table 3 and an end date for rebuilding of 2055, based upon the biology of this species. Because the life history of Atlantic wolffish is not well understood, there is

considerable uncertainty in the evaluation of stock status and stock projections and a rebuilding period or a rebuilding F for this species at this time. Measures to reduce F for this stock are implemented by this action, as described below.

Based upon GARM III data, projections indicate that SNE/MA winter flounder is unlikely to rebuild by 2014 in the absence of any fishing mortality, but would likely rebuild between FYs 2015 and 2016. Since this stock is caught as non-targeted catch in other large-mesh fisheries, small-mesh fisheries, and the scallop dredge fishery, the only way to achieve zero F would be to eliminate all fishing activity in the SNE/MA winter flounder stock area, including fisheries for scallops, summer flounder, and other non-groundfish species, resulting in substantial adverse economic impacts to affected entities and associated fishing communities. Instead, this action prohibits possession and landings of SNE/MA winter flounder by all vessels and requires all non-sector vessels fishing within two restricted gear areas to use selective gear to minimize the catch of SNE/MA winter flounder and other stocks. These measures are expected to result in achieving an F as close to zero as practicable, eliminate overfishing on this stock, and facilitate the rebuilding of this stock by FY 2015 or 2016. Projections of stock status under an F of zero are similar to those using an F of as close to zero as practicable, as implemented by this action, indicating that there is little difference between when this stock is expected to rebuild under either scenario (see Section

7.2.1.1.3.1 of the Amendment 16 FEIS). Therefore, to impose a complete closure of commercial and recreational fisheries in the SNE/MA winter flounder stock area and still not achieve the objectives of rebuilding this stock by 2014 is contrary to the objectives of the Magnuson-Stevens Act and would result in severe economic impacts without biological benefits. Pursuant to section 304(e)(7) of the Magnuson-Stevens Act which recognizes that an FMP may not always make adequate progress to achieving rebuilding objectives and allows time for revisions to be made to make adequate progress toward rebuilding overfished stocks, this action eliminates targeting of this stock to reduce F to the extent practicable, without delaying the projected rebuilding of this stock.

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

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

The mortality reductions used to design management measures implemented by this final rule are listed in Table 3. These mortality reductions were determined based upon the ABC control rule specified by the Council's Scientific and Statistical Committee (SSC) and the F necessary to rebuild overfished stocks within the rebuilding period ( $F_{rebuild}$ ). The ABC control rule proposed by the SSC and established through this action replaces the MSY control rule that was added to the FMP by Amendment 13. The ABC control rule specifies that the ABC for each stock would be determined as the catch at 75 percent of  $F_{MSY}$ , and that, if the catch at 75 percent of  $F_{MSY}$  would not achieve the mandated rebuilding requirements, ABC would be based upon  $F_{rebuild}$ . For stocks that cannot be rebuilt within existing rebuilding periods, the ABC would be based upon incidental bycatch, including a reduction in the existing bycatch rate. Finally, for stocks with unknown status, ABC would be determined on a case-by-case basis by the SSC. Table 3 lists the percentage change in F necessary to achieve the target F (either  $F_{rebuild}$  or the catch at 75 percent of  $F_{MSY}$ ), as appropriate, from F estimated for FY 2008. Mortality reductions for several stocks are not available because the assessments for these stocks did not produce reliable estimates of F that could be used in projection models to estimate  $F_{rebuild}$ .

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

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

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

| Species                 | Stock | 2007 F | Targeted F<br>(either $F_{rebuild}$<br>or 75% of<br>$F_{MSY}$ ) | $F_{msy}$ | 2008 F from<br>2008 catch<br>data | % Change in<br>F necessary to<br>achieve $F_{rebuild}$<br>using catch<br>and F 2008 |
|-------------------------|-------|--------|---|-----------|-----------------------------------|---|
| Atlantic wolffish ..... | ..... | N/A    | N/A   | N/A       | N/A                               | N/A   |

#### 5. ABC/ACL Specifications and Distribution Process

The recent reauthorization of the Magnuson-Stevens Act required fishery management councils to establish a mechanism for specifying ACLs for each managed fishery such that overfishing does not occur in the fishery, and measures to ensure accountability. The Magnuson-Stevens Act requires that ACLs must take effect in FY 2010 for fisheries subject to overfishing, and in FY 2011 for all other fisheries. Because several stocks managed under the FMP are subject to overfishing, this final rule establishes a process to specify ABCs and ACLs for the NE multispecies fishery for implementation in FY 2010, to comply with new requirements of the Magnuson-Stevens Act, based upon the National Standard 1 Guidelines published in the **Federal Register** (January 16, 2009; 74 FR 3178).

#### ABC/ACL Specifications Process

This action approves the ABCs/ACL specification process described in Section 4.2.1 of the Amendment 16 FEIS. The Groundfish Plan Development Team (PDT) is required to develop recommendations for setting an ABC, ACL, and overfishing level (OFL) for each stock for each of the next 3 years following the implementation of the biennial adjustment, or yearly for stocks managed by the U.S./Canada Resource Sharing Understanding (Understanding) (currently, GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock) through a specifications package. These recommendations will be based upon the ABC control rule, as described above; updated information regarding the status of each stock, including  $F_{rebuild}$  for overfished stocks; recommendations of the Transboundary Management Guidance Committee (TMGC) for appropriate catch levels for stocks managed by the Understanding; and any other guidance provided by the SSC. The ABCs developed through the process will be distributed among the various segments of the fishery that catch NE multispecies. These sub-ABCs will then be reduced to account for management uncertainty to derive how

the overall ACL for each stock is divided into various sub-components of the fishery, as described further below. The PDT will develop an informal document that describes how these recommendations were developed, including estimates of scientific and management uncertainty considered by the PDT, whether different levels of management uncertainty were applied to different components of the fishery, and whether total allowable catches (TACs) have been exceeded during previous FYs. The SSC will then approve the PDT's ABC recommendations, or provide alternative ABC recommendations, describing elements of scientific uncertainty used to develop its recommendations, and offer any other recommendations regarding ACLs or other relevant issues. The Council will then consider the recommendations of the SSC, PDT, and TMGC, and adopt ABCs and ACLs for each stock. As required by the Magnuson-Stevens Act, the Council must adopt ACLs that are equal to or lower than the ABC recommended by the SSC, taking into account management uncertainty. The Council will adopt the ABC/ACL specifications and submit them to NMFS by December 1, for approval and implementation for the following FY in a manner consistent with the Administrative Procedure Act.

As stated above, the actual ABCs and ACLs that result from the process established in this action were adopted by the Council at its November 2009 meeting as part of FW 44. If approved, measures in FW 44 would become effective on May 1, 2010, at the same time as measures implemented through this final action. The ABCs and ACLs for FY 2013 and beyond would be specified according to the process described above, unless otherwise modified through a future Council action.

#### ACL Distribution

This action also approves the process to distribute ACLs among various segments of the fishery that catch regulated species and ocean pout in Amendment 16. The PDT will

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

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

overall ACL for each stock from being exceeded, pursuant to the biennial review, or framework adjustment process in the FMP.

The ACLs for all three stocks of yellowtail flounder will be reduced to account for projected yellowtail flounder bycatch in the Atlantic sea scallop fishery. The level of yellowtail flounder bycatch in the scallop fishery would vary from year-to-year, based upon scallop and NE multispecies abundance, the rotational management program specified for the scallop fishery, and other factors. At a minimum, the yellowtail flounder sub-component of the ACL allocated to the scallop fishery would be consistent with the incidental catch amounts for closed area access programs specified in the current regulations (e.g., at least 10 percent of the GB yellowtail flounder ACL would be specified to account for closed area access programs on GB, when open under the rotational management program). With the exception of GB yellowtail flounder, yellowtail flounder bycatch in the scallop fishery will initially be treated as a sub-component of the ACL, rather than a sub-ACL, and, therefore, will not be subject to any specific AMs under this action. However, the Council is currently developing Amendment 15 to the Atlantic Sea Scallop FMP that is expected to establish yellowtail flounder AMs for the scallop fishery by FY 2011. The existing regulations regarding the Understanding require that any overages of the TACs managed by the Understanding be deducted from the available U.S. portion of the appropriate TAC during the following FY. Therefore, any overages of the U.S. portion of the GB yellowtail flounder TAC, including those by the scallop fishery, will be deducted from the U.S. portion of the GB yellowtail flounder TAC during the following FY.

This final rule clarifies that the allocation of GOM and GB haddock to the Atlantic herring fishery through FW 43 to the FMP (August 15, 2006; 71 FR 46871) reflects 0.2 percent of the GOM and GB haddock ACL. This allocation is considered a sub-ACL because the regulations implementing FW 43 already contain AMs in the form of elimination of the directed herring fishery in particular areas, and haddock possession restrictions, once this sub-ACL is projected to be caught. Because the existing regulations combine catches from both stocks of haddock, the haddock sub-ACL allocated to the herring fishery is not currently monitored on a stock-specific basis.

Finally, this action allocates the remaining ACL for each regulated

species and ocean pout stock to the NE multispecies commercial and recreational fisheries. With the exception of GOM cod and GOM haddock, the remaining ACL for each regulated species and ocean pout stock will be allocated to the commercial NE multispecies fishery. This is then further divided between vessels participating in approved sectors and those fishing under the provisions for the common pool (i.e., those vessels not participating in an approved sector), as described further in Item 14 of this preamble. An allocation for a particular stock would not be made to the recreational fishery if it is determined that, based upon available information, the ACLs for regulated species and ocean pout stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state-waters catch is less than 5 percent of the overall catch for a particular stock. If a stock is allocated to the recreational fishery, the distribution of the available ACLs for these stocks between the commercial and recreational fisheries will be determined based upon the average proportional catch of each component for each stock during FYs 2001 through 2006. Beginning in FY 2010, only two NE multispecies stocks will be allocated to the recreational fishery: GOM cod and GOM haddock. For GOM cod and GOM haddock, state-waters catch will be deducted from the sub-ACL available to the commercial fishery (i.e., vessels issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit). The sub-ACL available to recreational vessels would include catch of GOM cod and GOM haddock in both state waters and Federal waters, and any associated recreational AMs would be triggered by the cumulative catch of such stocks by all recreational vessels.

#### 6. AMs

This action establishes AMs for both the commercial and recreational fisheries, as described in Amendment 16 and summarized below, including separate AMs for sector vessels, vessels fishing in the common pool, and private recreational and charter/party vessels. Under this action, if the overall ACL for a stock is exceeded, the AMs applicable to the NE multispecies fishery, including those specified for sector, common pool, and recreational and charter/party vessels, will be triggered, as specified below. These measures are required to comply with new requirements of the Magnuson-Stevens Act and reflect the spectrum of AMs

recognized in the National Standard 1 Guidelines.

#### Sector AMs

This final rule prohibits sector vessels from fishing in a particular stock area unless that sector is allocated, or acquires, quota for all regulated species or ocean pout stocks allocated to sectors and caught in that stock area. In addition, this action requires that sector vessels cease fishing in a particular stock area if the sector exceeds its allocation of any regulated species or ocean pout stocks caught in a particular stock area. Any overages at the end of the FY would be deducted from that sector's allocation during the subsequent FY, after considering any transfers of quota from another sector. As described below for the AMs effective if the overall ACL for a particular stock is exceeded, the catch used to determine an individual sector's overage includes catch by each sector's vessels, as well as catch by other sub-components of the fishery. If either the catch of a particular stock by a sector's vessels alone, or the catch of a particular stock by a sector's vessels added to a sector's portion of the overall ACL overage caught by other sub-components of the fishery exceeds the amount of that stock's ACL allocated to an individual sector, the amount of the overage will be deducted from that sector's allocation for that stock during the following FY. If a sector disbands following an overage, or does not have sufficient allocation to cover the overage, an appropriate DAS or sector share penalty or fishing prohibition will apply to each individual participating vessel during the subsequent FY, as further described in Item 14 of this preamble. If a sector exceeds its allocations multiple times or by a large amount, the sector operations plan or monitoring program may be insufficient to control fishing effort and could justify disapproval of the sector in future years. These measures are intended to ensure that sectors avoid exceeding their allocations and help prevent overfishing for each managed stock.

#### Common Pool AMs

This action approves two types of AMs for the common pool: A differential DAS counting AM during FYs 2010 and 2011, and a hard-TAC AM overlaid upon the DAS effort controls in FYs 2012 and beyond. This reflects the Council's intent to transition from an effort control fishery to one managed through hard TACs. This transition also enables monitoring systems and service providers to prepare for the increase in infrastructure and personnel necessary

to accommodate the influx of higher volumes of catch data and the need to monitor greater numbers of offloads, as further described below.

Under the differential DAS counting AM, if the NMFS Regional Administrator projects that the sub-ACL available to common pool vessels for each regulated species or ocean pout stock would be exceeded or underharvested by the end of the FY based upon catch data available through January of that year, a differential DAS counting factor would be applied to each Category A DAS used in the stock area for which the sub-ACL was exceeded or underharvested, during the following FY. The catch used in this projection includes catch by common pool vessels as well as a projection of the catch by other sub-components of the fishery. If either the catch of a particular stock by common pool vessels alone, or the catch of a particular stock by common pool vessels plus the common pool's portion of any catch from other sub-components of the fishery that is projected to exceed the overall ACL for a particular stock, is projected to exceed the common pool's allocation for a particular stock, the differential DAS counting AM would be triggered for the following FY. This projection will be updated after the end of the FY to help determine if the catch by other sub-components of the fishery are accurately estimated for the purposes of determining whether the differential DAS counting AM is triggered. The areas in which differential DAS counting apply are defined further in this final rule.

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

vessels only within the Inshore GOM Stock Area during the following FY (i.e., Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). If it is projected that common pool vessels will underharvest all stocks within a particular stock area by at least 10 percent, and that the overall ACL for a particular stock is not exceeded by all sub-components of the fishery, the Regional Administrator will reduce the rate at which DAS are counted to allow the fishery to achieve the ACLs for all stocks within that area. For example, if the common pool catches 0.65 times the CC/GOM yellowtail flounder sub-ACL and 0.80 times the sub-ACL for all other stocks within the Inshore GOM Differential DAS Counting Area, the Regional Administrator will apply a differential DAS factor of 0.80 to all Category A DAS used only in the Inshore GOM Differential DAS Counting Area during the following FY (i.e., Category A DAS would be charged at a rate of 19.2 hr for every 24 hr fished, or 0.80 times 24-hr DAS counting). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas (either to reduce or to increase effort), the Regional Administrator will adjust the ratio of Category A: Category B DAS to reduce/increase the number of Category A DAS available, based upon the amount of the overage or underage, rather than applying a differential DAS counting factor to all Category A DAS used in all stock areas. Any differential DAS counting factor implemented in FY 2012 for any ACL overages in a particular stock area during FY 2011 will be applied against the DAS counting rate implemented in that stock area for FY 2011. This is necessary to ensure that the differential DAS counting rate applied during FY 2012 is sufficient to prevent the ACLs specified for FY 2012 from being exceeded if the differential DAS counting rate applied in FY 2011 was insufficient to control catch during that FY. For example, if a projection by the Regional Administrator concluded that 1.2 times the GOM cod ACL was caught during FY 2010, a differential DAS factor of 1.2 would be applied to any Category A DAS used in the Inshore GOM Stock Area during FY 2011 (i.e., Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). However, if even this higher DAS counting rate were insufficient to prevent the GOM cod ACL from being exceeded again in FY 2011 and 1.5 times the GOM cod ACL was caught during FY 2011, a differential DAS

factor of 1.5 would be applied to the DAS charging rate during FY 2011 (i.e., Category A DAS would be charged at a rate of 43.2 hr for every 24 hr fished (1.2 × 1.5 × 24-hr DAS charge)) for FY 2012. This more accurately reflects the likely reduction in effort needed to prevent overfishing from occurring, and increase the likelihood that catch during FY 2012 would not exceed the ACL in that stock area and result in the trimester TAC area closures being triggered.

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

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

Starting in FY 2012, common pool vessels will be subject to a hard-TAC AM. Under this AM, the sub-ACL available to common pool vessels for each regulated species or ocean pout stock will be apportioned into trimesters of 4 months duration, beginning at the start of the FY (i.e., Trimester 1: May 1—August 31; Trimester 2: September 1—December 31; Trimester 3: January 1—April 30), as listed in Table 5. The distribution of these sub-ACLs into trimesters was based upon a preferred distribution of recent landing patterns, but would be adjusted through the biennial adjustment process to reflect the landing patterns of the most recent 5-yr period available at the time of each adjustment. If a trimester TAC is exceeded/underharvested, the overage/underage will be applied to the following trimester, with the exception that any underage could not be applied to the following FY's trimester TACs. With the exception of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TAC for a regulated species or ocean pout stock will be caught, the Regional Administrator shall close the area where the stock is predominantly caught to all NE multispecies common pool vessels

using gear capable of catching that species, as listed in Table 6, for the remainder of that trimester. The areas to be closed to particular gears are further described in this final rule, and are based upon the area that accounted for 90 percent of the catch of each stock according to available vessel trip report (VTR) data for calendar years 2006 through 2008. These areas differ slightly from those originally described in the Amendment 16 DEIS, as discussed further in Section 4.3.7.1.2 of the Amendment 16 FEIS. The Regional Administrator has the authority to expand or narrow the closure areas based upon additional catch information to reflect where each stock is actually caught. If the entire common pool sub-ACL for a particular stock is

exceeded (i.e., the common pool catch of that stock at the end of the FY exceeds all three trimester TACs for that stock combined, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch of that stock by vessels fishing in state waters outside of the FMP, exempted fisheries, or the scallop fishery), an amount equal to the overage will be deducted from the sub-ACL for that stock that is allocated to common pool vessels during the following year. Because a targeted fishery for windowpane flounder, ocean pout, and Atlantic halibut is eliminated by the restrictive trip limits approved by this action (i.e., a prohibition on the retention of these stocks, or, in the case of halibut, a one-fish-per-trip

restriction), the catch of these stocks will be monitored for the purposes of deducting overages, but will not trigger an area closure. Although particular areas will not close when these trimester TACs for these stocks are harvested, trip limits may be adjusted for these stocks to prevent overfishing in future years once the stock rebuilds and the fishery can once again target these stocks. Once 60 percent of the trimester TAC for any of these stocks is projected to be caught, the Regional Administrator has the authority to specify a trip limit to prevent the trimester TAC or sub-ACL allocated to the common pool vessels from being exceeded. Beginning in FY 2012, the white hake trip limit will be reduced to 500 lb (227 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.

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

| Stock                              | Trimester 1<br>(percent) | Trimester 2<br>(percent) | Trimester 3<br>(percent) |
|------------------------------------|--------------------------|--------------------------|--------------------------|
| GOM cod .....                      | 27                       | 36                       | 37                       |
| GB cod .....                       | 25                       | 37                       | 38                       |
| GOM haddock .....                  | 27                       | 26                       | 47                       |
| GB haddock .....                   | 27                       | 33                       | 40                       |
| CC/GOM yellowtail flounder .....   | 35                       | 35                       | 30                       |
| GB yellowtail flounder .....       | 19                       | 30                       | 52                       |
| SNE/MA yellowtail flounder .....   | 21                       | 37                       | 42                       |
| GOM winter flounder .....          | 37                       | 38                       | 25                       |
| GB winter flounder .....           | 8                        | 24                       | 69                       |
| SNE/MA winter flounder .....       | 36                       | 50                       | 14                       |
| Witch flounder .....               | 27                       | 31                       | 42                       |
| American plaice .....              | 24                       | 36                       | 40                       |
| Pollock .....                      | 28                       | 35                       | 37                       |
| Redfish .....                      | 25                       | 31                       | 44                       |
| White hake .....                   | 38                       | 31                       | 31                       |
| Northern windowpane flounder ..... | 33                       | 33                       | 34                       |
| Southern windowpane flounder ..... | 33                       | 33                       | 34                       |
| Ocean pout .....                   | 33                       | 33                       | 34                       |
| Atlantic halibut .....             | 33                       | 33                       | 34                       |
| Atlantic wolffish .....            | 75                       | 13                       | 12                       |

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

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



To facilitate monitoring trimester TACs under the common pool trimester TAC AM beginning in FY 2012, 20 percent of trips by common pool vessels will have their offloads monitored by an independent third-party service provider approved/certified by NMFS to provide such services. These service providers are required to randomly deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. To ensure coverage is randomly deployed, common pool vessels may only use one dockside monitoring service provider per fishing year. The costs associated with monitoring vessel offloads are the responsibility of individual vessels. Vessels are required to submit trip-start and trip-end hail reports to facilitate the deployment of such dockside/roving monitors, as further described in Item 14 of this preamble.

#### Recreational AMs

For the recreational fishery, once recreational catch information is available for the previous FY (expected by July), the Regional Administrator will evaluate whether recreational catch exceeded the recreational allocation for GOM cod or GOM haddock. For FY 2010, recreational catch will be compared to the recreational ACL for each stock for FY 2010. For FY 2011, the average recreational catch for FYs 2010 and 2011 will be compared to the average recreational ACL for each stock during FYs 2010 and 2011. Beginning with FY 2012, the 3-year average recreational catch will be compared to the most recent 3-year average of the recreational ACL for each stock. If it is determined that the recreational fishery has exceeded its allocation for GOM cod or haddock, NMFS will develop and implement appropriate measures necessary to prevent the recreational fishery from exceeding the applicable sub-ACL in future years, in consultation with the Council. Appropriate AMs for the recreational fishery will include adjustments to fishing season, minimum fish size, and/or possession limits.

#### AMs If an Overall ACL for a Particular Stock Is Exceeded

The National Standard 1 Guidelines state that AMs must be sufficient to prevent overfishing on each stock as a whole. This action implements the Amendment 16 provision that specified that the AMs applicable to the NE multispecies fishery must be sufficient to prevent overfishing on each stock by all components of the fishery that catch regulated species and ocean pout,

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

The amount of the overage caused by excessive catch by other sub-components of the fishery will be divided among the entire NE multispecies fishery, including common pool vessels, approved sectors, and private recreational and charter/party vessels, based upon each component's share of that stock's ACL available to the NE multispecies fishery for the applicable FY. Each component's share of the ACL overage for a particular stock will then be added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If it does, that component will automatically be subject to the applicable AM. For example, if in FY 2010, there is an overall ACL of 1,000 mt of CC/GOM yellowtail flounder allocated across all fisheries, 5 percent of the 1,000 mt (50 mt) would be allocated to vessels fishing in state waters outside the FMP, exempted fisheries, and the Atlantic sea scallop

fishery, while the remaining 95 percent (950 mt) would be allocated to the NE multispecies fishery. The 950 mt allocated to the NE multispecies fishery would be further divided between common pool vessels (allocated 200 mt), Sector 1 (allocated 450 mt), and Sector 2 (allocated 300 mt). Suppose also that, in FY 2010, vessels fishing in state waters outside the FMP, exempted fisheries, and the scallop fishery cumulatively catch 300 mt of CC/GOM yellowtail flounder, exceeding their allocation by 250 mt (i.e., 300 mt caught—50 mt allocated), and components of the NE multispecies fishery each caught less than or equal to their allocations for this stock, with common pool vessels catching 150 mt, Sector 1 vessels catching 450 mt, and Sector 2 vessels catching 300 mt, and cumulatively, the overall ACL for CC/GOM yellowtail flounder was exceeded by 200 mt based upon the catch of all fisheries (see Table 7 below). To determine how to distribute the overage of the overall ACL among the components of the NE multispecies fishery, it would be necessary to first determine each component's share of that stock's ACL that is available to the NE multispecies fishery by dividing each component's allocation for that stock (i.e., 200 mt to common pool vessels, 450 mt to Sector 1 vessels, and 300 mt to Sector 2 vessels) by the total amount allocated to the NE multispecies fishery (200 mt + 450 mt + 300 mt = 950 mt). In this example, the common pool is allocated 21 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (200 mt ÷ 950 mt), while Sector 1 is allocated 47 percent (450 mt ÷ 950 mt), and Sector 2 is allocated 32 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (300 mt ÷ 950 mt). Therefore, to determine whether the common pool and sector AMs would be triggered, 42 mt of the overage (21 percent times 200 mt overage) would be added to the actual common pool catch (150 mt), 94 mt of the overage (47 percent times the 200 mt overage) would be added to the actual catch by Sector 1 vessels (450 mt), and 64 mt of the overage (32 percent times the 200 mt overage) would be added to the actual catch by Sector 2 vessels of (300 mt). In this example, because vessels in both Sector 1 and Sector 2 caught their full allocation of CC/GOM yellowtail flounder, when the overage of the overall ACL was proportionally distributed among the components of the NE multispecies fishery, the total catch of CC/GOM yellowtail flounder by Sector 1 vessels exceeded its CC/GOM

yellowtail flounder allocation by 94 mt (i.e., 450 mt catch by Sector 1 vessels + 94 mt share of the overage = 544 mt, or a 94 mt overage of its allocation), while the total catch of CC/GOM yellowtail flounder by Sector 2 vessels exceeded its CC/GOM yellowtail flounder allocation by 64 mt (i.e., 300 mt catch by Sector 2 vessels + 64 mt share of the

overage = 364 mt, or a 64 mt overage of its allocation). Accordingly, the AMs for both sectors would be triggered, resulting in Sector 1's CC/GOM yellowtail flounder allocation being reduced by 94 mt, and Sector 2's CC/GOM yellowtail flounder allocation being reduced by 64 mt during FY 2011. However, if the common pool's share of

the overage of the overall ACL (42 mt) is added to the common pool's catch of CC/GOM yellowtail flounder (150 mt), the total catch did not exceed the CC/GOM yellowtail flounder allocation to the common pool (42 mt + 150 mt < 200 mt), the common pool would not be subject to the differential DAS counting AM in FY 2011 (see Table 7 below).

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

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

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

Amendment 16 allows a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time. In addition, the owner of a vessel currently issued a limited access Atlantic sea scallop trawl permit is allowed to convert to a dredge gear permit without relinquishing his/her limited access NE multispecies permit. Changes to the permitting and VMS declaration procedures are necessary to implement these provisions and will be described in the small entity compliance guide (i.e., permit holder letter) that will be sent to all permit holder letters in conjunction with the implementation of this final rule.

#### 8. Recordkeeping and Reporting Requirements

##### VTRs

This final rule revises the current VTR submission frequency for all vessels issued a NE multispecies permit from monthly to weekly. These changes now require that vessel owners/operators submit VTRs, including “did not fish reports,” by midnight of the first Tuesday following the end of the reporting week (i.e., 0001 hr local time Sunday through 2400 hr local time the following Saturday). Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) constitutes fishing

during that reporting week, but the date when fish are offloaded dictates the reporting week for which the VTR must be submitted to NMFS. Therefore, if a trip started, ended, or offloaded fish during a reporting week, a VTR is only necessary for the reporting week in which fish were offloaded, and a negative fishing report is not necessary for the reporting week in which a trip was started. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for that fishing trip must be submitted by midnight Tuesday of the third week, but a negative report (i.e., a “did not fish” report) is not required for either week. These measures make the VTR submission requirements consistent with dealer report submission requirements and increase the accuracy and timeliness of catch data available for monitoring and assessment purposes.

##### Area Declarations

This final action establishes four broad stock areas that encompass multiple statistical areas for the purposes of providing more accurate and timely data to apportion catch to individual stock areas, including providing area information for stock apportionment if VTR data are missing or delayed. Operators of all vessels issued a limited access NE multispecies permit that are fishing for NE

multispecies under a NE multispecies DAS, under the provisions of a small vessel category (Category C) or Handgear A permit when fishing in multiple stock areas, or on a sector trip are required to declare their intent to fish in one or more of these broad stock areas via vessel monitoring system (VMS) prior to each trip on which NE multispecies may be landed. In addition, all vessels are required to submit the VTR serial number associated with the first page of the VTR for that trip, as instructed by the Regional Administrator. The VTR serial number will be used to link VTRs with dealer reports and VMS data to increase the accuracy of data used for monitoring catch.

##### Trip-Level Catch Reports

If the operator of a limited access NE multispecies vessel, including vessels issued a limited access Handgear A permit, declares his/her intent to fish in multiple broad stock areas on the same trip, as described above, the operator is required to submit a trip-level catch report to NMFS via VMS that details the amount of each regulated species or ocean pout species kept (in pounds, landed weight) from each broad stock area on that trip prior to crossing the VMS demarcation line upon the return to port, as instructed by NMFS. In addition, to allow NMFS to calculate an assumed discard rate for trips not observed by either a NMFS observer or an industry-funded at-sea monitor, vessel operators are also required to declare the total amount of all species

kept in each broad stock area, including species outside of the FMP. Requiring vessels to declare total catch by each stock area was not specified in the proposed rule, but is necessary to allow NMFS and sectors to calculate discard rates applicable for each trip. This report is required for all trips in multiple areas, unless the vessel is required to submit a daily VMS catch report when operating in one of the special management programs (SMPs), as described further below. These reports will be used to provide more timely data on catch apportionment to stock areas until VTR data become available.

This action approves the provision in Amendment 16 that allows NMFS to exempt a vessel participating in an approved sector from the trip-level VMS catch reports described above to reduce unnecessary duplication with sector reporting requirements (described below in Item 14 of this preamble). At this time, NMFS has determined that these trip-level catch reports are necessary to accurately monitor catch of regulated species and ocean pout by all NE multispecies vessels, including those that are fishing under an approved sector operations plan. If further review of available catch monitoring data indicates that trip-level catch reports are no longer necessary to accurately monitor regulated species and ocean pout catch, and duplicate other available catch data, NMFS may exempt sector vessels from such reporting requirements in subsequent FYs.

#### SMP Reporting Requirements

This action maintains the existing reporting requirements for vessels that participate in a SMP (i.e., SAPs, the U.S./Canada Management Area, and the Regular B DAS Program). However, this action revises the daily VMS catch report for SMPs by eliminating the current requirement for vessel operators fishing in SMPs to report species discards, and requiring vessel operators to specify the VTR serial number or other universal trip ID specified by NMFS, the date fish were caught (applicable only for SMP trips), and the amount of each NE multispecies species, and the total amount of all species, including both NE multispecies and those managed in another FMP, kept in each broad stock reporting area. While the proposed rule indicated that the requirement to report statistical area fished would be removed, this final rule maintains this requirement to ensure that NMFS can accurately attribute catch of GB cod and GB haddock against the Eastern U.S./Canada Area TACs for these stocks.

This final rule also implements a provision that provides the Regional Administrator with the authority to remove SMP-specific reporting requirements if it is determined that the reporting requirements are unnecessary. With the exception noted below, NMFS has determined that daily SMP-specific VMS catch reports for vessels participating in sectors are unnecessary, because sectors are allocated ACE for most regulated species and ocean pout stocks through this action and, therefore, are not subject to any SMP-specific TACs or other restrictions on catch; are responsible for ensuring that sector allocations are not exceeded; and provide sufficient information to monitor all sector catch through the submission of weekly sector catch reports described further in Item 14 of this preamble. This exemption from the SMP reporting requirements for sector vessels does not apply to vessels participating in the Closed Area (CA) I Hook Gear Haddock SAP. This SAP includes an overall haddock TAC that is applicable to both sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for sector managers to provide daily catch reports by participating sector vessels is maintained. Consistent with Amendment 16, NMFS retains the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs.

#### Dealer Reporting and Record Retention Requirements

Because this action implements new requirements for dockside/roving monitors for common pool vessels beginning in FY 2012, and for sector vessels beginning in FY 2010, as described in Items 6 and 14 of this preamble, respectively, the dealer reporting and record retention requirements currently specified in § 648.7(a) and (e), respectively, are revised to require dealers to provide a copy of any dealer weigh-out documents or dealer receipts for a particular offloading event to dockside/roving monitors, allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor. In addition, this action requires that vendors providing dockside/roving monitor services retain and make available for review any records relating to fish offloaded and observed by dockside/roving monitors for 3 yr after the fish were first offloaded. This measure is

intended to maintain consistency with existing record retention requirements and facilitate enforcement of measures proposed under Amendment 16.

#### Pre-Trip Observer Notification

To better monitor regulated species and ocean pout catch under Amendment 16, NMFS has received sufficient funding to increase observer coverage in the NE multispecies fishery for FY 2010, with additional funding possibly available in future years. At this time, funding is available to observe up to 30 percent of common pool trips, and up to 38 percent of sector trips. To ensure that NMFS can achieve targeted observer coverage levels, this action requires that any vessel issued a limited access NE multispecies permit and fishing under a NE multispecies DAS or on a sector trip provide NMFS with the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery based on the authority provided the Secretary to request additional information to implement an FMP in sections 305(d) and 402(a) of the Magnuson-Stevens Act. For trips lasting 48 hr or less, the vessel owner, operator, or manager would be able to make a weekly notification, rather than a separate notification prior to each trip. Such weekly notifications must occur by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or sector trip during the following week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. NMFS will inform the vessel whether an observer has been assigned for that trip, or a waiver issued within 24 hr of notification. This pre-trip notification fulfills the current and proposed observer notification requirements for trips into SMPs. If funding is no longer sufficient to provide high levels of observer coverage for the entire fishery, the Regional Administrator may eliminate this pre-trip notification requirement for all trips, as it would no longer be necessary to facilitate observer deployment for all NE multispecies vessels. If this occurs, the pre-trip observer notification requirements for trips into SMPs would remain in effect.

#### 9. Effort Controls

This action approves all of the revisions to existing effort controls

listed in Amendment 16, including revisions to NE multispecies DAS allocations, NE multispecies DAS accrual provisions, gear restricted areas, and trip limits, as described in further detail below.

#### DAS Allocation

This action revises the way NE multispecies DAS allocated to both common pool and sector vessels are distributed between Category A and Category B DAS, as originally implemented under Amendment 13. Starting in FY 2010, the DAS allocations of common pool vessels will be distributed as follows: 27.5 percent of a vessel's Amendment 13 DAS baseline are allocated as Category A DAS, 36.25 percent of the Amendment 13 DAS baseline are allocated as Category B Regular DAS, and 36.25 percent of the Amendment 13 DAS baseline are allocated as Category B Reserve DAS. For example, a common pool vessel with an Amendment 13 DAS baseline of 88 DAS will be allocated 24.2 Category A DAS, 31.9 Category B Regular DAS, and 31.9 Category B Reserve DAS. This represents a 50-percent reduction from each vessel's 2006 DAS allocation, or an approximately 32-percent reduction from each vessel's 2009 DAS allocation.

This final rule implements a provision that exempts sector vessels from the DAS allocation reductions for common pool vessels described above, because sector vessels are now be subject to hard TACs rather than DAS to control fishing effort. As a result, this action retains the existing 2009 DAS allocations for vessel's participating in a sector for the purposes of participating in the monkfish fishery, a fishery that still requires the concurrent use of a NE multispecies DAS with a monkfish DAS for vessels issued a limited access Category C and D monkfish permit. If a vessel fishes in the common pool in one FY, but in an approved sector during the next FY, its DAS allocation for each FY will reflect whether the vessel is fishing under the common pool, or participating in an approved sector.

#### DAS Counting

Under Amendment 16, all NE multispecies DAS used by vessels fishing in the common pool will be counted in 24-hr increments, based upon the time called into the DAS program via VMS or the IVR system. For example, if a vessel fishes 6 hr, it will be charged for 24 hr of DAS usage; a vessel that fishes 25 hr will be charged for 48 hr of DAS usage. The existing differential DAS counting areas and minimum DAS charge for Day gillnet vessels (i.e., the 3–15 DAS counting rule

where Day gillnet vessels were charged 15 hr for any trip greater than 3 hr or less than or equal to 15 hr in duration, but actual time fished for any trip less than or equal to 3 hr or greater than 15 hr in duration) are eliminated. Because sector vessels are exempt from the Amendment 16 NE multispecies DAS counting provisions for common pool vessels, sector vessels, including sector vessels fishing under the Day gillnet designation, will be charged NE multispecies DAS to the nearest minute based upon the time called into the DAS program via VMS or the IVR call-in system.

#### Restricted Gear Areas (RGAs)

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

the RGAs, provided gear other than the selective gear specified above is properly stowed. Both the areas and the gear required to be used in these areas are further defined in this final rule.

#### Trip Limits

The following changes to trip limits are implemented by this action, but may be superseded by trip limits proposed in FW 44:

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

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

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

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

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

**GB yellowtail flounder:** There is no possession limit specified for this stock at the beginning of each FY. However, the Regional Administrator could implement a possession limit either prior to, or during, the FY to prevent the available GB yellowtail flounder TAC specified for common pool vessels fishing in the U.S./Canada Management Area from being exceeded.

**Atlantic halibut:** The current trip limit of one fish per trip is maintained.

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

In addition to the trip limits specified above, this action allows common pool vessels to land only one landing limit of regulated species in any 24-hr period. If fishing in multiple stock areas, the most restrictive possession limits for each species applies to the entire trip. Because DAS used by common pool vessels are now counted in 24-hr increments, the existing cod running clock provision is eliminated through this action.

#### 10. DAS Leasing and Transfer Programs

All of the revisions to the DAS Leasing and Transfer Programs in Amendment 16 were approved and are implemented by this final rule, including: (1) Allowing permits held in confirmation of permit history (CPH) to participate in the DAS Leasing and Transfer Programs without being activated by being placed onto a vessel, (2) elimination of the DAS conservation tax in the DAS Transfer Program (any DAS reduced due to the conservation tax applied to previously approved transfers would not be reinstated), and (3) elimination of the DAS leasing cap added to the FMP by Amendment 13 (i.e., there would be no limit on the number of DAS that a permit holder could lease from another permit holder). Existing restrictions on leasing DAS between vessels participating in sectors and those fishing in the common pool are continued under this action. A similar restriction on DAS transferred under the DAS Transfer Program is described in Item 14 of this preamble.

#### 11. Minimum Fish Size

This action reduces the minimum fish size of haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) for all NE multispecies vessels, including both commercial and recreational vessels, to reduce discards and increase landings of this healthy species due to slower than expected growth rates of mature fish. This action also increases the minimum fish size for halibut from 36 inches (91.4 cm) to 41 inches (104.1 cm) for both commercial and recreational vessels to reflect the median length at maturity for female halibut in the GOM, increase opportunities for halibut to spawn prior to capture, and improve the likelihood that this stock will meet rebuilding objectives.

#### 12. SMPs and SAPs

All of the changes to existing SAPs for both common pool vessels and those fishing in an approved sector proposed in Amendment 16 have been approved and implemented in this action, as described in further detail below.

#### U.S./Canada Management Area

This final rule revises the provision first implemented under FW 42 that counted all catch of cod, haddock, and yellowtail flounder against the Eastern U.S./Canada TACs for GB cod and GB haddock, and the overall TAC for GB yellowtail flounder for vessels fishing inside/outside of the Eastern U.S./Canada Area to accommodate the allocation of these stocks to sectors, as further described in Item 14 of this preamble.

#### Incidental Catch TAC

The current regulations specify incidental catch TACs to limit the catch of species of concern (i.e., stocks that were overfished or subject to overfishing) when vessels were targeting healthier regulated species or ocean pout stocks under a Category B DAS in SMPs. This action revises these provisions to reflect that incidental catch TACs will be based upon the ACL available to the commercial common pool fishery and to specify an incidental catch TAC for pollock. The incidental catch TAC for pollock is specified as 2 percent of the ACL available to common pool vessels and will be distributed to all SAPs, as follows: 50 percent to the Regular B DAS Program, 16 percent to the CA I Hook Gear Haddock SAP, and 34 percent to the Eastern U.S./Canada Haddock SAP. Consistent with existing SAP provisions, once the pollock incidental catch TAC is projected to be caught by common pool vessels, the use of Category B DAS in that particular SAP would be prohibited for the remainder of the season, as specified by the Regional Administrator.

#### Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP, scheduled to expire at the end of FY 2009, is extended indefinitely through this action. In addition, participating vessels may use codends with a minimum mesh size of 6 inches (15.24 cm) diamond or square mesh when participating in this program and using selective trawl gear such as the haddock separator trawl or the Ruhle trawl. All catch by sector vessels when participating in this SAP will count against the sector's allocation for each stock, including those specific to the Eastern U.S./Canada Area. Because sectors will be restricted by their allocations for each stock, sector vessels will not be restricted in the gear that could be used when participating in this SAP. Sector vessels will be allowed to continue to fish in this Eastern U.S./Canada Area Haddock SAP for the entire season specified for this SAP as

long as the sector to which they belong has been allocated quota for all stocks caught in this SAP.

#### CA I Hook Gear Haddock SAP

The CA I Hook Gear Haddock SAP is revised to expand both the area and the season of this SAP. The season is extended to run from May 1 through January 31. The seasonal split between sector and common pool vessels is eliminated, as is the division of the available GB haddock quota between sector and common pool seasons. This means that once the available GB haddock quota specified for the SAP is caught, the SAP will be closed to all vessels, including sector vessels. Sector vessels and common pool vessels would be able to fish under this SAP throughout the proposed season, provided the SAP is not closed and sectors to which vessels belong have been allocated quota for all stocks caught in this SAP. The SAP area is extended to cover most of the northern portion of CA I, as described further in this final rule. All other requirements of this SAP remain unchanged by this action. Finally, this action prohibits vessels participating in the SAP from using squid or mackerel for bait, or even possessing squid or mackerel on board the vessel to reduce the catch rates of cod in this SAP.

#### SNE/MA Winter Flounder SAP

Because F on SNE/MA winter flounder must be reduced to as close to zero as practicable, and no vessels will be allowed to possess SNE/MA winter flounder under this action, the SNE/MA Winter Flounder SAP is temporarily suspended until improving stock conditions warrant its re-implementation under a future Council action.

#### CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder SAP is revised by this action to facilitate the harvest of GB haddock within CA II, even when the SAP is closed to targeting GB yellowtail flounder. This revised CA II Yellowtail Flounder/Haddock SAP builds upon the existing provisions of the CA II Yellowtail Flounder SAP by modifying the gear requirements and season when the area is open to targeting haddock. When the SAP is open to targeting yellowtail flounder based upon the amount of GB yellowtail flounder available, the existing CA II Yellowtail Flounder SAP provisions apply. This includes the season (July 1 through December 31), individual vessel trip limits (one trip per vessel per month), cumulative

fishery trip limits (320 trips per year, unless otherwise specified by the Regional Administrator), gear requirements (one of two types of flounder nets specified in the regulations, the haddock separator trawl, or the Ruhle trawl), GB yellowtail flounder trip limit (10,000–30,000 lb (4,536–13,608 kg) per trip), GB cod trip limit (1,000 lb (453.6 kg) per trip), and other provisions. When the SAP is not open to the targeting of GB yellowtail flounder, either because there is insufficient GB yellowtail flounder available to open the SAP, or because the maximum number of trips has been taken, the SAP will open to target GB haddock, provided the Eastern GB haddock ACL has not been caught by common pool vessels, or there is sufficient quota for all stocks caught in the SAP for vessels participating in an approved sector. If the SAP is open to target haddock, the following provisions apply, unless otherwise noted below: Season (August 1 through January 31), gear requirements (a vessel is not allowed to use a flounder net and must instead use a haddock separator trawl, a Ruhle trawl, or hook gear), trip limits (no haddock trip limit, and the existing trip limits for GB cod and GB yellowtail flounder), and the existing SAP DAS and discard provisions. All catches of GB haddock apply to the Eastern GB haddock quotas allocated to either common pool or vessels participating in individual sectors. Sector vessels are not subject to the trip limits, limits to the number or frequency of trips (i.e., the current restriction of 1 trip per month or the maximum 320 trips per year) or DAS restrictions specified for this SAP, but are subject to the gear requirements for this SAP. Individual sector vessels will be allowed to continue to fish in this modified CA II Yellowtail Flounder/Haddock SAP should it close to common pool vessels, as long as the applicable sector has allocated quota remaining for all stocks caught in this SAP.

### 13. Recreational Measures

To ensure that management measures can be tailored to address the components of the fishery responsible if mortality targets are exceeded, this action allocates portions of the GOM cod and GOM haddock ACLs to the recreational fishery based upon the criteria proposed to allocate regulated species and ocean pout stocks between the NE multispecies commercial/recreational fishery, as described in Item 5 of this preamble. To meet the target F for GOM cod, this action also extends the existing seasonal GOM cod prohibition for recreational vessels,

including both private recreational and charter/party vessels for 2 weeks, to run from November 1 through April 15. Other recreational measures implemented by this action include the elimination of the limit on the number of hooks that can be used (recreational anglers are still limited to one line per angler), and the requirement that all fillets landed by private recreational and charter/party vessels must have at least 2 sq inches (5.08 sq cm) of contiguous skin that allows for the ready identification of the fish species. Such fillets are required to be from legal-sized fish, but the fillets themselves would not need to meet the minimum size requirements in the regulations. Finally, as stated above for commercial vessels, this final rule reduces the minimum size for haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) total length, indefinitely, and increases the minimum size for Atlantic halibut from 36 inches (91.4 cm) to 41 inches (104.1 cm) total length. Atlantic wolffish would be added to the FMP, with zero possession allowed for all recreational vessels.

Consistent with language in the Amendment 16 FEIS, the preamble of the proposed rule for this action indicated that the possession of SNE/MA winter flounder is prohibited in any fishery. However, while the proposed rule included regulatory text that prohibited common pool and sector vessels from possessing this stock, it did not include similar language for private recreational and charter/party vessels. To accurately reflect the intent of the Council under Amendment 16, this final rule revises the regulatory text at § 648.89 to insert a prohibition on the retention of SNE/MA winter flounder by all recreational vessels.

### 14. Sector Measures

This action approves all sector measures proposed under Amendment 16, including the formation of 17 additional sectors and revisions to many existing sector requirements such as sector allocation provisions, operations plan requirements, and monitoring and reporting requirements, as specified further below. In addition, vessels participating in an approved sector are required to comply with the sector-specific AMs specified in Item 6 of this preamble, sector reporting requirements described in Item 8 of this preamble, and sector provisions specified for individual SMPs outlined in Item 12 of this preamble.

Based upon the comments received on the proposed rule for this action, there remains some confusion as to whether a sector is a limited access

privilege program (LAPP), as defined in the Magnuson-Stevens Act. NMFS would like to clarify that NMFS does not consider sectors to be LAPPs, and they are not subject to the referendum or cost-recovery requirements of the Magnuson-Stevens Act. There is no permit issued to a sector, and no permanent or long-term allocation of fish is made to any sector. Unlike individual fishing quotas (IFQs), sectors are temporary, voluntary, fluid associations of vessels that can join together to take advantage of flexibilities and efficiencies that sectors are afforded. Vessel owners may choose to join a sector or not, and can change their decisions from one year to the next, based on what they believe are the best opportunities for them at that point in time. Additional details regarding NMFS' interpretation of the LAPP and IFQ provisions of the Magnuson-Stevens Act are provided in the response to Comment 49, below.

### Sector Eligibility and Definition

This action allows permits held in CPH to join sectors. In addition, because this action now controls sector effort through hard TACs instead of a combination of hard TACs and DAS, vessels issued a limited access NE multispecies Handgear A permit (a permit that is not subject to DAS effort controls) are now eligible to participate in sectors. Only those vessels that were issued a limited access NE multispecies permit or CPH as of May 1, 2008, are eligible to participate in sectors. Finally, consistent with the Council's sector policy, this action defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector to address concerns that sectors may be used as a means to circumvent the individual transferable quota referendum required by the Magnuson-Stevens Act, and minimize the administrative burden associated with implementing a large number of very small sectors.

### Operations Plan Requirements

Amendment 13 specified a number of required elements that must be included in each sector operations plan. This final rule adds to those requirements to provide additional details regarding sector reporting and monitoring provisions, as well as to better understand the composition and effort distribution of participating vessels so that the Council can better evaluate the impacts of sectors. These additional operations plan requirements include information about overage penalties if a sector exceeds its allocation for any

stock; detailed information about the sector's independent third-party dockside/roving monitor service provider that meets NMFS standards to monitor sector landings; detailed information about a monitoring program for discards; a list of all Federal and state permits held by vessels participating in the sector; a list of specific ports where sector members will land fish with specific exemptions provided for safety, weather, and other reasons; TAC thresholds and how the sector would notify NMFS once the threshold has been reached; identification of potential redirection of effort as a result of sector operations and any efforts to limit the adverse effects of such redirection of effort; and finally how regulated species or ocean pout would be avoided while participating in other fisheries that have a bycatch of regulated species and ocean pout if the sector does not anticipate being allocated or acquiring an allocation of such species from another sector. This last requirement is only required if the sector anticipates operating in this manner. Sector operations plans are required to be submitted by September 1 of each year to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next FY on May 1. Operations plans may address sector operations over either a 1- or a 2-year period, provided the analysis is sufficient to cover the duration of the applicability of the operations plan. The Regional Administrator will review each sector operations plan and associated analysis and approve or disapprove such operations, with implementation through publication of a rule in the **Federal Register**.

#### Universal Sector Exemptions

This final rule maintains the existing restriction that sectors cannot be exempted from year-round closures, permitting restrictions, gear restrictions designed to reduce habitat impacts, and reporting requirements. However, this final rule also establishes several "universal exemptions" in which all sectors will be exempt, including trip limits on stocks for which the sector receives an allocation (described in more detail below); seasonal closed areas; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear (i.e., the haddock separator trawl, the Ruhl trawl, or other approved gear) on GB, provided such vessels fish with a 6-inch (15.24-cm) mesh codend; and portions of the GOM Rolling Closure Areas (described in more detail below). Sectors may still

request and analyze additional exemptions as part of their yearly operations plans, but such exemptions need to be approved by the Regional Administrator. The provisions applicable to a sector, including any exemptions from existing regulations, will be specified in a LOA issued to sectors by the Regional Administrator, which must be possessed on board participating vessels at all times to facilitate enforcement of sector provisions.

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

Consistent with the Council's intent to transition from input controls to output controls, this action does not rely upon DAS to control sector effort on regulated species or ocean pout, relying instead on hard TACs to control sector catch. Under this action, sectors will be allocated fishery resources for all regulated species stocks, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder, and ocean pout based upon the fishing histories of participating vessels. Although SNE/MA winter flounder is not allocated to sectors at this time, if the status of SNE/MA winter flounder improves, this stock would be allocated in a manner similar to how other stocks are allocated, as described below.

Sector allocations are in the form of an ACE for each stock, or the maximum amount of a particular stock that a sector could catch—including both landings and discards—on a yearly basis. Each individual sector's ACE for a particular stock represents a share of that stock's ACL available to commercial NE multispecies vessels based upon the cumulative PSCs of vessels participating in each sector. A PSC represents an individual permit's share of the ACL for each regulated species or ocean pout stock based upon the individual permit's dealer landings available to NMFS (see below for further detail), including the landings histories for any permit histories consolidated onto one vessel prior to May 1, 2008, as part of the existing DAS Transfer Program provisions. These PSCs remain with the limited access permit indefinitely, including upon replacement of a vessel, or consolidation with another limited access NE multispecies permit on another vessel. The ACE allocated to a sector is valid only for one FY and is recalculated on a yearly basis based upon changes to sector rosters. While Amendment 13 specifically restricted the size of an individual sector

allocation to no more than 20 percent of the yearly TAC for any regulated species or ocean pout stock, this action eliminates that restriction to further facilitate participation in sectors.

The PSC for each regulated species or ocean pout stock is based upon historic landings of each stock while operating under the restrictions of a limited access NE multispecies permit, including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries. With the exception of GB cod, the PSC for each stock is calculated by summing the dealer landings for each permit during FYs 1996 through 2006. This value is then divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors to get the individual permit's share of the available commercial ACL for each stock. The landings history for each permit includes all landings that can be attributed to that permit. For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during FYs 1996 through 2003, before the adoption of the limited access Handgear A permit category in 2004. For GB cod, any vessel owner that indicated his/her intent to participate in one of the existing sectors (i.e., the GB Cod Hook Sector or the GB Cod Fixed Gear Sector) by signing a preliminary roster for these sectors by March 1, 2008, is allocated a GB cod PSC based upon documented landings histories of this stock between FYs 1996–2001, the years selected to determine the GB cod allocation for existing sectors under Amendment 13. A process to correct data used to calculate each permit's PSC for each stock was outlined in a May 1, 2009, letter to all limited access NE multispecies permit holders and updated on July 27, 2009, and again on November 2, 2009. These letters are available on the NMFS Northeast Regional Office Web site (<http://www.nero.noaa.gov>).

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



that sector would also be allocated and allowed to harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to commercial NE multispecies vessels is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, this sector would be allocated 100 mt of GB cod, of which 10 mt would be allocated to, and could be harvested from, the Eastern U.S./Canada Area.

A sector can only fish in a particular stock area if it is allocated, or acquires through transferring ACE from another sector, ACE for all stocks allocated to sectors in that stock area. Catch for all allocated regulated species or ocean pout stocks, including both landings and discards, count against a sector's ACE for a particular stock. Sector vessels are required to retain all legal-sized regulated species and ocean pout and are only allowed to discard undersized fish for all allocated stocks. Once a sector's ACE for a particular stock is caught, a sector is required to cease fishing operations in that stock area for the rest of the FY, or until it acquires additional ACE for that stock. If, in a particular FY a sector exceeds its ACE for a particular stock after considering all ACE allocated to that sector or acquired from another sector, that sector's ACE for that stock will be reduced by the amount of the overage in the following FY. If there is insufficient ACE allocated to a particular sector to cover the overage, vessels participating in that sector will not be allowed to fish in the stock area for which the overage occurred unless and until that sector acquires sufficient ACE from another sector to cover the remaining overage (i.e., the overage that exists after reducing the ACE for that stock to zero for the following FY). For example, if a sector is allocated 10 mt of GB cod ACE, but catches 25 mt of GB cod during the previous FY, the GB cod ACE for the following FY would be reduced to zero and that sector would be required to acquire at least 5 mt (i.e., 15 mt overage – 10 mt ACE allocated = 5 mt overage remaining) of GB cod ACE in order to fish in the GB cod stock area during the following FY. If the sector disbands, individual participating vessels will be subject to a reduction in PSC if participating in another sector, or a reduction in allocated DAS if participating in the common pool, proportional to the individual vessel's share of the maximum overage that occurred. For example, if a sector exceeds its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit in that particular sector that

enters the common pool during the subsequent FY would receive a 15-percent reduction in its Category A DAS allocation for that FY. If a sector comprised of 10 permits/vessels exceeds its GB cod ACE by 10,000 lb (4,536 kg) during the previous FY, but later disbands, each permit in that sector that joins another sector during the subsequent FY would have its GB cod PSC temporarily reduced by 1,000 lb (453.6 kg) during that FY. A sector could also specify additional penalties to participating vessels as part of its yearly operations plan. If the sector does not exceed its ACE for any stock, but other vessels in the common pool or another sector exceed their sub-ACLs or ACEs, respectively, the sector's ACE in the following FY would not be reduced as a result of such overages by other groups. This is intended to ensure that groups responsible for exceeding their portion of the ACL for a particular stock do not negatively impact other groups.

If a sector exceeds its ACE at the end of the FY, it could be held jointly and severally liable for such an overage and may be subject to a permanent reduction in the sector's ACE (i.e., a permanent reduction in individual vessel's PSCs) or a withdrawal of the approval of that sector in addition to the penalties described above. In addition to ACE overages, a sector and its participants could be held jointly and severally liable for discarding legal-sized fish or misreporting catch (both landings and discards).

With the exception of GB yellowtail flounder, a sector is allowed to carry over up to 10 percent of unused ACE for each stock into the following FY, even if a sector's roster has changed between those FYs. Any unused ACE allocated for Eastern GB stocks contributes to the 10-percent carry-over allowance for each stock as a whole, but will not increase an individual sector's allocation of Eastern GB stocks during the following year. In addition, a sector is not allowed to carry over any unused ACE for GB yellowtail flounder into the next FY. Because the U.S. portions of the TACs for GB yellowtail flounder and Eastern GB cod and Eastern GB haddock are specified on a yearly basis as part of the Understanding, allowing sectors to carry over any of these stocks could result in U.S. harvest of these stocks exceeding the U.S. portions of these stocks for a particular FY if all vessels fully harvested the TACs specified to either sectors or the common pool. This could result in a violation of the Understanding and the need to deduct such overages during the following year based upon existing regulations implementing the Understanding.

#### ACE Trading

All or a portion of a sector's ACE for any regulated species or ocean pout stock may be transferred to another sector at any time during the FY, and up to 2 weeks into the following FY. ACE transfers will be approved by the Regional Administrator through the submission of an ACE transfer request form that details the amount of ACE transferred and any compensation exchanged. The Regional Administrator will approve/disapprove such a transfer request based upon whether the sector is compliant with applicable reporting requirements, including the weekly sector catch report described below, and individual VTR requirements. Such transfers are only valid for the FY requested on the transfer request form. To ensure that such ACE trading does not lead to overfishing, NMFS will withhold 20 percent of each sector's ACE for each stock for a period of 61 days (i.e., through June 31) to accommodate any transfers of ACE late in the FY and to allow sufficient time for NMFS to evaluate sector catch data to determine if an overage actually occurred.

#### DAS Transfer Requests by Sector Vessels

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

#### Sector Monitoring and Reporting Requirements

Amendment 16 and this final rule requires sectors to develop mechanisms to adequately monitor catch and discards by participating vessels. One of these mechanisms is an independent third-party dockside/roving monitoring program that observes offloads by sector vessels to ensure that landings are accurately reported. This dockside/roving monitoring program is required starting in FY 2010, and will be funded by sectors, unless otherwise specified by NMFS. Dockside monitors observe



offloadings directly to a dealer, while roving monitors are used to monitor offloads to a truck for later delivery to a dealer. Such a program must employ a dockside/roving monitor service provider approved/certified by NMFS based upon specific provider and operational standards developed by the Gulf of Maine Research Institute (GMRI) and members of the fishing industry, in consultation with NMFS, as further described in this final rule. During FY 2010, the offloads of 50 percent of trips by each sector will be randomly observed, with 20 percent randomly observed in future years. In addition, because discards and area fished are critical elements in the monitoring of sector catch, sectors are required to develop an adequate independent third-party at-sea/electronic monitoring program no later than FY 2012. This program will be used to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization. Coverage levels will be specified by NMFS on a yearly basis, based upon a list of participating vessels and gear types for each sector. At a minimum, such coverage will be sufficient to ensure that the resulting estimate of discards meets the coefficient of variation specified in the Standardized Bycatch Reporting Methodology (SBRM), but it is expected that coverage is likely to be higher than this minimum standard to monitor catch (both landings and discards) as closely as possible and to minimize coverage bias in each sector. Electronic monitoring could be used in lieu of actual at-sea monitors in the future, provided the technology is deemed sufficient by NMFS for a specific gear type and area fished; NMFS has not yet deemed electronic monitoring technology sufficient for any gear or area fished. Existing NMFS-funded observer coverage will continue under this action. Any at-sea monitoring coverage provided by an approved sector at-sea monitoring program will be in addition to the coverage provided by NMFS-funded observers. If a NMFS-funded observer and an industry-funded at-sea monitor are assigned to the same trip, the NMFS-funded observer will take precedence and will cover that trip, and the at-sea monitor will not be deployed on that trip, to minimize costs to industry. To facilitate deployment of dockside/roving and at-sea monitors and enforcement of these provisions, vessels must submit trip-start and trip-end hail reports to the dockside/roving and at-sea/electronic monitoring service providers and to NMFS Office of Law

Enforcement, unless otherwise specified in an approved sector operations plan, as further described in this final rule. The details for any dockside/roving and at-sea/electronic monitoring program must be specified in each sector's annual operations plan.

Discards will be monitored through the use of a sector-specific assumed discard rate, unless NMFS deems that there are sufficient observer or at-sea monitor data available to specify a sector-specific, inseason discard estimate for each stock/gear combination specified in the FMP. Once sufficient data are available, the sector-specific inseason discard rate will apply to all trips taken by sector vessels for the remainder of the FY, in lieu of the assumed discard rate. If a trip is observed by either an observer or an at-sea monitor, the discards reported by the observer or at-sea monitor will be used to document discards for that particular trip instead of using an assumed discard rate, regardless of whether the sector has developed an approved at-sea monitoring program for that FY (see the NMFS Northeast Regional Office Web site for further details: <http://www.nero.noaa.gov/sfd/sfdmultisector.html>).

The data and methodology used to calculate a Sector-specific assumed or inseason discard rate is considered an administrative measure necessary to administer the FMP and monitor sector catch. As a result, the manner in which such rates are calculated may change on a yearly basis. For FY 2010, NMFS will calculate the assumed discard rate based upon observed trips by sector vessels during FY 2009, by stock and gear type, as specified in Section 4.2.3.5.3 of the Amendment 16 FEIS. If there are insufficient data to develop an assumed discard rate at this level, a fleet-wide stock and gear discard rate will be used instead. When calculating these discard rates, regulatory discards of legal-sized fish caused by trip limits will be excluded to represent anticipated behavior under sectors. These assumed discard rates will be calculated as often as practicable, and will be used to add a discard estimate to each landing by a sector vessel so that total catch can be determined for each stock for each trip. Based upon available funding, NMFS intends to increase the NMFS-funded observer and at-sea monitor coverage to include approximately 38 percent of sector trips and 30 percent of common pool trips during FY 2010, and possibly future FYs.

Sectors are required to submit an annual report to NMFS by July 1 of each year that provides information necessary to evaluate the biological,

economic, and social impacts of sectors. The report must include harvest levels of all vessels for all federally managed species, enforcement actions, and other information needed to evaluate the performance of the sector. In addition, sectors must submit weekly catch reports that provide sector catch and discard for each stock allocated to that sector, as instructed by the Regional Administrator. Sectors must provide trip-level catch data, if requested, to facilitate the auditing of sector catch data to ensure that data used by sectors are consistent with those submitted to NMFS, based upon the provision in Amendment 16 that allows other requirements of sector monitoring plans to be implemented, as directed by the Regional Administrator.

#### Authorization of Sectors

Amendment 16 authorizes 17 new sectors and revises the provisions for 2 existing sectors. These sectors include the GB Cod Hook Gear Sector, GB Cod Fixed Gear Sector, Sustainable Harvest Sector, Port Clyde Community Groundfish Sector, Northeast Fishery Sectors I through XIII, Tristate Sector, and the Northeast Coastal Communities Sector. All operational aspects of these sectors have been proposed in their annual operations plans, as submitted to NMFS.

#### 15. VMS Requirement

Because this action relies upon VMS to submit area declaration, hail reports, and catch information necessary to implement provisions approved in Amendment 16, all vessels issued a limited access NE multispecies permit and fishing under either a NE multispecies DAS or on a sector trip must use a VMS for each NE multispecies trip. In addition, any vessel issued a limited access NE multispecies small vessel Category C or Handgear A permit that fishes in multiple broad stock areas must also use a VMS for each NE multispecies trip. The preamble to the proposed rule for this action inaccurately stated that all vessels issued a limited access NE multispecies permit would be required to use VMS. However, the proposed regulations correctly reflected the intent described above. Consistent with existing VMS regulations, upon taking either a common pool or a sector trip, a vessel issued a limited access NE multispecies permit must maintain an operational VMS for the remainder of the FY.

#### 16. Framework Items

This action revises the management measures that may be modified by a

framework action by adding the following measures to the list of measures that can be adjusted through a framework action: Process for specifying and distributing ABCs and ACLs; trimester TAC distribution; sector provisions, including authorized sectors; PSC calculations; and any other provision implemented under the FMP.

#### 17. Corrections

As described in the proposed rule for this action, a number of inadvertent errors, omissions, and ambiguities in existing regulations must be corrected in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP. This final rule clarifies that although the replacement vessel size restrictions do not apply to Handgear A vessels, the limitation on one vessel replacement per year does apply to these vessels. Outdated references to the gillnet tag requirements for Trip gillnet vessels eliminated by FW 40B are removed. The Atlantic sea scallop access program regulations are revised to cross reference the correct SNE/MA yellowtail flounder trip limit and eliminate references to incorrect trip limits. Regulations providing the Regional Administrator with the authority to modify or delete exemptions to the existing exempted fisheries are reinserted to reflect regulations originally implemented on a permanent basis by FW 9 (60 FR 19364; April 18, 1995). This action clarifies that limited access general category scallop vessels, and limited access scallop vessels not fishing under a scallop DAS, that are fishing in the GOM RMA must fish in the GOM Scallop Dredge Exemption Area, and are prohibited from fishing in any other part of the GOM RMA, and must use dredge gear to harvest scallops in the GOM Scallop Dredge Exemption Area to reflect the intent of measures in FW 21 (62 FR 8404; February 25, 1997). In addition, general category scallop vessels, and limited access scallop vessels not fishing under a scallop DAS, that are fishing in the SNE RMA must fish in the SNE Scallop Dredge Exemption Area, and are prohibited from fishing in any other part of the SNE RMA, and must use dredge gear to harvest scallops in the SNE Scallop Dredge Exemption Area. The western border of the SNE Scallop Dredge Exemption Area is corrected to coincide with the eastern border of the MA Exemption Area. An incorrect reference to midwater trawl gear as exempted gear in the GOM Rolling Closure Area regulations is removed to reflect measures implementing FW 43. Restricted Gear Area 1 point 72 is added to make the

regulations consistent with FW 22 (March 10, 1997; 62 FR 10747) and the regulations for the American lobster fishery. The regulations for the DAS Leasing Program are clarified to allow a one-time DAS leasing baseline downgrade opportunity for a NE multispecies permit that results from the combination of two limited access NE multispecies permits merged under the DAS Transfer Program. This final rule also clarifies that the upgrade of any baseline specification under the DAS Transfer Program precludes any future upgrades through subsequent transactions and removes outdated references that a permit involved in a DAS transfer must forfeit all other permits. Regulatory text regarding closure of the Eastern U.S./Canada Area once 100 percent of the Eastern GB cod TAC is harvested is inserted to reflect the intent of the provisions originally implemented under Amendment 13. Several coordinate points defining the CC/GOM and SNE/MA stock areas for yellowtail flounder in the Regular B DAS Program are revised to maintain consistency with the areas adopted under FW 42. Finally, the existing regulations are revised to allow the stowage of other types of gear when fishing in the Eastern U.S./Canada Haddock SAP to be consistent with the overall regulations for the Eastern U.S./Canada Area.

#### 18. Transfer of ACE by NOAA-Sponsored Permit Banks

The proposed rule for this action considered allowing any state-operated permit bank sponsored by NOAA to be a sector to enable such permit banks to lease ACE to qualifying sectors to minimize any adverse socio-economic impacts to fishing communities associated with catch-share programs. Public comment received on this action indicated that, although many supported the concept to allow permit banks to transfer ACE and DAS, others believed there was insufficient information provided in the proposed rule to effectively evaluate the implications of such measures. Some public comments expressed a concern that such provisions would have broader implications on the definition of a sector, as developed by the Council in Amendment 16, and on the ability of existing and future permit banks to operate under the sector provisions approved under Amendment 16. To foster further discussion on permit banks and how they are affected by the provisions approved under Amendment 16 and implemented by this action, NMFS has removed proposed measures specific to NOAA-sponsored permit

banks from this final rule and will recommend that the Council develop a means to address public comments regarding permit banks, including those sponsored by NOAA, in a subsequent Council action.

#### 19. Approval of Service Providers for FY 2010 Sector Dockside and At-Sea Monitoring Programs

As described in Items 6 and 14 of this preamble, Amendment 16 requires that service providers interested in providing dockside and/or at-sea monitoring services to common pool and sector vessels apply to, and be approved/certified by, NMFS. Based upon consultation with the GMRI and industry participants, NMFS expanded the service provider approval/certification standards listed in Section 4.2.3.5.4 of the Amendment 16 FEIS to include operational standards necessary to effectively implement both dockside and at-sea monitoring programs in Amendment 16. These expanded standards were listed in the Amendment 16 proposed rule and were used to approve/certify dockside and at-sea monitoring service providers under this action.

Potential service providers identified by the sector proponents were invited to a workshop at the NMFS Northeast Fisheries Science Center (NEFSC) in August 2009. This workshop presented the service provider requirements of the Amendment 16 DEIS. In order to implement Amendment 16 sector requirements by May 1, 2010, NMFS specified that service providers intending to provide dockside and/or at-sea monitoring services to sectors during FY 2010 would be required to demonstrate their compliance with the service provider standards as part of the operations plan of each sector interested in retaining their services. Because sectors were required to submit operations plans to NMFS by September 1, 2009, potential service providers needed to demonstrate compliance with these standards by September 1, 2009. NMFS received complete applications from four service providers intending to provide dockside and/or at-sea monitoring services to sectors, and one service provider intending to provide only dockside monitoring services to sectors in FY 2010.

Discussions with members of industry and service provider applicants identified the need to approve service providers ahead of the sector operations plans final rule to allow time for industry and service providers to arrange contracts before May 1, 2010. It was decided that service providers and proposed FY 2010 sectors could be

notified of a preliminary determination about service provider approval/disapproval as soon as possible, and that the Regional Administrator's final determination would be published concurrent with the approval of sector monitoring measures in this Amendment 16 final rule. On December 24, 2009, service provider applicants and proposed FY 2010 sectors were notified of NMFS's preliminary approval of all five applicants as eligible to provide monitoring services to sectors in FY 2010. In this final rule, the Regional Administrator is announcing the final approval of dockside/at-sea monitoring service providers based upon the completeness of their applications and a determination of their ability to perform the duties and responsibilities of a dockside/at-sea monitoring service provider, as specified by Amendment 16 and the proposed rule for this action.

The Regional Administrator has approved the following four service providers as eligible to provide both dockside and/or at-sea monitoring services to sectors in FY 2010:

- A.I.S., Inc., 89 North Water Street, New Bedford, MA 02747, phone 508-990-9054, fax 508-990-9055, Web site <http://www.aisobservers.com>.
- East West Technical Services, 34 Batterson Drive, New Britain, CT 06053, phone 860-223-5165, fax 860-223-6005, email [ewtsct@ewts.com](mailto:ewtsct@ewts.com).
- MRAG Americas, 65 Eastern Ave., Unit B2C, Essex, MA 01929, phone 978-768-3880, fax 978-768-3878, Web site <http://www.mragamericas.com>.
- Saltwater Inc., 733 N. Street, Anchorage, AK 99501, phone 907-276-3241, fax 907-258-5999, Web site <http://www.saltwaterinc.com>.

The Regional Administrator has approved the following service provider as eligible to provide dockside monitoring services to sectors in FY 2010:

- Atlantic Catch Data Ltd., 99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5, phone 1-902-422-4745, fax 1-902-422-9780, Web site <http://www.atlanticcatchdata.ca>.

#### Comments and Responses for Amendment 16

Fifty comments were received during the comment period specifically on the proposed rule for this action from 28 individuals, 7 fishing industry groups, 6 conservation groups, a group of scientists from 1 university, 1 fish dealer, 1 state resource management agency (Massachusetts Division of Marine Fisheries (DMF)), 2 community groups, 1 sector, and 3 professional

organizations. Only comments that were specifically directed to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. Other comments were received in connection with the notice of availability for Amendment 16. Many of these overlap with comments addressing the proposed rule to implement Amendment 16. NMFS responses to these comments, as set forth in its Record of Decision for approval/disapproval of Amendment 16, are incorporated herein by reference. Please note in considering the responses to comments below that NMFS may only approve or disapprove measures proposed in a fishery management plan or amendment, and may not change or substitute any measure in a substantive way, pursuant to section 304(a)(3) of the Magnuson-Stevens Act.

#### General Comments

*Comment 1:* The Northeast Hook Fisherman's Association (NEHFA) suggested that Amendment 16 is inconsistent with National Standard 6 because it does not allow for variations among, and contingencies in, fisheries and catches among participants. This group notes that the number of active limited access NE multispecies Handgear A vessels had been reduced by nearly 50 percent since 2004 and that the proposed measures may force the remaining permits out of business.

*Response:* NMFS disagrees. The commenter offered minimal explanation as to why NEHFA believes that Amendment 16 is inconsistent with National Standard 6, and seems to misinterpret National Standard 6 to mean that current or historical participation in the fishery must be preserved. In the National Standard 6 Guidelines, NMFS has interpreted this national standard to require that FMPs have the capacity to respond to changes in fishing practices, catches, stock conditions, or other uncertainties inherent in managing marine resources by building in flexibility to adapt to such changes and uncertainties. Amendment 16 includes a number of provisions that are meant to provide flexibility to adapt to changing resource and fishery conditions, including a process to establish ACLs and revise management measures on a biennial basis that reflect updated estimates of stock status and management conditions; increasing incentives to participate in the DAS Leasing and Transfer Programs that help provide additional access to DAS for vessels to remain economically viable; dual management regimes that allow a vessel to choose to continue to operate under

DAS and/or trip limits, or operate under hard-TAC management of sectors; and increasing incentives to fish selectively through expanded SAPs and the establishment of RGAs. Although not all of these measures are available to Handgear A vessels, Amendment 16 expanded the sector eligibility provisions to specifically allow these permits to join sectors to provide the necessary flexibility to participate in either the common pool or sectors, based on which management regime would offer the most benefit to the individual vessel. Previously, Handgear A vessels were not allowed to participate in sectors. Thus, the measures implemented by this action do take into consideration variations and contingencies in fisheries, fishery resources, and catches, consistent with National Standard 6.

*Comment 2:* The Environmental Defense Fund (EDF) and Penobscot East Resource Center (PERC) supported efforts to transition the fishery from a DAS management regime to a catch share regime in the form of sectors, but suggested that the Council should continue to improve the design and adaptability of sector management measures. Specifically, EDF recommended, and PERC supported, that the Council consider an adaptive management set-aside of quota once stocks rebuild to facilitate additional management needs and objectives, including biological, economic, or social issues. In addition, PERC recommended that that Council consider who should be able to hold or land a sector's ACE, and restricting ACE trades based upon vessel size or gear usage.

*Response:* The Council did not explicitly consider measures recommended by EDF and PERC in Amendment 16 and they are not considered to be necessary at this time to ensure consistency of Amendment 16 with Magnuson-Stevens Act requirements. Therefore, this action need not implement such measures. However, the Council could develop such measures through a future Council action.

*Comment 3:* One industry member suggested revising the current definitions of the haddock separator trawl and the Ruhle trawl. Revisions to the haddock separator trawl include requiring the separator panel to begin at the forward edge of the first belly of the net and run the full length of all of the bellies of the net. Revisions to the Ruhle trawl include removing the requirements for a minimum fishing circle, kite panel size, and size and placement of rockhoppers in the sweep

of the net and are intended to facilitate its use by smaller vessels.

*Response:* The original haddock separator trawl description was based upon gear research available at the time it was proposed under Amendment 13. At that time, there were conflicting recommendations within available research regarding the placement of the separator panel. The definition that was finally implemented reflects input from participants in some of that research, as well as other gear experts. Further, the Ruhle trawl definition was based upon extensive experimentation. Another experiment testing a smaller version of the Ruhle trawl is under review. Because these revisions to gear definitions have not been previously made available for public comment and could likely change the behavior and performance of these nets, it is not appropriate to revise such definitions through this final rule. Instead, it would be more appropriate to consider such revisions in a future Council action.

*Comment 4:* The New Hampshire Commercial Fisherman's Association (NHCFA) suggested that the Council reconsider a means of converting DAS to an allocation of pounds, and recommended that pollock be considered a transboundary stock for the purposes of adjusting management measures to accommodate management inequities between the United States and Canada and lessen the mortality reductions necessary under Amendment 16. NHCFA also stated that Amendment 16 underestimates the economic impacts of proposed measures. Mayor Lang of New Bedford, MA stated that the economic analysis must include impacts on communities, including impacts to the tax base and infrastructure if vessels will no longer remain economically viable.

*Response:* The Council considered including DAS as an element in the calculation of PSCs, but elected, based on reasons included in Amendment 16, to adopt options only involving historic landings. The Council may reconsider a means of converting DAS to an allocation of pounds similar to the DAS Performance Plan, a plan that was proposed by the NHCFA, during the development of Amendment 17 or another future action. Consideration of pollock as a transboundary stock is ongoing, with a joint U.S./Canada assessment being developed for 2010. However, a formal agreement to jointly manage this stock has not yet been developed. Therefore, the mortality reductions necessary under Amendment 16 consider fishing mortality from all sources, including catch by both U.S. and Canadian vessels. Finally, a full

analysis of the economic impacts of Amendment 16 measures was conducted for the FEIS. The scope of this analysis was based on established guidelines. This analysis uses the best available scientific information, but notes that there are a number of sources of uncertainty associated with measures in Amendment 16 that make precise evaluation of impacts difficult. A full discussion of the impacts of changes in occupational opportunities and community infrastructure is in Section 7.6.3.4 of the FEIS.

*Comment 5:* One individual, the Association of Professional Observers (APO), and the United National Fisherman's Association (UNFA) recommended that the Amendment 16 public comment period should be extended to end upon the completion of the comment period for the draft national catch share policy on April 10, 2010, stating that there was not enough time to comment on proposed measures and that Amendment 16 sector provisions should not be finalized until the national policy is defined.

*Response:* The measures in Amendment 16 are necessary to end overfishing and ensure that overfished stocks continue to rebuild. The rebuilding plans in the FMP rely upon implementation of management measures beginning in FY 2010 on May 1, 2010, otherwise the success of such rebuilding programs may be compromised. Due to the time necessary to review and respond to public comments and make determinations about the final measures under this action, it is not possible to extend the public comment period to April 10, 2010, and still implement final measures by the start of FY 2010. Because it is administratively difficult and disruptive to the fishery to implement measures during the middle of the FY, particularly measures that involve hard TACs, it would be impractical and contrary to the public interest to further delay this action to accommodate further public review and implement this action mid-year. While the Amendment 16 sector measures may not fully reflect the final catch share policy, the Council has the capacity to revise management measures in the future to comply with such a policy, as necessary. The measures in Amendment 16 have been under development for over 3 years, and have involved substantial public involvement through the Council process. Further, public comment either on Amendment 16 itself, or the proposed rule to implement measures in Amendment 16, has been solicited since the Amendment 16 NOA was published on October 23, 2009.

Therefore, NMFS believes that there has been sufficient time to consider and comment on the Amendment 16 measures implemented by this action.

*Comment 6:* The Northwest Atlantic Marine Alliance (NAMA) and PERC recommended that community fishing associations be formally recognized in Amendment 16. These groups stated that these associations are necessary to help ensure that sectors do not lead to the elimination of community-based fisheries, and is consistent with, and furthering the purposes of, the Magnuson-Stevens Act.

*Response:* As the group pointed out in their comment, the current regulations do not prohibit community fishing associations from forming or participating in the current DAS Leasing/Transfer Programs, or in an approved sector. Formally recognizing such associations in Amendment 16, or any other action, would not affect their ability to participate in the fishery or achieve their goals. Moreover, such organizations were not proposed to be and were not formally recognized by the Council in Amendment 16. Due to the absence of any measures on how such community fishing associations would be integrated into Amendment 16 measures, there would be neither the justification for, nor any purpose served in recognizing such associations, particularly without any consideration or public input regarding such a recognition.

#### **Incorporation of Atlantic Wolffish and Associated Measures**

*Comment 7:* One commercial fisherman, the Conservation Law Foundation (CLF), and the Nature Conservancy (TNC) supported adding Atlantic wolffish to the FMP. However, TNC did not support designating essential fish habitat (EFH) for this species to include the entire exclusive economic zone (EEZ). CLF suggested that cusk should be added to the FMP as well.

*Response:* This final rule adds Atlantic wolffish to the FMP to end overfishing and to implement management measures to rebuild the species through a possession prohibition. Because the Amendment 16 FEIS notes that there is little information and a high degree of uncertainty regarding population status and the reliability of survey data for this stock, designation of EFH throughout the EEZ was considered appropriate at this time, until further information can be acquired to narrow the scope of the EFH, as necessary. The notice of intent to prepare an SEIS, seeking comment on measures to incorporate during the

development of Amendment 16, suggested that the Council was considering incorporating cusk and wolffish into the FMP, pending the results of stock assessments for both species. As part of the Data Poor Working Group, a stock assessment was completed for Atlantic wolffish, but a stock assessment for cusk was not completed. Therefore, there is not enough information available at this time to add cusk to the FMP.

*Comment 8:* The NEHFA opposed the zero possession limit restrictions for Atlantic wolffish specified for both the commercial and recreational fisheries, stating that it is not warranted at this time. Drawing parallels to the management of Atlantic halibut, this group recommended implementing a one-fish-per-trip limit instead. This group stated that such an approach toward wolffish would not create a directed fishery, but would preserve valuable catch data that can be used to assess the status of this species, especially considering that trawl surveys cannot produce reliable information due to the complex habitat that wolffish prefer.

*Response:* The report of the Data Poor Working Group concluded that wolffish was overfished, but could not determine whether overfishing is occurring. The report noted the high level of uncertainty regarding many of the parameters used to determine stock status, including natural mortality, maximum age, and fecundity, and recommended that catch remain low. Research indicates that this species has a high survival rate if returned to the sea quickly. For these reasons, the Council developed the initial rebuilding program in Amendment 16 and adopted a zero possession allowance for this species to reduce F to the extent practicable. Because the Council did not consider allowing vessels to land one-fish-per-trip, as recommended by the NEHFA, NMFS cannot revise this action to implement the one fish per trip limit. Because the zero possession limit is consistent with National Standard 1 Guidelines requirements to rebuild overfished stocks, NMFS implements the zero possession limit in Amendment 16 through this final rule.

#### Status Determination Criteria

*Comment 9:* CLF and the Northeast Seafood Coalition (NSC) recognized the high level of uncertainty associated with the GOM and SNE/MA winter flounder stock assessments, respectively, and recommended that NMFS work with the NEFSC to improve the assessments of these stocks.

*Response:* NMFS recognizes that GARM III indicates that there is a lot of uncertainty associated with the assessments of GOM and SNE/MA winter flounder. Efforts are currently underway to improve the assessments of these stocks, including updating histological maturity data and considering alternative forward projecting models. These improvements will be incorporated into the next assessments for these stocks.

#### Rebuilding Programs

*Comment 10:* CLF accepted the rationalization for adopting an F of as close to zero as practicable for SNE/MA winter flounder under Amendment 16, but stated that there will be significant bycatch associated with this strategy.

*Response:* NMFS believes that, given the circumstances associated with this stock, as described in the preamble to the proposed rule for this action, the rebuilding approach specified in Amendment 16 is reasonable and consistent with applicable law, including section 304(e)(7) of the Magnuson-Stevens Act. NMFS acknowledges that bycatch remains a concern with this stock as it continues to rebuild, but contends that there are a number of provisions in Amendment 16 that help minimize bycatch to the extent practicable, including RGAs and an ABC control rule that increases incentives to reduce bycatch by basing the ABC on incidental bycatch, including a reduction in the bycatch rate, until the stock is rebuilt.

*Comment 11:* The NSC indicated that the proposed rule did not clarify whether rebuilding programs could be revised through a biennial adjustment, a framework adjustment, or as part of the specifications process.

*Response:* The regulations at § 648.90(a)(2)(iii) and (a)(6)(i), as highlighted in NSC's comment, provide the Council with the authority to revise any measure currently specified in the FMP, including rebuilding programs, through one of the cited regulatory actions. As an example of the application of such authority, the Council previously established a rebuilding program for GB yellowtail flounder through FW 42 in 2006, and plans on revising that same rebuilding program through FW 45 for 2011.

*Comment 12:* The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) supported efforts to establish rebuilding programs with a 75-percent probability of success.

*Response:* This action implements new rebuilding programs for witch flounder and GB winter flounder, both of which include a 75-percent

probability of success for rebuilding by 2017. For the other new rebuilding programs established under this action (i.e., pollock, wolffish, and northern windowpane flounder), it is not possible to determine a probability of success due to uncertainty in the assessments, or because the assessments are based upon survey indices.

#### ABC Control Rule and Mortality Reductions Necessary To Achieve Rebuilding Targets

*Comment 13:* The PEW Environmental Group (PEW) suggested that the ABC control rule in Amendment 16 is not lawful, in that Amendment 16 should specify a probability that an actual catch equal to the ABC for each stock would result in overfishing, does not identify a stock biomass level below which no fishing should occur, and failed to specify a cap that would limit bycatch based upon the best scientific information available. CLF shared similar concerns, suggesting that future revisions to the ABC control rules should more closely reflect the letter of the National Standard 1 Guidelines.

*Response:* The ABC control rule is consistent with the Magnuson-Stevens Act and associated National Standard Guidelines. Section 7.2.1.1.2 of the FEIS provides a qualitative assessment of the impacts of the ABC control rule on overfishing. The ABC control rule specifies the ABC of a particular stock at the median catch associated with 75 percent  $F_{MSY}$  or  $F_{rebuild}$ , whichever is lower. Because the ABC for all stocks is set at the median catch associated with a level of F that is already below the level associated with overfishing (i.e., at 75 percent of  $F_{MSY}$ ), the ABC control rule will always result in ABCs with at least a 50-percent probability of avoiding overfishing. Thus, the ABC control rule will specify a level of catch such that the resulting F will always be less than the maximum F threshold when the stock is less than the biomass at MSY or its proxy, especially when additional information is not available to more accurately estimate uncertainty. Analysis included in the environmental assessment (EA) prepared for FW 44, currently under NMFS review, indicates that, although probabilities that overfishing would occur cannot be determined for all stocks, the FY 2010–2012 ABCs that result from the application of the control rule in Amendment 16 have between a zero and 20-percent chance of resulting in overfishing for stocks for which such a probability can be calculated. Thus, the application of the Amendment 16 ABC control rule has less than a 50-percent

chance of resulting in overfishing, and is consistent with applicable court rulings. As specified in the response to comments in the final rule promulgating National Standard 1 Guidelines (January 16, 2009; 74 FR 3190), the ABC control rule need not stipulate a level of biomass below which fishing is prohibited. Although ABC control rules could specify such a threshold, failure of this ABC control rule to specify such a threshold does not mean that the ABC control rule is inconsistent with National Standard 1. Finally, the Amendment 16 ABC control rule developed by the SSC specifies that, for stocks that cannot rebuild in the specified rebuilding period, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (i.e., the proportion of the stock caught as bycatch). Because Amendment 16 measures prohibit all vessels from landing SNE/MA winter flounder, the ACL specified in FW 44 based on the Amendment 16 ABC control rule becomes the de facto bycatch cap. The SSC recommended the ABC that result in the ACL, and NMFS has determined that the bycatch cap for this species is based upon the best available scientific information.

#### **ABC/ACL Specifications and Distribution Process**

*Comment 14:* Several commercial fishermen commented that the ACLs for pollock and GOM winter flounder are too low, do not match recent catch history for these stocks, and would result in substantial economic impacts to vessels and associated fishing communities. One commercial fisherman suggested that a trip limit be specified for sector vessels during FY 2010, or until the stock assessment can be corrected to reflect recent landing patterns, to ensure that sectors do not exceed their ACE for pollock and have to cease fishing. Another commercial fisherman questioned the accuracy of data that led to the specification of the GOM winter flounder ACL, stating that the GOM winter flounder ACL should be at least as high as the ACL for CC/GOM yellowtail flounder.

*Response:* Amendment 16 specified the process for implementing ACLs in the fishery, but the actual ACLs for FY 2010 are proposed in FW 44. FW 44 and its associated EA state that the proposed ACLs are based upon the best scientific information available and reflect the ABC recommended by the SSC and the ACLs adopted by the Council. It is true that ACLs specified for the fishery at large, and the resulting ACEs to individual sectors, are not likely to be similar to recent catches, because F for

many stocks must be reduced during FY 2010, and the ABCs/ACLs specified must incorporate consideration of both scientific and management uncertainty, as required by the Magnuson-Stevens Act. NMFS believes that the ACL process in Amendment 16 is necessary and consistent with the requirements of the Magnuson-Stevens Act. Because the Council did not propose implementing a pollock trip limit for sectors under Amendment 16, NMFS cannot unilaterally implement such a provision in this final rule. However, sectors may independently impose a pollock trip limit for participating vessels to regulate catch and ensure that the sector does not prematurely harvest available pollock ACE allocated to that sector and require the sector to cease fishing.

*Comment 15:* One commercial fisherman noted that the ACLs established by the Amendment 16 ACL specification process would not account for the catch of NE multispecies as a result of cooperative research. This individual stated that it is unreasonable to expect that a sector vessel owner will utilize valuable ACE to participate in a research project. Because such research is vital to fisheries management, this individual recommended that NMFS must identify a process to accommodate such research, including using ACL management reserves (presumably the amount of the ACL reduced to accommodate management uncertainty), or risk reducing industry participation in cooperative research.

*Response:* Cooperative research is important to the management of NE multispecies. NMFS recognizes that sector vessel owners might be reluctant to use ACE to participate in cooperative research. However, there is currently no mechanism in the FMP to reserve a portion of the total catch to support cooperative research. The Council considered, but did not adopt, a research set-aside program under Amendment 16 that would have reserved 1 percent of the available catch of all stocks toward supporting research projects. Further, when quantifying the ACLs for FY 2010–2012 under FW 44, the Council did not specifically incorporate scientific research into considerations of management uncertainty. NMFS cannot unilaterally add a provision in this final rule to accommodate catch associated with cooperative research. However, the Council could reconsider a research set-aside program, or revise the components that contribute to management uncertainty through a future Council action. Based upon the ACL specification process in Amendment 16, this action accounts for the catch

associated with cooperative research toward the ACL in two ways. First, if a vessel meets the definition of a scientific research vessel conducting a scientific research activity, as defined in the Magnuson-Stevens Act, catch associated with that research will be attributed to the other non-specified sub-components of the ACL for each stock, because such catch is outside of the authority of the FMP, similar to state-waters catch. Second, if the vessel is conducting an activity that does not meet the definition of a scientific research vessel conducting a scientific research activity, the vessel is subject to commercial fishing regulations and any catch will be attributed to either the ACL available to the common pool, or to a particular sector's ACE for each stock. Thus, absent other alternatives to accommodate cooperative research catch that avoid deducting it from a sector's ACE, all catch by cooperative research vessels is accommodated under this action.

#### **AMs**

*Comment 16:* CLF contends that imposing AMs on the NE multispecies fishery for excessive catch in other fisheries is a form of inequitable punishment.

*Response:* Consistent with the Magnuson-Stevens Act, Amendment 16 specified AMs that would be sufficient to prevent overfishing of any stock regulated by the FMP. Because the FMP could not impose AMs on any other fishery, unless through a joint management action (Amendment 16 is not a joint action), it was only possible to specify AMs that apply to the NE multispecies fishery in this action. With the exception of the Atlantic sea scallop and herring fisheries, most other fisheries catch minimal amounts of NE multispecies. The Council is already developing an AM to address yellowtail flounder bycatch in the scallop fishery under Amendment 15 to the Atlantic Sea Scallop FMP and could develop similar AMs for other fisheries through other actions. For the bycatch of regulated species and ocean pout stocks by the herring fishery, NMFS interprets the measures implemented by FW 43 for that fishery to be AMs for the purpose of controlling bycatch of stocks managed by the FMP. In the meantime, however, enforcing AMs on the NE multispecies is unavoidable in order to ensure compliance with the Magnuson-Stevens Act conservation objectives. Finally, National Standard 4 Guidelines recognize that disadvantaging one group of fishermen may be necessary to serve overarching conservation objectives of the FMP.

*Comment 17:* CLF and the CCCHFA suggest that the Amendment 16 common pool differential DAS counting AM is not consistent with the National Standard 1 Guidelines because there are no inseason controls and no payback provision in the case of an overage. These groups, along with PEW, recommended that NMFS immediately impose a hard-TAC backstop, stating that there is no true catch limit for common pool vessels during FY 2010–2011. CLF supported implementation of the trimester TAC AM for the common pool, but noted that it expects NMFS will calculate an offset into the differential DAS counting rate to accommodate an overage payback mechanism.

*Response:* The differential DAS counting AM is consistent with National Standard 1. Neither the Magnuson-Stevens Act, nor the National Standard 1 Guidelines mandate the use of fishery closures or the use of inseason controls as AMs. As outlined in the National Standard 1 Guidelines, reactionary AMs similar to the differential DAS counting AM are just as valid as inseason AMs, although the guidelines recommend that inseason AMs be utilized whenever adequate inseason information is available. Amendment 16 requires the type of AMs described by commenters, but delays the implementation until FY 2012 in order to allow orderly transition from the current DAS management regime to one with many sectors, hard TACs, and fishery closures. In the meantime, Amendment 16 requires the use of a combination of accepted approaches to implement AMs beginning in FY 2010, employing a reactionary differential DAS counting AM for FYs 2010 and 2011. Although fishery closures would not be triggered upon the catch of common pool ACLs during FYs 2010 and 2011, management measures would be revised in the following FY through the implementation of differential DAS counting if these ACLs are exceeded, to prevent overfishing and exceeding such ACLs in the future, which is the intent of the new requirements of the Magnuson-Stevens Act. Further, if measures adopted under FW 44 are approved, the Regional Administrator would have the authority to revise common pool trip limits and DAS charging rates inseason to further assure that common pool catch rates would be controlled such that ACLs would not be exceeded. NMFS cannot unilaterally implement such a hard-TAC backstop AM for FY 2010 under Amendment 16. Also, the Council did not specifically include an overage payback provision

for the common pool in the differential DAS counting AM, despite adopting such a provision in the trimester TAC AM for FY 2012. Therefore, no changes to the differential DAS counting AM are implemented in this action.

*Comment 18:* Five commercial fishermen and the NSC opposed the application of differential DAS counting for wolffish. One fisherman suggested that such protection is unnecessary, as most of the areas in which wolffish are caught are already off limits to commercial vessels due to permanent closure areas, and predicted that if such an AM is applied to wolffish, it would cause a derby fishery in the common pool. The NSC opposed the general application of differential DAS counting rates to smaller areas if the catch of that stock that contributes to triggering that AM would come from a much larger area.

*Response:* The Magnuson-Stevens Act mandates that FMPs include AMs for all managed species to prevent overfishing. Because the Council added wolffish to the FMP in Amendment 16, an AM should be established for this stock to comply with applicable law, regardless of other measures in the FMP to protect this species, such as closure areas. Section 4.3.7.1.1 of the Amendment 16 FEIS describes that the common pool would be subject to the differential DAS counting AM for FYs 2010 and 2011, but Amendment 16 does not specifically exempt any of the species managed under the FMP from this AM. In fact, the Council evaluated where each stock was caught to determine which areas would be subject to differential DAS counting if the AM for a particular stock was caught. Table 26 of the Amendment 16 FEIS identifies the areas in which differential DAS counting AM would apply for each stock managed by the fishery, including wolffish. Although the Council did not specifically identify wolffish catch as a trigger for a differential DAS AM, wolffish was not exempted from this AM either. In fact, Amendment 16 specifically listed the areas that would be affected by differential DAS counting if the ACL available to the common pool for this species was exceeded. Therefore, NMFS, under the authority provided in section 305(d) of the Magnuson-Stevens Act, has reasonably concluded that this species is not, nor was ever intended by the Council to be, exempt from the differential DAS counting AMs under this action. Wolffish is a bycatch species that is not targeted by the fishery. As a result, the FY 2010 ACL specified for wolffish for the common pool is very low. Although this could increase the risk that the differential DAS counting

AM could be triggered, it is not likely that the fishery will revise its behavior to target this species as part of a derby fishery knowing that differential DAS counting might be triggered during the subsequent fishing year. Finally, even though wolffish is caught throughout the NE, it is caught predominantly in the inshore GOM and inshore GB areas. Therefore, it is unlikely that large amounts will be caught outside of these areas and contribute to triggering the AM for this stock. If catch shifts to other areas, the Council could revise these areas through a future Council action.

*Comment 19:* The CCCHFA suggested that all vessels should be subject to fishery closures to ensure consistency with National Standard 4, and noted that common pool AMs are more lenient than sector AMs because they do not involve fishery closures, at least for FY 2010 and 2011.

*Response:* NMFS disagrees that all segments of the fishery must be subject to the same measures to be fair and equitable, or that fishery closures are required as AMs, as noted in the response to Comment 17. The AMs in Amendment 16 reflect a balancing of different factors, including transition factors, regarding the multiple types of management measures to be implemented, are reasonably calculated to promote conservation, and do not discriminate between residents of different states. All AMs in Amendment 16 apply to all vessels in all states, even though the AMs applicable to individual vessels may be different. Each vessel owner has the choice to fish under hard TACs and fishery closure AMs in sectors, or to fish under the DAS system and its associated differential DAS counting AM. Therefore, the AMs implemented for the common pool for FY 2010 and 2011 are consistent with National Standard 4.

*Comment 20:* CLF fully supports the proposed sector AMs, stating that they are fully compliant with applicable law. The NSC and associated members request that NMFS clarify what constitutes an overage regarding the requirement for sectors to cease fishing once or before an ACE is exceeded, by including regulatory text at § 648.87(b)(1)(ii) that references the date fish are received or purchased by a dealer after considering all ACE transfer requests received or approved by NMFS.

*Response:* Based in part on NSC's comment regarding the clarification of an ACE overage, the regulations at § 648.87(b)(1)(ii) have been revised to include language that ACE overages will be determined on the date fish are received or purchased by a dealer, after considering all requests for ACE



transfers that are ultimately approved by the Regional Administrator.

*Comment 21:* The NHCFA stated that the recreational AMs are not of the same proportion or consequence as the AMs specified for the commercial fishery. CLF suggested that there are no inseason or post-season recreational AMs specified in Amendment 16. They suggested that NMFS should require the Council to develop a more robust AM program under Amendment 17 so that no component of the fishery is under the false impression that AMs are not applicable.

*Response:* Amendment 16 indicates that the recreational AMs include adjustments to season, minimum fish size, or possession limits, with the ability to specify separate AMs for the private boat and charter/party components of the recreational fishery. Further, Amendment 16 indicated that these AMs would be triggered if the recreational fishery exceeded its allocations of GOM cod and GOM haddock, or if the catch of these stocks by other components of the fishery not subject to an AM exceed their allocations and the overall ACL for either stock is exceeded, as described in detail in the proposed rule for this action. These measures will be implemented by January of the FY following the overage of the recreational AMs of GOM cod and/or GOM haddock. However, Amendment 16 does not include any specific recreational AM for a particular FY due to the uncertainty in the number of participants and the expected catches from year to year, and the need to coordinate the development of recreational AMs with the directors of state marine resource management agencies who sit on the Council. This is similar in approach to that applied to the differential DAS counting AM for the commercial fishery, in that the actual differential DAS counting rate and the area in which such a rate would apply will be specified by the start of the next FY based upon the projected catch for the commercial common pool fishery as of January of each year. The recreational angler permits/registry recently implemented will help reduce the uncertainty associated with the number of anglers fishing in a particular FY. However, the impact of changes to recreational possession limits, minimum fish size changes, and revisions to fishing seasons depend upon the amount and distribution of fishing effort, size of fish caught, and stock abundance and are difficult to quantify in advance, compared to commercial fishing effort. Therefore, recreational AMs will be developed once it is known how many fish were

caught during a particular year, as necessary. Further, coordination with state resource management agencies through the Council is the most efficient way to ensure that recreational AMs can be effectively developed and implemented on the state level, where a substantial portion of recreational fishing activity occurs. All AMs implemented under this action are designed to prevent overfishing by either preventing ACLs from being exceeded, or addressing any overages of ACLs. Amendment 16 is clear that the appropriate AMs will be developed by NMFS in consultation with the Council, should the recreational fishery exceed its allocation of GOM cod or GOM haddock during a particular FY. Therefore, while the Council could consider developing a more robust AM program in a future management action, it is not necessary to clarify the Council's intent regarding the applicability of AMs for the recreational fishery.

#### **Issuance of Limited Access NE Multispecies and Atlantic Sea Scallop Permits**

*Comment 22:* PEW, CLF, CCCHFA, NAMA, and PERC strongly opposed the measure in Amendment 16 that allows the concurrent issuance of a limited access Atlantic sea scallop and a limited access NE multispecies permit. PEW, CLF, and CCCHFA claimed that it would undermine the successful transition to sectors and result in the loss of NE multispecies permits from several New England states due to acquisition of NE multispecies permits by scallop vessel owners. NAMA, PERC, and CCCHFA stated that such a provision eliminates incentives to reduce scallop bycatch and could turn the scallop fishery into a directed groundfish fishery. Finally, CLF suggested that there is inadequate analysis in the FEIS to support this measure, which does not meet the requirements of section 303(a)(9) of the Magnuson-Stevens Act; that there was no discussion of this measure by the Council; and that it is inconsistent with National Standard 8 because it fails to minimize adverse economic impacts on fishing communities. CLF urged NMFS to disapprove this measure unless it is clear that individual states fully support the potential reallocations of fishing effort that might occur.

*Response:* In addition to the current limited access NE multispecies Combination permit, Amendment 16 expands the allowance of a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the

same time to enable vessels to operate in a more profitable manner and reduce the costs of having to purchase, operate, and maintain multiple vessels to participate in both fisheries. In doing so, Amendment 16 also increases the value of such permits and the economic efficiency of vessel operations. This measure has no direct impacts on allocations within or between fisheries, and does not compromise the conservation measures of the fishery, as existing effort controls and permit restrictions in both fisheries, including DAS allocations, gear restrictions, trip limits and permit-splitting provisions, are maintained. Therefore, a limited access scallop dredge permit vessel could not retain more groundfish than is already allowed. Further, only in a limited circumstance will a vessel be able to fish for both scallops and groundfish on the same trip. In this circumstance, the vessel will be required to fish with trawl gear and comply with the applicable regulations under both the NE Multispecies and Atlantic Scallop FMPs. Furthermore, the scallop fishery will still be subject to any groundfish ACLs distributed to the fishery, and limited in the amount of groundfish that could be caught. Only landings history of limited access NE multispecies permits will be used to contribute to sector ACE allocations. Therefore, this measure, by itself, will not eliminate incentives to reduce the catch of groundfish in the scallop fishery, or affect the allocations detailed in Amendment 16 or FW 44. Because conservation controls in both fisheries are maintained, there is little chance that this measure will adversely impact the F in either fishery. A full analysis of the expected impacts of this measure is in Section 7.0 of the FEIS. This analysis, along with the other analyses in the FEIS, complies with all of the elements of a fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act, and no further analysis is required. Although this analysis indicates that this measure may shift effort from New England states to MA states because the scallop fishery is predominantly based in SNE, the analysis notes that such shifts in effort are difficult to predict. While shifts in effort to different ports could result in the loss of revenue in affected communities, other measures in Amendment 16 help to foster continued participation in the NE multispecies fishery through the expansion of authorized sectors, increased access to haddock through revised SAPs and the Regular B DAS Program, and revisions to the DAS Leasing and Transfer



Programs. Taken as a whole, this action meets the conservation objectives of the FMP and applicable law, while minimizing the economic impacts and providing for the sustained participation of fishing communities to the extent practicable, consistent with National Standard 8. The Council first considered this measure early in the development of Amendment 16, voting unanimously to include this provision in Amendment 16 at its February 2007 meeting. This sentiment was reaffirmed in June 2009, when the Council adopted the final measures for Amendment 16, with a 15–0–2 vote for including this particular provision. Therefore, the Council has discussed this measure and there is universal support for this provision by all states participating in the Council, even those that some fear may lose NE multispecies permits as a result of this measure. Accordingly, NMFS has approved this measure in Amendment 16 and implements it through this action.

#### **Recordkeeping and Reporting Requirements**

*Comment 23:* CLF offered general support for the reporting requirements in Amendment 16, but Oceana expressed concerns that the reporting requirements were inadequate. Oceana did not explain why the proposed monitoring and reporting requirements were inadequate other than to state that key studies for the use of different data collection methodologies exist (such studies were not identified by the commenter), and that many of the monitoring issues were resolved in closed-door workshops that were not open to the public. Oceana insisted that the monitoring issues discussed at these workshops must be communicated through the Amendment 16 rulemaking.

*Response:* The workshops referenced by Oceana were not widely advertised and public participation was limited because they were designed to bring together NMFS staff and sector proponents and managers to work through some of the more difficult monitoring and reporting tasks associated with the Amendment 16 sector requirements. Based upon these meetings, reporting and monitoring strategies were refined and monitoring methodologies communicated to affected industry. NMFS believes that these workshops were essential to increasing the effective implementation of such requirements, increasing the accuracy of catch monitoring data under this action, and fostering cooperation between NMFS and sector participants. All of the discussions regarding how to effectively implement the Amendment

16 reporting requirements, including the workshops referenced by Oceana, are available to the public on the NERO Web site (<http://www.nero.noaa.gov/sfd/sfdmultisectorinfo.html>). Further information on these workshops and the monitoring and reporting requirements implemented by this action are available from the Regional Administrator (see **ADDRESSES**).

*Comment 24:* Five commercial fishermen, NHCFA, the Associated Fisheries of Maine (AFM), and the UNFA opposed increasing the submission frequency of “did not fish” reports. They stated that increasing the frequency of “did not fish” reports is too burdensome, as NMFS will receive sufficient catch information for a majority of the fleet through weekly sector catch reports and will be able to identify whether a vessel fished or not through VMS. Two commercial fishermen and the AFM specifically recommended that “did not fish” reports should only be submitted on a monthly basis, consistent with existing regulations. CCCHFA supported weekly VTR submission requirements.

*Response:* Increased reporting is critical to provide the data necessary for effectively monitoring catch under Amendment 16. Because several of the ACLs and sector ACEs are expected to be very small during FY 2010, it is not only important to identify when a vessel has fished and what it caught, but also to know when the vessel did not fish to identify if any catch data are missing. Therefore, “did not fish” reports are vital pieces of information that reduce the uncertainty of catch monitoring data. While there may be other data sources that can provide such information, including VMS position reports, not all vessels that land groundfish are required to use VMS. Therefore, it is not possible to rely on VMS at this time to accurately identify whether or not all vessels have actually fished during a particular reporting week. NMFS’s Fisheries Statistics Office is attempting to develop ways to minimize the burden associated with submitting “did not fish” reports, including reevaluating the reporting frequency for such trips, electronic submission of “did not fish” reports, and offering alternative ways to confirm that a vessel did not fish during a reporting week. Any such changes would be implemented consistent with the Administrative Procedure Act, as appropriate.

*Comment 25:* Four commercial fishermen, NSC, and CCCHFA support the implementation of electronic VTRs through this action, stating that such technology is necessary to comply with

the reporting requirements of Amendment 16.

*Response:* Current regulations allow the Regional Administrator to authorize the use of electronic VTRs instead of the conventional paper VTRs. To date, the Regional Administrator has not authorized the use of such electronic VTRs, as the existing technology has not yet been determined to be adequate. There are several pilot programs currently underway that are testing the efficacy of available electronic VTR software. Should efforts to develop and test new electronic VTR systems that meet the goals of the FMP and the existing regulations be determined to be successful, the Regional Administrator can authorize the use of such systems through rulemaking consistent with the Administrative Procedure Act.

*Comment 26:* One commercial fisherman opposed requirements for vessel operators to declare their intent to fish in one or more of the broad stock areas prior to each trip, and to submit trip-level VMS catch reports detailing the amount of NE multispecies kept from each broad stock area. This individual recommended that the existing catch reporting requirements be maintained, as there is no need for such additional reporting burdens.

*Response:* The current catch reporting requirements are not sufficient to address the additional monitoring requirements associated with implementing ACLs and sector measures under Amendment 16. It was widely recognized during the development of Amendment 16 that the existing reporting requirements did not provide timely information to attribute catch to stock areas. Even with the increased VTR submission requirements implemented by this final action, there is still a delay in receiving, processing, and validating such VTR data. Amendment 16 included a number of revisions to the existing reporting requirements to increase the timeliness and accuracy of catch data by helping attribute NE multispecies catch to the correct stock area until VTRs become available. Without additional reporting data, it would not be possible to accurately monitor catch in the NE multispecies fishery and ensure that sub-ACLs allocated to common pool vessels and ACEs allocated to sectors are not exceeded and result in overfishing. Because the Council specifically adopted new reporting requirements that involve reporting catch by broad stock area, NMFS cannot replace such reporting requirements in this action. Therefore, this action implements the additional reporting

requirements approved in Amendment 16.

*Comment 27:* The AFM suggested that NMFS revise the GB broad stock areas to reflect the division between the Eastern and Western U.S./Canada Area. They suggested that this would reduce confusion over the new reporting requirements and increase the accuracy of the reporting requirements.

*Response:* The Eastern and Western U.S./Canada Areas are used to facilitate the management of transboundary stocks of yellowtail flounder, cod, and haddock with Canada as part of the Understanding. The differentiation between Eastern and Western U.S./Canada Areas is necessary to ensure that NMFS can accurately monitor the catch of Eastern GB cod and Eastern GB haddock toward the harvest of area-specific quotas specified as part of that agreement. Thus, the differentiation between these areas is only necessary for 2 of the 20 stocks managed by the FMP. While revising the Offshore GB Broad Stock Area to reflect the current division between the Eastern and Western U.S./Canada Area may better reflect reporting areas familiar to many vessels, it would unnecessarily increase, not decrease, the complexity associated with the new catch reporting requirements, and would likely lead to less accurate catch reporting overall. This is because all vessels fishing in this area would be required to report catch of each species in each area, which could lead to misreporting and data entry errors. The existing VMS declaration provisions require vessels to declare their intent to fish in either the Eastern or Western U.S./Canada Areas, or both areas, on the same trip. Such declarations are used to ensure that DAS counting, gear requirements, and applicable trip limits can be enforced, but also to differentiate catch for Eastern GB cod and Eastern GB haddock stocks for catch monitoring purposes. Because differentiating catch between the Eastern and Western U.S./Canada Areas is not necessary for a vast majority of stocks, the recommendations by the AFM would unnecessarily increase the cost and time burden associated with complying with such reporting requirements without further contributing to catch monitoring under this action. Therefore, this action does not revise the Offshore GB Broad Stock Area to differentiate between the Eastern and Western U.S./Canada Area.

*Comment 28:* The CCCFA supported the declaration and reporting requirements involving broad stock areas, but suggested that vessels should not be allowed to fish in multiple broad

stock areas without 100-percent observer coverage.

*Response:* The suggestion to require 100-percent observer coverage for vessels fishing in multiple broad stock areas on the same trip is likely intended to reduce incentives for vessels to misreport catch. The Council did consider restricting vessels to fish in only one broad stock area per trip to simplify administration and increase the accuracy of catch reporting. However, the Council concluded that such an approach would be overly restrictive on vessel flexibility and efficiency of vessel operations. Various sources of data are used to validate one another, including self-reported catch data. For example, VMS positional data could be used to validate self-reported catch data by stock area to increase the accuracy of monitoring data and enforce the reporting requirements implemented by this action.

*Comment 29:* One commercial fisherman, AFM, and the Sustainable Harvest Sector supported the provision that would exempt sector vessels from the daily VMS reporting requirements associated with the U.S./Canada Management Areas.

*Response:* For the reasons listed in the discussion of the SMP reporting requirements in Item 8 of the preamble of the proposed rule for this action, NMFS determined that daily SMP-specific VMS catch reports for sector vessels are unnecessary, and is not implementing such requirements in this final rule. However, consistent with the provision adopted by the Council in Amendment 16, NMFS reserves the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs.

*Comment 30:* The Sustainable Harvest Sector believed that the proposed rule incorrectly specified that sector managers must provide daily catch reports to NMFS for sector vessels participating in the CA I Hook Gear Haddock SAP and believes that this provision should have been applied to individual vessels instead.

*Response:* The final rule implementing FW 41 (September 14, 2005; 70 FR 54302) included regulations at § 648.85(b)(7)(v)(D) that specify sector vessels fishing in the CA I Hook Gear Haddock SAP must submit a daily catch report to the sector manager based upon instructions provided by the Sector manager. The sector manager is responsible, in turn, for providing daily catch reports for participating vessels to NMFS. Therefore, this final rule only continues already existing requirements.

*Comment 31:* Two individual fishermen, the Sustainable Harvest Sector, and the NHCFA supported the pre-trip notification requirements proposed in this action, but suggested that 24-hr notice instead of 48-hr notice would be more effective, particularly for smaller vessels that fish nearshore. The AFM supported the notification requirements as proposed, while one other fisherman suggested that they were an unnecessary burden on industry. Two other fishermen suggested that a vessel should be able to notify the Observer Program of its intent to fish for the entire week, similar to current practices in the CA I Hook Gear Haddock SAP.

*Response:* As stated in the proposed rule, NMFS believes the pre-trip observer program notification requirements are necessary to effectively implement observer/at-sea monitoring coverage objectives under this action. Forty-eight hours is considered the minimum amount of time necessary to determine observer/at-sea monitoring coverage and deploy an observer/at-sea monitor once assigned. Therefore, this action does not revise the 48-hr advanced notice requirement. The proposed regulations included a weekly notification provision to accommodate small vessels that fish closer to shore that was, at least in part, based upon the practices deployed for the CA I Hook Gear Haddock SAP. That weekly notification requirement is implemented through this final rule.

### Effort Controls

*Comment 32:* One commercial fisherman indicated that the Amendment 16 effort controls would pose a serious economic burden on common pool vessels. He suggested that, because Day gillnet vessels do not catch much flounder, they should not be subject to further effort controls under this action. The NEHFA expressed similar concerns, stating that such effort controls will eliminate the GOM cod hook fishery and might cause a derby fishery.

*Response:* The Amendment 16 effort controls are necessary to reduce F for a number of overfished stocks, most notably cod and pollock, species that are caught by both gillnet and hook gear. F on GOM cod must be reduced by 40 percent, while F on pollock must decrease by 73 percent compared to the F from catch in FY 2008 to achieve the conservation objectives of this action. Therefore, effort controls on these two gear types are necessary to end overfishing and rebuild these overfished stocks. Economic impacts associated with effort reductions to achieve the

conservation objectives of the FMP and applicable law are unavoidable. The analysis prepared for this action suggests that these effort controls would result in greater impacts on gillnet vessels than other gear types, but that impacts on hook vessels would be the least affected among all gear types. However, Amendment 16 strove to minimize the economic impacts of management measures without compromising rebuilding efforts by removing obstacles that limit participation in the DAS Leasing and Transfer Programs and sectors, increased access to haddock resources, and increased trip limits for some stocks, among other provisions. The potential for a derby fishery in the common pool was a concern expressed by several fishermen upon the adoption of Amendment 16 by the Council in June 2009. Based upon these concerns, the Council provided the Regional Administrator with the authority to revise DAS counting rates and trip limits for NE multispecies stocks under FW 44 to ensure that the ACLs available to the common pool are not prematurely harvested and to minimize the potential for a derby fishery in the common pool.

*Comment 33:* CLF and CCHFA suggested that small gillnet boats will be disproportionately burdened by the 24-hr DAS counting measure for the common pool. They also indicate that this measure causes safety concerns, and recommended that the Council evaluate the impacts to small day-boat fishermen if this provision is implemented.

*Response:* The Amendment 16 analysis indicates that small gillnet vessels will be more affected by 24-hr DAS counting than larger vessels and vessels using other gear types. Despite the different impacts on vessels of different sizes and gear types, all vessels will be subject to the same effort controls, and this measure does not discriminate between permit holders from different states. The 24-hr DAS counting measure more accurately reflects the manner in which DAS allocations were first calculated in the FMP, and is designed to end overfishing and rebuild overfished stocks consistent with the conservation objectives of the FMP and the requirements of the Magnuson-Stevens Act. During previous actions, safety concerns were raised regarding differential DAS areas because vessels could be encouraged to fish farther from shore. There is no evidence to support claims that changes in DAS counting rates affect fishing behavior in ways that would compromise safety, and there is no evidence that the measures implemented by this action

would compromise safety any more than previous management measures, as described in Section 7.6 of the FEIS. Examination of historical fishing patterns in the Day gillnet fleet suggest that, despite being charged more DAS than actually fished, many vessels elect to return to port early to reduce operational costs. This suggests that it is not likely that the 24-hr DAS counting measure would compromise vessel safety. Moreover, there is nothing in this measure that requires a vessel to operate in an unsafe manner to catch or harvest fish. Therefore, NMFS concludes that this measure is consistent with National Standards 4 and 10.

*Comment 34:* The NSC and associated members stated that the impacts of the common pool measures are not properly documented in the FEIS and that makes it difficult for the public to evaluate the impacts and comment on the proposed measures.

*Response:* The impacts of the common pool measures are thoroughly documented in Section 7.0 of the FEIS. Because of uncertainty in the degree and scope of participation in sectors, the FEIS analyzed the impacts of common pool measures assuming that all vessels would participate in the common pool. This is a worst-case scenario, necessary to ensure that common pool measures will effectively meet the conservation objectives of this action, as noted in the FEIS. As highlighted earlier in this preamble, the impact of Amendment 16 measures can only be fully understood by considering other related actions, namely FW 44 and the final rule to approve sector operations plans. Accordingly, a more accurate evaluation of the likely impacts of common pool measures can be found in the EA prepared for FW 44, as that action revises some of the common pool measures in Amendment 16, specifies the ACLs for FYs 2010–2012, and evaluates common pool impacts based upon sector rosters submitted to NMFS as of September 1, 2009. The EA for that action is available from the Council (see **ADDRESSES**).

*Comment 35:* CLF supported the implementation of RGAs under this action.

*Response:* This action implements RGAs to create incentives to fish more selectively on GB and SNE, and to reduce the catch of overfished stocks such as cod, pollock, witch flounder, SNE/MA winter flounder, and SNE/MA yellowtail flounder.

*Comment 36:* Ten commenters, including seven commercial fishermen, AFM, NSC, and the Sustainable Harvest Sector supported the GOM Haddock Sink Gillnet Pilot Program, stating that

it was the only way to access abundant resources of GOM haddock due to the fact that 6.5-inch (16.51-cm) mesh gillnets cannot effectively catch haddock. They suggested that there are sufficient controls to control mortality on affected stocks. Three commercial fishermen, AFM, and NSC suggested that if this pilot program is disapproved, a process for consideration of sector exemption requests for relief from gillnet requirements should be provided. CLF expressed concern about the impact of this pilot program on wolffish, considering that wolffish migrate through the proposed pilot program area.

*Response:* This pilot program would have allowed vessels on a fishery-wide basis to target haddock while using 6-inch (15.24-cm) mesh gillnets, which is less than the minimum mesh size currently required, from January through April. As stated in the preamble to the proposed rule, NMFS considers this pilot program a SAP under the FMP, as it would have provided access to regulated multispecies that would otherwise be prohibited. According to Amendment 13, SAPs are intended to facilitate the targeting of healthy stocks, without compromising efforts to end overfishing or rebuild overfished stocks by using selective gear or fishing when interaction with stocks of concern (i.e., stocks that must have fishing mortality reduced to end overfishing or rebuild the overfished stock) are minimized. Research cited in the Amendment 16 FEIS to support this pilot program indicated that the catch of the target species (haddock) was too low to evaluate the selectivity of gillnets for haddock adequately, while the catch of cod and pollock was too high to reasonably conclude that this pilot program would not have an adverse impact on these overfished stocks. During this experiment, only 71 haddock were caught, while 264 cod and 873 pollock were caught. The report concludes that “bycatch of cod is likely to be a challenge for a directed springtime haddock fishery on this portion of Jeffreys Ledge,” that “make(ing) a regulatory change based upon this study alone (is) unwise,” and that “further work must be done on avoiding cod bycatch if a haddock gillnet fishery is to be reestablished in this area” (Marciano, *et al.*, 2005). Researchers suggest that gear modifications that raise the webbing of gillnets several feet off the bottom would enhance the selectivity of gillnet gear and promote the objectives of this pilot program. While this work was reportedly conducted in 2006, a final

report of the work has not been made available, and, thus, its results have not been used to enhance the effectiveness of the proposed pilot program. As this research demonstrates, gillnets are effective at catching both pollock and cod, stocks that require reductions in F to rebuild. Section 7.2.1.3.1.4 of the FEIS indicates that, if the catch rates of these species remain the same or increase under the proposed pilot program, F on these species may increase. While the FEIS also indicates that F might decrease if catch rates decrease, the FEIS does not provide any evidence that catch rates of cod and pollock would actually decrease as a result of using smaller mesh in this program. The research used to support this pilot program, and recent landings data, indicate that haddock catches by gillnet gear in the GOM are minimal in January and February, and peak in March. However, large amounts of both cod and haddock are regularly landed in January and February. This suggests that this pilot program, as proposed, would encounter larger amounts of cod and pollock early in the proposed season, while haddock catch rates would not increase until later in the season. As a result, the proposed pilot program could either maintain or increase catches of these species compared to current measures, particularly considering the proposed use of smaller mesh, as also suggested in the FEIS. Thus, this program could undermine rebuilding programs for these stocks without substantially increasing the catch of haddock. Based upon the above information, NMFS determined that the proposed pilot program was inconsistent with National Standards 1 and 9 because it could increase catch and fishing mortality, and may lead to excessive discards of overfished stocks of GOM cod and pollock. Moreover, it was inconsistent with the FMP provisions, including the SAP provisions outlined in Amendment 13 and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, this proposed pilot program was disapproved under Amendment 16 and is not implemented by this action. The Council could revise the proposed pilot program in a future action to better reflect months when low catch rates of cod and pollock correlate with high catch rates of haddock (i.e., March and April) to maximize opportunities to increase the catch of haddock without unnecessarily increasing mortality on cod and pollock. It also appears that elements of this

program could be used to increase access to haddock on a smaller, more controlled scale by sector vessels, without unnecessarily compromising efforts to eliminate overfishing and rebuild overfished stocks of cod and pollock. Therefore, NMFS would consider approval of such opportunities for sectors through another means, and will work with the Council to explore such possibilities, including granting additional exemptions to approved sectors through an additional rulemaking consistent with the Administrative Procedure Act.

#### **DAS Leasing and Transfer Programs**

*Comment 37:* CLF expressed general support for revisions to the DAS Leasing and Transfer Programs, while the UNFA suggested that vessels not fishing in sectors should be allowed to lease their landings history percentage (presumably PSC) to other sector vessels.

*Response:* Revisions to the DAS Leasing and Transfer Programs are necessary to increase participation in these programs to help mitigate the economic impacts of continued effort controls and increase the economic efficiency of vessels to the extent practicable. Therefore, this action implements the proposed revisions to these programs. NMFS does not agree that common pool vessels should be allowed to lease PSCs to other vessels, particularly to vessels that are participating in sectors. PSC is not a commodity or allocation unto itself that can be traded among vessels, but rather a characteristic of the permit. A permit's PSC can only be used to contribute to the ACE allocated to a sector through the participation of that permit in a particular sector. Without further details about how to implement such a measure, the suggestion by UNFA implies that a common pool vessel could fish under its DAS, but allow another vessel to lease its PSC to fish under a sector. This would essentially double count the fishing history associated with each common pool permit because it would increase the PSC and, therefore, ACE available to sector vessels without also decreasing the available ACL specified for the common pool caused by the transfer of that PSC. This could lead to excessive effort and, possibly, overfishing in the fishery. Therefore, the suggestion by the UNFA is not implemented in this final rule.

*Comment 38:* Three commercial fishermen and the AFM supported the elimination of the DAS Transfer Program's conservation tax. One of these fishermen and the AFM suggest that catch history for other permits should

be preserved upon transfer to another vessel, even if duplicate permits are voluntarily relinquished.

*Response:* This action eliminates the DAS Transfer Program conservation tax. The DAS Transfer Program was originally implemented in Amendment 13 as a means to reduce capacity in the fishery. Preserving the fishing history of permits that are voluntarily relinquished would not reduce capacity in the fishery, as originally intended. Because the Council did not propose such a provision in Amendment 16, NMFS cannot implement such a revision through this final rule.

#### **SMPs and SAPs**

*Comment 39:* The CCCHFA supported the continuation of the delayed opening of the Eastern U.S./Canada Area to trawl vessels until August 1, and opposed the continuation of the 5-percent cap of the Eastern U.S./Canada Area GB TAC that could be landed by hook gear vessels prior to August 1.

*Response:* The delayed opening of the Eastern U.S./Canada Area to trawl vessels and its associated limitation on the amount of Eastern GB cod that could be harvested by hook gear vessels is a measure that was previously implemented through existing Regional Administrator authority as part of the yearly specifications package implementing U.S./Canada Management Area TACs. Accordingly, these comments are more appropriate for FW 44, the action that would implement ACLs and U.S./Canada Management Area TACs for FY 2010. As proposed, FW 44 would delay the opening of the Eastern U.S./Canada Area to trawl vessels until August 1, but would retain the existing cap on the amount of Eastern GB cod that may be caught by hook vessels prior to August 1.

*Comment 40:* The CCCHFA supported the renewal of the Eastern U.S./Canada Haddock SAP. One commercial fisherman, AFM, and the Sustainable Harvest Sector suggested that sectors should be able to use any gear type in this SAP, provided the individual sectors are allocated ACE for stocks caught in the SAP area.

*Response:* Consistent with the approved measures in Amendment 16, this final rule allows sectors to use any gear type in this SAP, provided the sector is allocated ACE for all stocks caught in this SAP, and renews this SAP indefinitely.

*Comment 41:* Two commercial fishermen, AFM, and the CCCHFA supported the expansion of both the CA I Hook Gear Haddock SAP area and season. One other commercial fisherman and the AFM recommended

that sectors should be able to use any bait they choose in this SAP, considering all catch would count against the sector's ACE for each stock.

*Response:* The expansion of the CA I Hook Gear Haddock SAP is implemented through this final rule. As explained in the preamble to the proposed rule, the bait restrictions originally adopted by the Council in FW 41 were inadvertently omitted from the regulations implemented by the final rule for that action. This final rule implements these bait restrictions to ensure that the regulations accurately reflect provisions adopted by the Council in FW 41. Because the Council did not provide for a specific exemption from such bait restrictions in Amendment 16, NMFS cannot provide a sector exemption from the bait requirements for this SAP in this final rule. The Council could reconsider its decision, however, any changes, would be implemented through a future action.

*Comment 42:* One commercial fisherman and the AFM support proposed revisions to the CA II Yellowtail Flounder/Haddock SAP. This fisherman recommended that NMFS revise the final regulations to clarify that sector vessels fishing in this SAP may have other gear on board, provided it is stowed, and allow such vessels to fish in other areas on the same trip. The CCHFA, however, only supported revisions to the CA II Yellowtail Flounder SAP if they were supported by similar standards of research as were required to approve revisions to the CA I Hook Gear Haddock SAP. Further, they supported increased access to haddock, but only by gear proven to selectively harvest that species—specifically hook gear.

*Response:* The proposed rule included revisions to the regulations at § 648.85(b)(3)(v) that would specify that vessels could fish inside and outside of CA II Yellowtail Flounder/Haddock SAP, provided they declared their intent to do so in accordance with instructions provided by the Regional Administrator and complied with the most restrictive DAS counting requirements, trip limits, and reporting requirements for the area fished. Further, the proposed rule included revised regulations at § 648.85(b)(3)(x) that would clearly note that other gear may be on board vessels participating in this SAP, provided it is stowed according to § 648.23(b). These proposed revisions are implemented in this final rule and, therefore, no additional changes to the regulations are necessary to address issues raised by the public. The CA II Yellowtail Flounder SAP was originally approved in Amendment 13 based upon research

reviewed by the Council prior to the approval of that action. That research evaluated the catch of yellowtail flounder, cod, haddock, and other species using trawl gear in the proposed SAP area. Other research to support the Eastern U.S./Canada Haddock SAP using a haddock separator trawl, the expansion of the CA I Hook Gear Haddock SAP, and the development of the Ruhle trawl demonstrate that such gears can selectively target haddock, while reducing the catch of cod and flatfish species. Although these gears had different successes at increasing the selectivity of the fishery, they were all evaluated in the same manner and all contribute to furthering the objectives of the FMP and the Magnuson-Stevens Act. Only gear supported by applicable research was approved for use by the Council in Amendment 16, as listed in Table 182 of the Amendment 16 FEIS.

#### Recreational Measures

*Comment 43:* CLF expressed general support for recreational measures, but three commercial fisherman, NSC, and the NHCFA suggested that the recreational allocation of GOM cod and GOM haddock was unfair and inconsistent with National Standard 4, stating that to be equitable, allocations between commercial and recreational fishermen, and between sectors and common pool vessels need to be the same and cannot benefit one group to the detriment of another group. One individual opposed any allocation to the recreational fishery on the grounds that it would negatively impact the private angler from accessing fishery resources.

*Response:* As stated in the August 12, 2009, letter from Council Chairman John Pappalardo to the Secretary regarding the Council minority report on the adoption of Amendment 16, the allocation of available resources between commercial and recreational components of the fishery are entirely separate from and unrelated to the calculation of PSCs that establish sector ACE allocations. The use of the more recent time period for the recreational allocation in Amendment 16 reflects the Council's consideration of the potential inaccuracy of recreational catch data in earlier years and the current conditions in the fishery. The more recent time period is considered to be more representative of where the fishery is at present, and where it is likely to be going in terms of the proportions caught by the two components of the fishery. Accordingly, NMFS does not find an inconsistency between the different standards for allocating ACE versus the recreational allocation of groundfish. The National Standard 4 Guidelines

indicate that management measures must not discriminate between residents of different states, and that any allocations of fishing privileges must be fair and equitable to all fishermen and reasonably calculated to promote conservation. Amendment 16 establishes a process to allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001 and 2006. Both commercial and recreational catch are evaluated using the same time period, a period during which both fisheries were subject to restrictions on the catch of such stocks, to determine the amount of these stocks caught by each fishery. These allocations are necessary to provide accountability to every segment of the fishery that catches groundfish, and to develop more segment-specific management measures that more effectively reduce F for such segments. Therefore, this measure is consistent with National Standard 4, as described in Section 9.1.1 of the Amendment 16 FEIS. Amendment 16 did not distribute the recreational allocation of GOM cod and GOM haddock between the private angler and charter/party components of the recreational fishery. Therefore, this action does not inhibit either component of the recreational fishery from catching these stocks. However, the Council specifically included the capacity to develop separate AMs for the private and charter/party components of the fishery to ensure that excessive catch by one component does not compromise the continued access to these resources by the other component.

#### Sector Measures

*Comment 44:* Two commercial fishermen, EDF, PEW, CLF, and TNC expressed strong general support for sector management measures proposed in Amendment 16.

*Response:* For the reasons specified in Amendment 16 and the preamble to the proposed rule for this action, NMFS approved, and this final rule implements, the Amendment 16 sector measures.

*Comment 45:* Four commercial fishermen opposed sector management in general, stating that it is akin to privatizing fishery resources and will lead to the elimination of the small vessel fleet. These individuals preferred to continue to operate under the DAS management regime.

*Response:* Sector management does not privatize fishery resources, or lead to the elimination of the small vessel fleet. A sector is a group of persons holding limited access permits that

agree to work together for a specific period of time and under specific regulations to harvest a share of the available ACLs. Thus, sector allocations are temporary, changeable, and do not constitute a property right in the most common use of the term, or even an allocation of fishing privileges, as such terms are used in the Magnuson-Stevens Act. Under Amendment 16, each vessel may choose to enter a sector, or fish under the common pool and remain subject to DAS management. It is up to each individual vessel owner to decide which management regime would offer the most benefits to him/her. Because small vessels fish closer to shore and will likely be more adversely affected by the 24-hr DAS counting provisions in Amendment 16 than larger vessels, sector management may actually offer a better means to remain economically viable compared to DAS management, because sectors are universally exempted from DAS restrictions. Small vessels can form their own sector if they so choose, or enter another existing sector if it offers sufficient benefits.

*Comment 46:* The NEHFA commented that it is impossible for limited access Handgear A vessels to make a profit under sector management due to the costs to enter, administer, and monitor sector operations. This group recommended that Handgear A vessels should be exempt from all sector measures that require vessels to pay any associated costs, and suggested that Amendment 16 is inconsistent with National Standard 7 in that it does not minimize costs and requires Handgear A vessels to comply with all of the sector provisions. Finally, the NSC and three associated commercial fishermen indicated that the fishing industry cannot afford to pay for all of the sector management costs and must rely upon Federal funding to remain economically viable. The Northeast Coastal Communities Sector also noted that NMFS needs to ensure that the dockside monitoring costs for all sectors are fully covered for FY 2010 and that no individual sector be allowed to carry a balance of funds into 2011 if another sector has insufficient funds to cover their dockside monitoring.

*Response:* Amendment 16 anticipated a number of costs associated with sectors, including costs to join a sector and pay for a sector manager, and costs associated with monitoring and reporting provisions. Amendment 16 includes estimates of the costs associated with sector measures. The Council believed that these provisions are necessary to administer and effectively monitor sector operations, and that the benefits of transitioning

from the current effort control system to a quota management system under sectors outweigh the costs associated with sector provisions. Under Amendment 16, the Council specified that the fishing industry would pay for the costs associated with sector provisions, and did not provide for alternative funding sources. While many of the administrative and monitoring costs associated with sector operations during FY 2010 will be paid by NMFS through Congressional appropriations dedicated to supporting Sector development, it is unclear whether such funding will remain available to support sector operations in future FYs. Additional funding has been made available from individual states, as well as from several environmental groups, to support individual sector development. If such funding from one or more of these sources is no longer available, the fishing industry will be responsible for paying these costs. Some management measures considered in Amendment 16 were not selected in part because of concerns over the costs and burdens of administering the program. The costs associated with 100-percent at-sea and dockside monitoring coverage were deemed to outweigh the benefits expected from such measures. Therefore, this action minimized costs to the extent practicable, consistent with National Standard 7. As discussed in the response to Comment 41, each individual vessel owner must choose which management regime would provide the most benefits based upon his/her intended operations. Further, if costs to join an already existing sector are considered too high, vessels may form their own sector with similarly situated vessels.

The NMFS funding available to help offset costs associated with dockside monitoring during FY 2010 have been awarded by grant to a third party, GMRI, who is working directly with sector representatives to ensure the funds are distributed equitably to each sector relative to their particular monitor needs. Variables affecting dockside monitoring costs include the volume of catch, the number of trips, the need to provide service to remote ports, the need for roving monitors, or any combination of the above. However, these costs are difficult to estimate without full knowledge of how fishing operations will be executed during FY 2010. The amount of the total grant to be distributed to sectors exceeds the current estimated total cost of dockside monitoring for all of the sectors. If necessary, funds can be shifted to optimize their effectiveness. However,

should dockside monitoring costs exceed the amount of the grant, the sectors will be responsible for paying the additional costs, consistent with Amendment 16.

*Comment 47:* The Northeast Coastal Communities Sector stated that NMFS should establish a minimum threshold requirement for dockside monitoring to ensure that vessels that land low amounts of fish for each trip are not subject to unnecessarily high dockside monitoring costs, particularly for small ports in eastern Maine where the low availability of regulated species does not result high volumes of fish being landed for each trip.

*Response:* As noted above in the response to Comment 46, the costs associated with dockside monitoring are affected by several variables, including the amount of fish landed, or the amount of time the dockside monitor is required to observe landings. If dockside monitoring costs are based primarily upon these factors, it is possible that the costs will be lower for smaller volumes of fish landed by vessels operating in eastern Maine than for other vessels landing higher volumes of fish. However, Amendment 16 did not propose a minimum threshold of landings that would exempt a trip from the requirements to use a dockside monitor. Instead, Amendment 16 specified that dockside monitoring coverage will be randomly assigned to 50 percent of sector trips. Because Amendment 16 did not include a specific exemption from the dockside monitoring provisions for small volumes of fish landed, NMFS has not revised the dockside monitoring provisions implemented by this final rule.

*Comment 48:* The NHCFA, UNFA, and one seafood dealer commented that sector development was rushed and, therefore, should be delayed until data used to calculate sector allocations can be corrected. NHCFA specifically objected to the fact that vessels had to comply with sector provisions before they were implemented, while the seafood dealer suggested that sector measures will force many vessels and shoreside infrastructure companies out of business.

*Response:* Sector measures have been in place since 2004 with the implementation of Amendment 13, and the revised sector measures of Amendment 16 have been under development for over 3 years. These revised sector measures were the subject of extensive debate during this time, including numerous meetings open to the public. Therefore, NMFS disagrees that the implementation of sectors has

been rushed and should be delayed. In fact, the Council was originally scheduled to implement Amendment 16 at the start of FY 2009 on May 1, 2009, but delayed the action to further develop Amendment 16, including its sector measures. Therefore, further delay of sector implementation is not warranted to further develop sector provisions. Although NMFS recognizes that some of the landings data used to calculate PSCs are incorrect, these data represent the best data available to NMFS. A process to correct landings data and, therefore, PSCs is currently underway. However, it may not be possible to correct all landings data and be able to recalculate PSCs and associated sector ACEs in time for implementation on May 1, 2010. Because any revisions to a single PSC requires the recalculation of PSCs for all other vessels, updates to PSCs can only be implemented at the start of a FY. Otherwise, implementing such corrections during the middle of the fishing year could result in disruptions to the fishery that could compromise the ability of the fishery to effectively meet the conservation objectives of the FMP, especially if such corrections reduce the PSCs for a particular sector and cause that sector to exceed its ACE based upon ACE harvested prior to the correction. Delaying the implementation of sector measures until May 1, 2011, would mean that vessels whose PSCs were accurate would be denied the benefits of fishing under sectors at the start of FY 2010. Any corrections to the landings data and PSCs are relative and would change an individual vessel's PSC, but would not increase the amount of fish that could be caught in a particular FY. To ensure that the fishery can take advantage of the benefits associated with sectors as quickly as possible, this action implements sector measures effective May 1, 2010. Any updates to PSCs are intended to become effective for the start of FY 2011 on May 1, 2011. The sector-related deadlines in Amendment 16, which have been communicated to the public since the Council adoption of Amendment 16, are necessary to ensure that sector measures can be implemented by the start of the 2010 FY on May 1, 2010. While these deadlines are not mandatory, NMFS has made the industry aware that failure to comply with these deadlines could result in the delayed implementation of individual sectors beyond the start of the 2010 FY. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreline infrastructure. Similar provisions could

be implemented in future sector operations plans. If such provisions are included, Sector management could actually preserve the viability of shoreline infrastructure. Evidence suggests that the existing sectors were able to increase the economic efficiency of vessel operations and realize higher vessel revenue streams. Because Amendment 16 provides further opportunities to increase the economic efficiency of vessel operations through additional sector exemptions, increased access to haddock through revisions to existing SAPs, and other measures, it is possible that sector provisions implemented by this action will enable more vessels to remain economically viable.

*Comment 49:* The NHCFA, Food and Water Watch (FWW), and the DMF claimed that sectors are analogous to an IFQ program and require a referendum under the Magnuson-Stevens Act. Therefore, this group claimed that Amendment 16 is in violation of the Magnuson-Stevens Act because it failed to develop a referendum to implement sectors. Further, the NSC, three associated commercial fishermen, and FWW believe that sectors are a type of LAPP and, therefore, should have been developed pursuant to the requirements in section 303A of the Magnuson-Stevens Act.

*Response:* The Magnuson-Stevens Act explicitly states that a sector allocation is not an IFQ for the purposes of the referendum requirement. Moreover, NMFS has determined, as explained in a September 1, 2007, letter to the Council, that the sector program, as currently implemented in the FMP, is neither an IFQ program, nor a LAPP program as those terms are used in the Magnuson-Stevens Act. Further, none of the revisions to the current sector program in this final rule change the conclusions reached in that letter. To summarize the September 1, 2007, letter, according to the definition of a LAPP in the Magnuson-Stevens Act, a LAPP involves the issuance of a "Federal permit issued as part of a limited access system under section 303A to harvest a quantity of fish \* \* \* representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person." Individual sectors are not issued a permit, they are not allocated a portion of the TAC, and they are not clearly "persons" eligible to hold a LAPP under section 303A(c)(1)(D). Therefore, NMFS does not believe that sector measures, as approved in Amendment 16 and implemented by this action, are LAPPs that must comply with the

requirements in section 303A of the Magnuson-Stevens Act.

*Comment 50:* CLF recommended that sectors should be categorically excluded from future NEPA analysis based upon the analysis already contained in the Amendment 16 FEIS, and that NMFS should prepare the appropriate analysis of environmental impacts with the assistance of individual sectors.

*Response:* The analysis of sector formation in the Amendment 16 FEIS was never intended to address the particular operations of individual sectors, but rather to evaluate the overall impacts of the formation of sectors and their compliance with other sector-specific measures proposed in Amendment 16. Another, more detailed analysis of the specific impacts associated with the intended operations plans and rosters of participating vessels for each FY is required to allow the Council, NMFS, and the public to evaluate the expected impacts of these sectors and to comply with NEPA. Information on the vessels participating in each sector or the intended operations was not available at the time the Amendment 16 FEIS was being prepared and finalized. Therefore, a supplemental analysis is necessary to fully comply with NEPA. To assist new sectors in developing such analysis, NMFS hired contractors to work directly with NMFS and individual sectors to prepare EAs for Sector operations in FY 2010. In addition, NMFS worked very closely with sector proponents to ensure that such documents comply with NEPA and other applicable law. NMFS will continue to offer support in the future, although funding to draft future EAs may not be available. Upon the completion of this initial analysis of sector operations, if sector participants and operations in future years are similar to those incorporated in the original analysis, more abbreviated NEPA compliance may be possible in future FYs.

*Comment 51:* NAMA recommended that the Council encourage future sectors to form based on the concept of area management.

*Response:* Sectors may form for any number of reasons, and may adopt area-specific management measures if they so choose. In fact, the existing sectors were originally restricted to fishing in specific areas surrounding the communities in which they were based. The Council did not mandate similar area-based restrictions in Amendment 16 to provide the maximum flexibility for the formation of sectors.

*Comment 52:* The CCHFA supported provisions in Amendment 16 that insulate sectors from the overages of



common pool vessels. However, they observed that while sector vessels were subject to overage penalties if participating vessels left a sector following an overage, common pool vessels would not be subject to similar penalties. They contended that Amendment 16 should include overage penalties that follow common pool vessels if they join a sector in the FY after they contributed to an overage of the common pool allocations of a particular stock.

*Response:* The absence of an overage penalty for common pool vessels that contribute to an overage of common pool ACLs, but join a sector for the next fishing year does not compromise the ability of Amendment 16 measures to trigger applicable AMs and ensure that overfishing does not occur. Further, the deadlines to join a sector for the next FY necessitate that a vessel owner must decide to join a sector prior to September 1 of each year. Thus, the decision to join a sector will likely be made long before it is known whether there will be any overages of ACLs allocated to the common pool. Furthermore, a sector could specify conditions under which vessels may join that sector, including conditions that would preclude participation in a sector if a vessel fished in the common pool and contributed to an overage of common pool ACLs. Moreover, Amendment 16 does not include any overage penalties for common pool vessels if they contributed to an overage of common pool allocations, but later join a sector to avoid the increase in DAS counting associated with the differential DAS counting AM. NMFS can only approve or disapprove Amendment 16 measures, and cannot revise or add measures. However, the Council could consider adding such penalties in a subsequent action. Therefore, no common pool overage penalties are implemented by this final rule.

*Comment 53:* The NSC, three associated commercial fishermen, and the Sustainable Harvest Sector recommended that sectors should not be required to provide discard estimates as part of their weekly sector catch report. Instead, these commenters wanted to use the discard estimates calculated by NMFS to minimize the burden on sectors and increase the coordination of catch data used to monitor sector ACE.

*Response:* As part of a sector's weekly catch report, Section 4.2.3.5.3 of Amendment 16 states that sectors, or a private contractor hired to facilitate monitoring sector operations, must apply discard estimates to landings and deduct catch from sector ACEs. This

section also requires that sectors develop an "adequate monitoring system and demonstrate to NMFS that discards can be accurately monitored and counted as part of the ACE, at the sector's expense" as part of a sector's yearly operation plan. The Council determined that these elements are important for sector managers and the sectors themselves to be confident that all sectors are held to the same standard. Thus, each sector will be evaluated on its capacity to accurately monitor sector catch and prevent sector ACEs from being exceeded. Further, even though NMFS will provide the applicable discard rates to individual sectors, sectors may have more timely and accurate data regarding landings by gear type than is available to NMFS, particularly for vessels that fish with more than one gear type on a particular trip. This is because data regarding whether vessels fished with multiple gear types on the same trip are not captured through the VMS declaration requirements specified in this action, but will be reflected in VTR data. Even though the frequency of VTR submissions has been increased through this action, such data will not be immediately available to NMFS due to the time required to receive, process, and validate VTRs under current NMFS protocols. However, it is likely that sectors will have such data on a more timely basis due to proximity to affected vessels and the availability of sectors to rely upon electronic VTR software, developed in part to facilitate sector catch monitoring, to provide much of the data necessary to monitor sector landings. While NMFS will concurrently monitor sector catch using data available to NMFS, it would be inconsistent with Amendment 16, as well as the intent of sector management itself (i.e., self-management), to have NMFS calculate sector discards and apply it to sector landings on a weekly basis to determine sector catch, as Amendment 16 clearly indicates that it is the sector's responsibility to accurately monitor sector catch so that sector ACEs are not exceeded.

*Comment 54:* The NSC and three associated commercial fishermen commented that the weekly sector reporting requirements are burdensome on sectors. To reduce such burdens, NSC felt compelled to develop and utilize electronic reporting mechanisms that have yet to be authorized by NMFS, or that were evaluated in Amendment 16. NSC and its members recommended that NMFS approve the use of electronic VTRs for sector operations.

*Response:* As explained in the response to Comment 25, to date, the

Regional Administrator has not determined that the existing electronic VTR technology is sufficient to meet the existing reporting requirements, but could authorize the use of specific systems once such a determination is made.

*Comment 55:* The CCHFA supported Amendment 16 requirements for sectors to prepare an annual report. However, the Sustainable Harvest Sector opposed the requirement to include the catch of all species. This group contended that a 1-year snapshot of sector catch of other species is insufficient to understand shifts in effort to other fisheries. Instead, they recommended using NMFS's data to evaluate shifts in effort, as they include many years of landings and are more effective at determining if any shifts in effort have occurred. Further, this group suggested that the list of enforcement actions should be limited to only those resulting from a sector trip.

*Response:* The purpose of the annual sector report is to identify the full complement of sector operations conducted during a FY to allow the Council, NMFS, and the public to evaluate the biological, economic, and social impacts that such operations had on the NE multispecies fishery and other fisheries in which participating vessels were engaged. Although alternative sources of such data exist, it is important for the sector to specify how much catch the sector believes was caught in other fisheries, as it provides a means to not only evaluate shifts in effort, but also the efficacy of sector catch monitoring practices during a particular FY. Further, by summarizing the fishing activities of sector vessels, the public can understand the strategies employed by sectors to maximize the benefits of fishing operations. Furthermore, it would be inconsistent with the provision adopted by the Council in Amendment 16 to rely upon NMFS data and exempt sectors from submitting an annual report detailing the catch of all species. Reporting all enforcement actions associated with sector vessels, including those associated with other fishing activities, is critical to understanding how the sector operates and if sector operations are having an adverse effect on any fisheries. Therefore, this final rule does not revise the sector annual report requirements.

*Comment 56:* The NEHFA suggested that Handgear A vessels did not receive a fair and equitable allocation of available resources because measures in effect during the allocation period selected to determine PSCs, including GOM Rolling Closure Areas and trip



limits, reduced the amount of fish that such vessels could catch. Therefore, this group argued that the Amendment 16 PSC measures are inconsistent with National Standard 4. The NHCFA, PERC, NSC, and three commercial fishermen also contended that PSC measures are inconsistent with National Standard 4 because different time series were used to benefit individual groups, arguing that the allocation measures must be the same for all vessels, including recreational and commercial vessels and sector and non-sector vessels. Further, NHCFA commented that the allocation periods used reflect a time when GOM haddock abundance was depressed, causing PSC to be low and minimizing the potential that vessels will be able to access this stock once rebuilt. Furthermore, they contended that such measures would jeopardize the continued participation of traditional fishing communities, contrary to National Standard 8, while an elected official stated that sector allocations must be sufficient to sustain the fishery and reduce impacts to fishing communities. PERC specifically noted that the PSC measures would punish small vessels that had fewer landings during this period than other vessels. One other commercial fisherman supported using landings history alone for FYs 1996–2006, including for SNE/MA winter flounder once an allocation of that stock is appropriate, while the CCCHFA supported using landings of GB cod during FYs 1996–2001 for existing sectors. PERC further recommended that the Council establish a method to reallocate rebuilding stocks that includes set-asides in the initial allocation process that would accommodate “segments of the fishery that were marginalized during the transition to quotas.”

*Response:* Many of the issues raised by the public in opposition to the sector allocation measures in Amendment 16 were considered either directly or indirectly by the Council prior to adoption of these measures, as detailed in the FEIS and in the Council Chairman’s August 12, 2009, letter to the Secretary regarding the minority report for the adoption of Amendment 16. Under Amendment 16, all vessels are subject to the same sector allocation measures (i.e., PSC calculations) for all stocks with the exception of GB cod. The 11-yr period for allocation of most stocks (i.e., 1996–2006) is meant to minimize the impact on catch history that results from changes to groundfish regulations, such as trip limits and area closures during this period. For GB cod,

a different allocation window was adopted to preserve the business plans developed by participants in those existing sectors and to maintain the value of investments in permits made by such participants by maintaining Council decisions regarding the allocation of GB cod from previous management actions. The August 12, 2009, letter noted that 1996–2006 baseline to calculate PSCs for all stocks except GB cod was considered the “best method for ensuring a fair and equitable allocation using as much sound data as possible,” while promoting “stability in the fishery and fostering an environment where sectors can create efficient and effective business plans.” This letter references that Amendment 13 utilized landings histories during FYs 1996–2001 to establish the existing sectors’ allocations of GB cod and essentially froze this baseline once it was created. In a similar manner, the Council indicated its intent to freeze catch history for newly formed sectors as of the implementation of Amendment 16 to preserve the allocation decisions made in Amendment 13 and promote economic stability in the fishery by increasing the confidence that allocations are unlikely to change in the future. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreside infrastructure, consistent with Goal 4 of the FMP. In addition, because these sectors represent cohesive groups of smaller vessels fishing with hook and gillnet gear, preserving existing sector allocations promotes the continuation of a diversified fishery in both size and gear type near Chatham, MA, consistent with Objective 7 of the FMP. Revising existing sector allocations by not treating GB cod sector allocations differently than other stocks could reduce fishing opportunities for these sectors, increasing costs and economic impacts to such sectors, and adversely affect associated communities. Therefore, the measures in Amendment 16 are justified based upon furthering the goals and objectives of the FMP, providing for the sustained participation of fishing communities, and minimizing the economic impacts on such communities. Finally, the use of different PSC baselines for different stocks resulted in only a small quantitative difference regarding the amount of GB cod PSC specified for participants in existing sectors. Sector allocations will be calculated in such a manner that only 100 percent of the GB cod ACL will be allocated in any FY, thereby ensuring that sector measures

achieve the conservation measures of the FMP. Thus, the decision to use different allocation periods was not arbitrary, but specifically developed to provide stability and the sustained participation of vessels and fishing communities in the NE multispecies fishery without compromising efforts to rebuild overfished stocks, consistent with Goal 5 of the FMP.

Amendment 16 measures will allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001–2006. These allocation measures are intended to reflect recent participation in the fishery in the form of recent landings of groundfish and to account for concerns over the inaccuracy of historic data on recreational catch. As summarized in the response to Comment 43, the more recent time period is considered to be more representative of where the fishery is at present, and where it is likely to be going in terms of the proportions caught by the both the commercial and recreational components of the fishery. The catch of each component will be evaluated using the same time period, a period during which both fisheries were subject to restrictions on the catch of such stocks, including trip limits, closed areas, size limits, and other provisions necessary to prevent overfishing and help rebuild overfished stocks. Because all fisheries were subject to measures designed to achieve the conservation objectives during the same allocation period, one group is not advantaged over the other, despite the fact that different allocation periods result in different allocations to various segments of the fishery, and all are provided the same access to rebuilt stocks, including GOM haddock, which is projected to have rebuilt in 2009. These allocations are necessary to determine the amount of these stocks caught by each fishery and provide accountability to every segment of the fishery that catches groundfish, and to develop more segment-specific management measures that more effectively reduce F for such segments.

Allocations between commercial and recreational fisheries and between sector and common pool vessels are designed to minimize the economic impacts on fishing communities without jeopardizing the conservation requirements of the Magnuson-Stevens Act, including preventing overfishing and rebuilding overfished stocks. Measures affecting either group have indirect economic impacts on supporting businesses within such communities, such as restaurants,

marinas, fish processors, ice and fuel suppliers, etc. An allocation of available resources among these groups facilitates the development of effective management measures for each group that can selectively address overages by one group, while avoiding unnecessarily penalizing the other group for such excessive catch due to implementing effort reductions on other groups, in contrast to effort reductions applied across the entire fishery in previous management actions. In doing so, this measure contributes to the overall effort of Amendment 16 to provide for the sustained participation of such communities in the groundfish fishery through the furtherance of sustainable fisheries, while minimizing the adverse economic impacts associated with broadly applied effort reductions that would result without an allocation of available resources to each group.

Based on the above, NMFS has determined that sector and recreational allocations under Amendment 16 are consistent with each other, the goals and objectives of the FMP, the Magnuson-Stevens Act, including National Standards 4 and 8. Thus, NMFS implements such provisions through this final rule. If the Council determines that it is appropriate to establish set-asides to address a particular management objective, including setting aside catch for research or to promote initial entry into the fishery, it could revise these allocation measures through a future action.

*Comment 57:* The CCCHFA supported sector-specific allocations for stocks managed by the Understanding.

*Response:* NMFS is implementing such allocations through this final rule. These allocations ensure that access to the Eastern U.S./Canada Area by common pool and sector vessels is not adversely affected by the actions of other sectors or the common pool. This is consistent with Objective 8 of the FMP to insure accountability in achieving fishery management objectives, and to distribute fishery access based upon recent participation in the fishery.

*Comment 58:* The NHCFA suggested that the Amendment 16 allocation measures fail to recognize investments in DAS and, thus, devalue DAS permits without a sufficient analysis of the impacts.

*Response:* Amendment 16 did consider other options for sector allocation that included either vessel capacity and/or allocated DAS as part of the allocation formula. These factors would have resulted in all vessels being allocated at least some PSC for some or

all stocks, even though not all vessels actually fished for and landed groundfish during this period. As a result, such options do not reflect current participation in the fishery and would be inconsistent with the intent of this measure in Amendment 16. Section 7.5.1.2.3.3 of the FEIS discusses the economic impacts of PSC options adopted in Amendment 16 on those vessel owners that invested in permits to increase their access to DAS under the existing DAS effort controls. This discussion acknowledges that vessel owners may have invested in permits with allocated DAS, but little landings history in the area in which the owner has traditionally operated. Owners who invested heavily in permits with many DAS, but little landings history, could continue to participate in the common pool and be regulated by DAS instead of sector allocations. Thus, owners must make decisions as to which management system is most advantageous to them based upon opportunities presented by either management system. Therefore, Amendment 16 adequately considered the impacts on such vessels.

*Comment 59:* PEW, NHCFA, CLF, CCCHFA, and PERC opposed the removal of the sector allocation cap and recommended that NMFS retain the existing 20-percent cap, or develop suitable alternatives to ensure that phases in the allocation cap to avoid excessive shares in the fishery. These commenters claim that the absence of an allocation cap could compromise small-vessel operations due to consolidation of fishing effort by larger corporations, and that there is not a sufficient analysis of the potential consequences in Amendment 16, claiming that the absence of a cap could impact markets or cause unknown negative impacts. EDF also opposed removal of the cap because it believes that such a removal fails to address the goal of the FMP to preserve the day-boat fishery and that it would be arbitrary and capricious to implement a regulation that directly contravenes a stated objective of the FMP. Further, EDF argued that Amendment 16 is inconsistent with National Standard 4 because it fails to prevent an entity from acquiring an excessive share of the resource, although it acknowledged that an allocation cap is not the only means to address the requirements of National Standard 4. Although this group opposed the removal of the cap, it recommended that NMFS specifically not reinstate the existing cap due to disruptions in the fishery for FY 2010, but rather instruct the Council to

develop an appropriate allocation cap in a future action. EDF also suggested that NMFS freeze permanent quota transfers until an allocation cap is implemented, pursuant to the authority granted in section 305(d) of the Magnuson-Stevens Act.

*Response:* Amendment 13 first implemented an allocation cap that prevented sectors from being allocated more than 20 percent of the yearly TAC for a particular stock in part due to perceived concerns over the possibility that one sector could lead to an excessive share of a particular stock and exert market control for that resource. National Standard 4 Guidelines provide useful guidance on whether removal of the allocation cap is inconsistent with the “excessive share” provision of National Standard 4. National Standard 4 Guidelines state that an “allocation” or “assignment” of fishing privilege is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4.” Amendment 16 does not directly or deliberately allocate any fishing privileges. Instead, Amendment 16, in addition to removing the allocation cap, establishes several new rules for sectors and identifies specific sectors that have been formed to operate under the revised sector rules. Sectors themselves are merely vehicles for allowing individual fishermen to voluntarily enter into an arrangement to fish under certain exemptions to the FMP based on their individual fishing histories. Nothing in Amendment 16 or the related actions of Framework 44 or the sector operations plan proposed rule actually allocate directly or even indirectly any new fishing privileges to individual fishermen, and, sectors themselves do not acquire any privileges that were not already in existence based on fishermen’s preexisting histories. Therefore, sectors are not “acquiring” excessive shares of fishing privileges, as contemplated by National Standard 4. NMFS recognizes that the fact that one sector may have a significant cumulative total of ACE on a temporary basis for one fishing season may raise potential concerns for incidental allocative or market effects, and such possibilities should be closely monitored. However, commenters offer no explanation as to what constitutes an excessive share in the sector context

under National Standard 4 Guidelines, or which sectors fall into the excessive share category, nor do they show how the sector program will result in inordinate control on buyers or sellers in the market, a factor suggested in National Standard 4 Guidelines as evidence of an excessive share.

Analysis by the PDT during the development of Amendment 16 suggests it is unlikely that any one sector could accumulate a sufficient share of a stock to exercise market power over the rest of the fishery. Further, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector will be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Amendment 16 will allow sectors to trade ACE for use during that FY. This will minimize the influence of the initial sector allocation, including any cap on initial allocations, on market control, as a sector could acquire an unlimited amount of ACE from another sector by transferring ACE. Consolidation in the fleet has already occurred under the DAS management regime due to continued effort controls, DAS Leasing/Transfer Programs, and other provisions. It is possible to allow for consolidation in the fleet without compromising the diversity of the fleet. Maintaining a diverse fleet is one of the objectives of the FMP, and future Council actions could be directed to explicitly increase, or at least maintain, the existing diversity of the fleet. In fact, the PDT analysis of sector allocation caps specifically noted that an allocation cap could be used to address other objectives in the fishery. However, the Council elected not to do so in Amendment 16.

On balance, retaining the 20 percent would unquestionably have more negative impacts on the sector program than eliminating it in the context of current Amendment 16 measures and approve sectors. The elimination of the sector allocation cap has been considered by the Council since December 2007. Since that time, sectors have operated under the assumption that the allocation cap would be removed under Amendment 16. Accordingly, five sectors submitted rosters to NMFS that will result in ACE allocations that exceed the current 20-percent allocation cap, if the membership is maintained for FY 2010. If NMFS had disapproved the removal of the sector allocation cap in Amendment 16, the existing sector allocation cap would have remained in effect; NMFS could not have

simultaneously disapproved the proposed Amendment 16 measure and eliminated the existing 20-percent allocation cap. If the 20-percent allocation cap were maintained, five sectors would either need to be disapproved under the sector operations plan proposed rule because they would exceed the 20-percent allocation cap for one or more stocks, or sufficient members of the sectors would need to be removed from the sector rosters to ensure that the remaining vessels would not cause the allocation cap to be exceeded. This would have meant requiring such vessels to fish in the common pool. Another alternative would have been to allow vessels removed from a sector to join together and operate under one of the sectors authorized by the Council that did not submit an operations plan to date. However, any sector that has not submitted an operations plan could not be approved by the start of FY 2010 on May 1. This would have resulted in tremendous disruption and economic impacts to the fishery for FY 2010, particularly for those sectors that would have had to be disapproved, or vessels that would have been forced to fish under the provisions of the common pool or another sector. Such a disruption in the fishery could compromise the ability of sector measures to achieve other goals of the FMP, including giving industry members greater control over their own fate; providing a mechanism for economics to shape the fleet, rather than regulations (while working to achieve fishing and biomass targets); minimizing bycatch; increasing economic efficiency; and transitioning the fishery from effort controls to quota management. Therefore, NMFS did not disapprove the Amendment 16 measure to remove the sector allocation cap. However, NMFS recognizes the potential legitimate concerns raised by the public, and has pledged in its letter to the Council announcing partial approval of Amendment 16, to work with the Council in addressing these potential problems of the incidental allocative effects of the sector program as well as individual permit holders acquiring excessive control of fishing privileges. To that effect, NMFS will work with the Council's Interspecies Committee to consider developing measures that would address the issue of sector ACEs as they relate to the FMP's social and economic objectives, the Council's sector management policy, the national policy on catch share management, and the requirements of National Standard

4, pursuant to a motion adopted by the Council on January 28, 2010.

The only mechanism that exists to allow the permanent transfers of quota is the DAS Transfer Program. If NMFS were to freeze this program, as recommended, vessels fishing in the common pool would also be prohibited from consolidating fishing effort and increasing the economic efficiency of vessel operations, as such vessels could participate in sectors during a future FY. This would conflict with the goals and objectives of the FMP, as well as requirements of the Magnuson-Stevens Act to reduce costs and economic impacts to vessels by requiring entities to maintain multiple operational fishing platforms and pay for associated dockage, insurance, etc. Thus, this final rule does not temporarily suspend the DAS Transfer Program, as requested.

*Comment 60:* TNC and PERC supported the indefinite specification of PSC and the freeze on catch history under Amendment 16. However, the NSC and three associated commercial fishermen opposed such indefinite specification of PSC, stating that PSCs should only be used for sector allocations in Amendment 16 and that alternative allocations should be developed if the fishery transitions to an IFQ regime through a future action.

*Response:* Although Amendment 16 specified conditions by which PSCs were calculated for sectors, such provisions do not limit the Council's ability to revise such measures in the future, or develop alternative allocation measures to support an IFQ regime through a subsequent action.

*Comment 61:* EDF, PEW, CLF, NAMA, and the CCCHFA indicated that additional observer coverage is necessary to effectively implement sector provisions and increase the accuracy of discard estimates in the fishery. PEW and CLF suggested that at-sea monitoring coverage should be increased to 100 percent, even if that means reducing dockside monitoring coverage. NAMA suggested that such increased coverage should be applied to at least FYs 2010 and 2011 to establish a baseline of sector operations. EDF recommended that if at-sea monitoring cannot be increased to 100 percent without delaying Amendment 16, NMFS should implement more restrictive enforcement measures that require individual vessels to pay for 100 percent observer coverage for the rest of the FY if reported discards are significantly higher or lower compared to observed trips, with positive incentives for sectors that "outperform the fleet average" for reporting quality. Two commercial fishermen, PEW, CLF,

and CCCHFA also recommended that NMFS implement 100-percent dockside monitoring coverage. Oceana further claimed that Amendment 16 does not specify the precise level of observer coverage in the FMP, as alleged in a lawsuit brought against NMFS based on the approval of Amendment 13 to the FMP.

*Response:* When the Council adopted Amendment 16, the Council neither selected the option to require 100-percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in FY 2010. However, NMFS agrees with the basic concept advocated by the commenters that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16 and reducing the potential of an observer effect that could potentially compromise data collected with less than 100-percent coverage. As stated earlier in the preamble of this final rule, NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, and about 30-percent at-sea monitoring coverage for common pool vessels, in addition to fully funding 50-percent dockside monitoring coverage for FY 2010. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the SBRM, while providing the additional coverage suggested by commenters to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goals of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated. Shifting resources to emphasize one over the other would not be consistent with the objectives of Amendment 16. Additional coverage would provide more data on groundfish catch, but even if available funds were shifted to emphasize at-sea monitoring over dockside monitoring, there may not be sufficient funding to provide 100-percent observer coverage across the entire fishery. Further, there is no guarantee that such funding will be available for future years. Requiring 100-percent coverage would, therefore, cause the fishing industry to bear such costs, absent additional funding for NMFS to pay for such coverage. Individual sectors may establish at-sea monitoring programs through their yearly operations plans that provide for additional observer coverage beyond that provided by NMFS. However, no

sector has proposed such additional coverage for FY 2010.

Although EDF recommended implementing additional enforcement measures that would increase at-sea monitoring coverage based upon the accuracy of a sector's discard estimates compared to the fleet average, there were insufficient details provided to determine how to implement such a mechanism. Moreover, there is no enforcement authority that would allow the kind of real-time increase of observer coverage suggested by EDF. Further, it is unclear from the description whether it would even be possible for a sector to avoid triggering 100-percent at-sea monitoring coverage, as additional coverage would be required if the sector's reports were either statistically higher or lower than the fleet average. This approach could undermine incentives to accurately report discards and would, instead, create incentives to report discards that reflect the industry average. Because the Council did not include such a mechanism to increase at-sea monitoring coverage in Amendment 16, NMFS does not have the latitude to implement such a provision through this final rule. Finally, the Court's findings in the Amendment 13 lawsuit required that FMPs establish SBRM's, but did not mandate specified levels of observer coverage. Because Amendment 16 is in compliance with the omnibus amendment that implemented SBRMs for all FMPs managed in the NE in January 2008, Amendment 16 is not at odds with the Court's findings in the lawsuit referred to by the commenters.

*Comment 62:* Two commercial fishermen, PEW, CLF, and CCCHFA recommended that NMFS utilize electronic monitoring to reduce costs, including deploying electronic monitoring in other fisheries to record NE multispecies bycatch. The APO commented that the standards for approving electronic monitoring technology are not clear and that the public should be involved with any decision to approve such technology.

*Response:* NMFS has not yet determined whether electronic monitoring technology is sufficiently developed to be applied in the NE multispecies fishery. Criteria to evaluate such technology are currently being refined by NMFS based upon existing research and pilot programs. Any electronic monitoring technology to be applied in the NE multispecies fishery will be subject to rulemaking consistent with the Administrative Procedure Act.

*Comment 63:* Two individuals, the Public Employees for Environmental Responsibility (PEER), and the APO

opposed Amendment 16 measures that would change eligibility standards for at-sea monitors to require a minimum of a high-school education, or equivalent, with no science background specified. They claim that lowering the education standards undercuts the observer profession and would be contrary to regional, national, and international policy and best practices. Commenters noted that there have been problems with non-degreed observers in other fishery management programs, including both professional and data problems, which caused such programs to increase their observer program eligibility and training standards significantly. They also suggest that at-sea monitors would receive less training and be paid less than fisheries observers who are required to have an advanced science and mathematics education.

*Response:* The educational requirement for a high school diploma rather than a college degree is a minimum eligibility requirement and does not require vendors to hire only those candidates with the minimum qualifications. Although there may have been problems with non-degree observers in other programs, NMFS intends to provide thorough and rigorous training and oversight of at-sea monitors to avoid similar problems in the NE multispecies fishery. While the training program for at-sea monitors is not as long as the training program for observers (10 days versus 16 days), the amount of data collected by at-sea monitors will also be concomitantly less than the data required to be collected by observers, due to the different roles that at-sea monitors will undertake compared to observers. The primary role of at-sea monitors is to verify area fished, catch, and discards by species, by gear type. NMFS has taken into account the data collection needs for sector management in determining the training and educational requirements for at-sea monitors. For example, unlike observers, at-sea monitors will not be required to collect biological samples, will not collect as much gear information, and will not be responsible for conducting supplemental research projects that are sometimes required of observers. At-sea monitors are intended to complement, not replace, the work performed by observers, and at-sea monitors are not expected to compromise the utility of observers or undercut the profession in any way. Therefore, NMFS concludes that the at-sea monitoring program, including standards for at-sea monitors, can be implemented in a manner consistent with regional, national, and other

policies and best practices. It is unknown whether at-sea monitors will be compensated at the same level as fisheries observers at this time.

*Comment 64:* One individual, PEER, APO, and Alaska Observers argued that the Amendment 16 at-sea monitoring standards would result in lower data quality and integrity. Oceana stated that Amendment 16 must include a full discussion of the effects of performance standards on uncertainty in catch estimates and overall management of the fishery. Although daily costs of at-sea monitors might be less than for fisheries observers, Alaska Observers and PEER contend that overall costs would likely increase due to complications in data oversight and accountability measures, and with the overall loss of data integrity. Six fishing industry representatives, including AFM and the NSC, supported the at-sea monitoring standards, stating that it is necessary to reduce the financial burden of such monitoring requirements as much as possible.

*Response:* NMFS disagrees that at-sea monitors will collect lower quality data, or data of less integrity. At-sea monitors will be required to pass rigorous training based upon the training regime developed and employed for observers. Therefore, it is expected that the data quality associated with at-sea monitors would be comparable to that associated with observers. Accordingly, NMFS does not believe that there will be any effects of the performance standards on the uncertainty in catch estimates and overall management of the fishery. At-sea monitors are meant to increase at-sea observations of fishing behavior to increase data collected in a more efficient and cost-effective manner, given the often limited resources to support a full observer program. Specifically, because at-sea monitors would not be required to collect and deliver biological samples, the costs and complexity of the logistical operations of the at-sea monitoring program are reduced compared to the existing observer program. Although NMFS cannot confirm whether at-sea monitors will be NMFS does not anticipate overall costs for implementing at-sea monitors to be higher than the cost for observers, and at-sea data collection and processing will be subject to the same standards as observer data. Because such standards are not expected to compromise data quality, but may lower the costs associated with at-sea monitoring provisions required by this action, this final rule implements the at-sea monitoring standards as proposed in Amendment 16.

*Comment 65:* PEER, one individual, and APO suggested that the Amendment 16 at-sea monitoring provisions would result in less public access to observer data. Although none of the commenters explained how they thought Amendment 16 would impact public access to fisheries monitoring data, it was suggested that sector management in general may limit the availability of such data for fisheries monitoring and management purposes. They also suggested that NMFS's authority and management would be undercut by a host of waivers and exemptions, and the fishing industry would gain much of the authority over fisheries monitoring.

*Response:* At-sea monitoring data will be subject to the same confidentiality provisions as observer program data, in compliance with the Magnuson-Stevens Act. NMFS will not apply a different standard to data collected by at-sea monitors versus observers. All data submitted to NMFS as part of the sector reporting requirements implemented by this action will be made available to fisheries managers and the public, as appropriate, for the purpose of monitoring and managing the NE multispecies fishery. Although the intent of sector management is to provide individual sectors with the responsibility of monitoring and managing sector operations, the ultimate responsibility and authority for monitoring catch and associated fishing mortality resides with the Secretary and NMFS. Therefore, NMFS does not agree that Amendment 16 measures implemented by this final rule would limit public access to monitoring data or compromise NMFS's ability to effectively monitor and manage the NE multispecies fishery.

*Comment 66:* PEER claimed that at-sea monitors would collect significantly fewer protected species data than traditional observers because of the time necessary for monitors to complete catch data requirements, thereby compromising NMFS's ability to meet statutory requirements under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), noting that the at-sea monitoring "Marine Mammal, Sea Turtle, and Sea Bird Incidental Take Log" will have 60 percent fewer data fields.

*Response:* At-sea monitors will still be required to collect data on marine mammal, sea turtle, and sea bird interactions. Incidental takes (i.e., interactions of marine mammals, sea turtles, and sea birds with fishing gear) will still be documented and described in detail. The primary difference between at-sea monitors and observers is that at-sea monitors will not collect

biological specimens. Because at-sea monitor coverage will be in addition to the current levels of observer coverage, at-sea monitors represent additional on-the-water observations of interactions with marine mammals and endangered species. Thus, at-sea monitors will increase, not decrease, the data available to estimate takes of such species in the NE multispecies fishery. This will enhance, not compromise, NMFS's ability to meet statutory requirements under the MMPA and ESA, and to estimate bycatch. The fields that were eliminated in the incidental take log are the result of improved format of data collection, as much of the information collected on the current forms will be collected and described in comments on a newly designed worksheet.

*Comment 67:* PEER suggested that, if the sector at-sea monitoring program proposed in Amendment 16 remains unchanged, additional agency management and training staff will be required, noting that two programs will be in operation simultaneously and thus have a different process for training, inseason management, contract management, administrative oversight, data management and data modeling.

*Response:* The two programs will operate simultaneously and are integrated within the same group (the NEFSC Fisheries Sampling Branch). The training for at-sea monitors and observers is the same, where their roles overlap. For example, the vessel safety training, conflict resolution, species identification, and catch estimation is the same. Training of at-sea monitors will not include training for observer duties that do not apply to at-sea monitors, such as how to extract fish otoliths, vertebrae, and scales, and how to conduct a full necropsy of dead marine mammals. The inseason management, contract management, and administrative oversight of the at-sea monitoring program are not significantly different under the model being proposed for 2010 and 2011. Data management is similar, with the exception that the data collected by at-sea monitors will be submitted electronically, for the most part. Similar audits and data transfer methods are being designed for the at-sea monitoring data, in a robust relational Oracle database overseen by the NEFSC. As the integrity of the data collected are the same and of equal quality, the data modeling (use of data in fisheries management) does not have a different process. The data can be pooled and combined, but identifiers are included to be able to parse them out for quality assessment comparisons.

*Comment 68:* One individual noted that currently the Department of Labor (DOL) has job classifications for Fishery Observer 1, 2, or 3, and asks if the DOL have a job classification for "at-sea monitors," if the duties of an at-sea monitor are sufficiently different from those of a Fisheries Observer as to warrant a separate job classification, and whether NMFS will realize any cost-savings from hiring at-sea monitors with only high school diplomas.

*Response:* The DOL does not have a separate job classification for at-sea monitors. Since the duties between at-sea monitors and observers are similar, it is likely that at-sea monitors will be classified and compensated at the same rate as Fishery Observer 1. NMFS may not realize any cost-savings in terms of salaries for at-sea monitors, but other overhead costs, such as training, will be reduced.

*Comment 69:* One individual highlighted that there are several catch share programs currently in place, including the North Pacific and the Pacific groundfish trawl individual quota programs, that require college degreed observers for at-sea data collection. He noted that implementing such a significant change in policy with regard to educational requirements in the Northeast will have repercussions throughout the fishing industry, observer provider industry, and observer programs, particularly as fisheries begin to transition to catch share programs and the need for additional data collection and monitoring increases. The commenter asked how NMFS plans to address this disparity in policy implementation.

*Response:* NMFS is aware of concerns regarding hiring at-sea monitors with only a high school diploma, and presented such concerns to the Council during the development of Amendment 16. However, the Council elected to specify lower educational standards for at-sea monitors than used in other programs for the reasons listed in Amendment 16. Despite the fact that educational standards for at-sea monitors differs from similar requirements in other programs, at-sea monitors are separate and distinct from fishery observers and do not necessarily have to be held to the same standards as fishery observers. Because the Amendment 16 at-sea monitor standards are consistent with applicable law, they are implemented by this final rule. The Council and NMFS are free to make changes to the at-sea monitoring program and its eligibility requirements if the Amendment 16 educational standards negatively affect the data quality of at-sea monitors. Each FMP

must be evaluated on its own needs, concerns, stances, and merits. Therefore, NMFS does not agree that the standards in Amendment 16 and implemented by this final rule will necessarily affect monitoring programs in other FMPs.

*Comment 70:* One individual stated that current existing observer programs have significant requirements that prohibit observers from having a financial interest in the resources they are observing. The commenter stated that Amendment 16 contains ambiguous language stating that an at-sea monitor must have "independence" from the fishery in which he/she is collecting information, but does not provide sufficient details to reasonably prohibit conflicts of interest and or withstand legal challenge.

*Response:* As part of the approval process to become an at-sea and/or dockside monitor provider, providers must sign and submit a document to NMFS that states that they: (1) Do not have a direct or indirect interest in a fishery, managed under Federal regulations, including, but not limited to vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions; (2) will assign at-sea and dockside/roving monitors without regard to any preference by representatives of vessels other than when a monitor will be deployed; and (3) will 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 at-sea and/or dockside/roving providers. In addition, individual at-sea and dockside monitor approved/certified by NMFS will be required to sign a document stating that they do not have a direct or indirect interest in a fishery, managed under Federal regulations, including, but not limited to vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions.

*Comment 71:* One individual stated that the lack of a contract between the Federal government and the service provider severely limits oversight by Federal managers, creates an undue burden on the Federal agency to make programmatic changes to the monitoring program, does not prevent service providers from non-payment of observers and monitors, and does not provide a timely management mechanism to ensure consistently good performance by service providers. This

individual recommended that NMFS should require a no-cost performance-based contract between NMFS and the service provider in order for NMFS to have sufficient program management oversight. If a no-cost contract is not implemented, the commenter believed NMFS should require service providers to be bonded to prevent non-payment of observers and at-sea monitors.

*Response:* Although there does not have to be a direct contract between NMFS and the service providers, there are detailed requirements to be met by the provider companies and the individual monitors. NMFS reviews the qualifications of the providers through an annual approval process. The individual monitors must meet requirements specified in Amendment 16, and pass the training in order to become certified. NMFS has the authority to disapprove or decertify if any requirements are not being met. NMFS has received sufficient appropriations to fund at-sea monitoring, for FY 2010 at least, and is in the process of issuing a Request for Proposals, which will be a performance-based contract for at-sea monitoring. NMFS will still maintain close oversight of the provider companies and monitors to ensure that performance and reporting expectations are being met, safety is not being compromised, and monitors are being treated fairly. NMFS is continuing to evaluate various service delivery models, such as the no-cost contract. There are provisions to transition to industry funding of at-sea monitors in FY 2012, and at that time NMFS and the Council may consider alternative service delivery models. NMFS is currently investigating mechanisms to protect service providers and individual monitors from failure of either a vessel or service provider to pay for particular services, including permit sanctions for clear non-payment cases. However, many of these issues are private business matters that should be resolved by the parties involved, rather than requiring NMFS intervention. In sum, NMFS has determined that the system that will be in place addresses the concerns raised.

*Comment 72:* One individual recommended that NMFS should provide additional information addressing each of the key elements, including training, briefing and debriefing, at-sea training, bonus initiatives, fraud detection, at-sea monitor manuals, additional training requirements that are required in the NMFS observer eligibility policy, and identifying how each element will be implemented for observers and for at-sea monitors.

*Response:* The at-sea and dockside monitoring training is being designed and conducted by the Northeast Fisheries Observer Program Observer (NEFOP) Training Center. The training for both certifications is 10 days and includes a full background security check, fish identification, tour of fish house, survival training at sea, vessel safety, safety at the docks and at seafood dealers, compliance reporting, marine mammal identification, sea turtle identification and resuscitation, sea bird identification, catch estimation, fish length measurements, basic gear information on bottom otter trawl, anchored sink gillnet, and bottom longline, hygiene, conflict resolution, data quality and probation policies, gear maintenance, and introduction to the NEFOP staff. The training includes a pre-study assignment, quizzes, required homework assignments, and exams that are required to be passed with a score of 85 percent or above. Attendance at all day's training is mandatory, and overall attitude is assessed by the trainers and service providers. The training will uphold the requirements noted in the NMFS observer eligibility policy, such as requiring a licensed physician note stating that the candidate is physically capable of serving as an at-sea monitor, candidates must be able to clearly and concisely communicate verbally and in writing in English, and candidates must be a U.S. citizen, or a non-citizen who has a green card, TN authorization, H1 visa, or valid work visa, and a social security card. At-sea monitors will be assigned to a NMFS editor with the NEFOP, and regular briefings and debriefings will be performed in person, by email, and by phone. Trip data will undergo a thorough check for patterns that would indicate fraud. Other data sources will be used as comparisons. Fishermen Comment Cards will be distributed, and captain interviews will be conducted. A full at-sea monitoring manual will be available to the public on the NEFOP's website once it has been fully developed.

*Comment 73:* Three commercial fishermen, the AFM, and the Sustainable Harvest Sector recommend that dockside monitors should not be required for trips in which either an at-sea monitor or fishery observer is deployed. They suggested that such a practice is redundant and a waste of resources.

*Response:* NMFS disagrees. The roles for dockside monitors and at-sea monitors are different; dockside monitors are intended to verify the landings of a vessel and certify that landings weights on the dealer report are accurate, while at-sea monitors are

responsible for verifying area fished, catch, and discards by species and gear type. Furthermore, the responsibilities of a fishery observer differ from those of an at-sea monitor, in that observers are also required to collect biological samples and more comprehensive data on the interactions with protected species and marine mammals. Moreover, because both at-sea monitors and observers do not have the capacity to operate 24 hr per day, and are often required to sub-sample portions of the catch, data from at-sea monitors or observers do not represent a complete accounting of every pound of fish that is retained by a vessel, unlike dealer reports, and cannot be used to validate dealer reports. Finally, the Council did not differentiate in Amendment 16 between trips monitored by an at-sea monitor or observer for the purposes of defining dockside monitoring coverage levels. Therefore, because the purposes of dockside monitors and at-sea monitors and observers are different, the associated data for each entity are not directly comparable, and because the Council did not consider the exemption requested by the commenters, NMFS is not implementing such an exemption through this final rule.

*Comment 74:* One commercial fisherman supported the ACE carry-over provisions.

*Response:* This final rule implements the ACE carry-over provisions, as proposed.

*Comment 75:* Five commercial fishermen, the AFM, the NSC, and the Sustainable Harvest Sector wanted clarification that an ACE overage is not a violation unless such an overage is not balanced at the end of the FY through acquisition of additional ACE through ACE transfer provisions. To treat an overage as a violation without considering ACE transfers, they believed, is inconsistent with Amendment 16.

*Response:* In Amendment 16, an overage for the purposes of triggering a violation is distinct from an overage that triggers a sector's AMs (overage deduction). Section 4.2.3.4 of Amendment 16 explicitly states that sectors are required to ensure that ACEs are not exceeded during a FY and "should project when its ACE will be exceeded and should cease fishing operations prior to exceeding it." If a sector's ACE is exceeded, Amendment 16 prohibits any sector vessel from fishing in a stock area until it acquires additional ACE. Thus, if a sector exceeds its ACE, but fishing vessels in the sector continue to fish in a particular stock area, NMFS considers such fishing to be a violation. For the

purposes of applying sector AMs, a sector is not considered to have exceeded its ACE, and is not in violation, unless it cannot rectify such an overage by acquiring ACE from another sector up to 2 weeks following the end of the FY. NMFS believes that the proposed regulations accurately reflected these restrictions, and no revisions to the applicable regulatory text are made in this final rule.

*Comment 76:* CLF and CCCHFA expressed general support for the universal sector exemptions proposed in Amendment 16.

*Response:* This final rule implements the proposed universal sector exemptions.

*Comment 77:* One individual strongly opposed allowing sectors into spawning areas in Ipswich Bay, MA while spawning is occurring, suggesting doing so under Amendment 16 could have disastrous consequences on one of the few large and healthy cod spawning components, including preventing successful spawning and rapidly depleting this unique spawning component. This individual highlights research indicating that fish spawning in Ipswich Bay show site fidelity, are genetically distinct, and contribute to recruitment from Massachusetts to Maine. This individual recommended revising Sector GOM Rolling Closure Area IV to protect spawning areas and prohibiting recreational vessels from fishing in such areas during spawning periods.

*Response:* Much of the research highlighted by this individual was not available prior to the decision by the Council to allow sectors to access portions of the existing GOM Rolling Closure Areas and, therefore, was not considered when developing this action. This research could be used by the Council to modify such access in a future action.

*Comment 78:* The NSC, three associated commercial fishermen, and the AFM supported sector exemptions to use 6-inch (15.24-cm) mesh codends when fishing with the Ruhle trawl or haddock separator trawl on GB. However, five commercial fishermen, the NSC, the AFM, and the Sustainable Harvest Sector also supported similar exemptions in the GOM to facilitate the harvest of GOM haddock.

*Response:* This final rule implements the universal sector exemption to use 6-inch (15.24-cm) mesh codends when fishing with the Ruhle trawl or haddock separator trawl on GB. When the Groundfish Oversight Committee (Committee) developed this exemption for consideration by the Council at its June 2009 meeting, the Committee



explicitly decided not to provide the flexibility for sectors to use 6-inch (15.24-cm) mesh codends in the GOM due to concerns over the potential for this measure to increase interactions with undersized fish. Because there was no justification or analysis provided in Amendment 16 for such an exemption, NMFS cannot modify the universal sector exemptions adopted by the Council in Amendment 16 to allow Sector vessels to use 6-inch (15.24-cm) mesh codends in the GOM through this final rule.

*Comment 79:* One commercial fisherman, the AFM, and the Sustainable Harvest Sector recommended that sector vessels fishing on a monkfish DAS in the Southern Fishery Management Area, any sector trip west of 72°30' W. long., any sector trip using exclusively 10-inch (25.4-cm) or greater mesh gillnets or codends, and any sector trip by vessels issued a Category F monkfish permit, should be exempt from the sector monitoring requirements, but still be required to comply with all other sector requirements. They argued that such trips catch very small amounts of NE multispecies and should not be subject to provisions that are only necessary to monitor the catch of NE multispecies.

*Response:* Section 4.2.3.4 of Amendment 16 clearly indicates that the ACE allocated to sectors applies to all catches of those stocks by sector vessels, regardless whether such catch was harvested during a directed NE multispecies trip, or on other trips. The proposed regulations to implement Amendment 16 indicate that applicable sector requirements would apply to all sector trips, and defined a sector trip as any trip taken by a sector vessel in which the vessel declared its intent to fish in the NE multispecies fishery. Therefore, a trip by a sector vessel in another fishery, such as the summer flounder fishery, that does not require the concurrent use of a NE multispecies DAS would not be subject to the sector requirements. However, a trip by a sector vessel that is also issued a monkfish permit would be considered a sector trip, as defined in this action, because the current monkfish regulations would require the concurrent use of a NE multispecies DAS. Because the Amendment 16 monitoring provisions are designed to ensure that all sector catch is properly accounted for, it would be inconsistent with Amendment 16 to exempt trips that meet the definition of a sector trip from such reporting requirements, as it would not provide the assurance that NE multispecies catch on such trips would be properly accounted for. In

addition, because the requested exemptions represent substantial revisions from the proposed measures, it is not appropriate to implement such changes outside of the Council process. Thus, this final rule does not provide the requested exemptions from sector monitoring requirements, as requested.

*Comment 80:* The PERC, CCCHFA, and TNC supported ACE trading provisions proposed in Amendment 16. TNC suggested that NMFS should develop a clearinghouse for ACE trading, while PERC and the CCCHFA recommended that requiring ACE to be traded within bins of vessel size, gear, or other criteria would help protect the small-boat fleet. The AFM was concerned that, due to the number of sectors affiliated with the NSC, such sectors would be unwilling to transfer ACE with other sectors. AFM argued that NMFS must take action to ensure that other sectors do not place limitations on ACE trades with other sectors. The NSC and associated members emphasized that ACE trades must be approved immediately upon receipt by the Regional Administrator.

*Response:* NMFS agrees that ACE trading is critical to the success of sector management. Section 4.2.3.7 of Amendment 16 describes ACE transfers as a private business arrangement between sectors that is not subject to any restrictions on the nature of the transactions between sectors. However, there is no reason that a sector could not stipulate such conditions as part of its negotiations to trade ACE with another sector. Further, the Council could implement such restrictions in a future action if data suggest that the small-boat fleet is being adversely affected by unrestricted ACE trading under Amendment 16. Because both the Council and NMFS consider ACE transfers to be a private business arrangement, NMFS is not inclined to dictate the conditions under which individual sectors may trade ACE with one another, including mandating that individual sectors must trade with one another. However, if problems arise due to obstacles in trading ACE that affect conservation and management objectives of the FMP, NMFS or the Council could make changes to measures governing such trading. In addition, these types of potential problems are going to be addressed as stated in response to Comment 59 (i.e., the response to the sector allocation cap removal). NMFS is considering posting ACE balances online to provide the data necessary for various sector managers to negotiate ACE trades. As outlined in Amendment 16, an ACE transfer is not authorized until approved by NMFS.

NMFS intends to review and process ACE transfer requests as quickly as possible. Consistent with Amendment 16, NMFS will approve/disapprove ACE transfer requests based upon whether the sectors requesting the transfer of ACE are complying with sector reporting and administrative requirements implemented by this action.

*Comment 81:* Despite acknowledging the likely substantial revisions to current record-keeping processes, TNC urged the Council and NMFS to consider ways to recognize private arrangements to distribute fishing history among individual sectors as part of approved ACE transfer requests, as specified in the ACE trading agreements.

*Response:* The Council froze catch history in Amendment 16, but could accommodate requests similar to those of TNC through a future action. NMFS agrees that recognizing alternative distributions in fishing history as a result of ACE transfers would require substantial revisions to existing record-keeping processes and databases that would significantly increase the complexity of catch monitoring processes currently being developed for approved Amendment 16 measures.

*Comment 82:* TNC and the CCCHFA expressed general support for Amendment 16 provisions that limit which measures may result in joint liability for sector vessels.

*Response:* This final rule implements the approved Amendment 16 joint/several liability provisions.

*Comment 83:* PERC and TNC expressed general support for allowing permits currently in CPH to participate in sectors. The Northeast Coastal Communities Sector noted that because sector catch will be regulated by hard TACs, the sector eligibility requirements should be revised to allow vessels issued an open access NE multispecies permit to participate in sectors and comply with sector provisions.

*Response:* This final rule allows permits currently in CPH to participate in sectors as approved in Amendment 16, but does not allow vessels issued an open access NE multispecies permit to participate in sectors. As observed in the Northeast Coastal Communities Sector's comment, at its June 2009 meeting, the Council considered requests by industry to revise the sector eligibility restrictions to allow open access permits to participate in sectors, but did not ultimately make such revisions, arguing that there were many opportunities to incorporate such a revision earlier in the development of Amendment 16 and that it would not be

appropriate to add such a provision at the last minute due to the potential ramifications on other measures, including PSCs and VMS requirements.

*Comment 84:* UNFA opposed the Amendment 16 provision that would require that sectors be composed of at least 3 individuals, none of whom have an ownership interest in one another, citing an example that 10 separate corporations owned by the same people would be prohibited from participating as a sector even though each corporation is a separate legal entity.

*Response:* Amendment 16 included minimum requirements for sector formation for a number of reasons, including to minimize the concern that one entity (or group of related entities) could obtain an excessive share of the available resource, address concerns that sectors would be a means to circumvent the ITQ referendum requirements of the Magnuson-Stevens Act, ensure accountability among sector members, and reduce the administrative burden of implementing a large number of very small sectors. The example highlighted by UNFA would not comply with the measures approved under Amendment 16, as they would undermine the objectives of this provision.

*Comment 85:* The CCCHFA supported, while NSC and three associated commercial vessels opposed, the proposed measure that prohibits sectors from carrying over unused ACE of GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock. The NSC and associated commercial fishermen recommended that sectors should be allowed to carry over unused ACE for such stocks as long as the U.S. portion of the TACs specified pursuant to the Understanding are not exceeded, particularly if U.S. vessels are unable to fully harvest available TAC due to complying with more conservative rebuilding requirements than required by the Magnuson-Stevens Act.

*Response:* When the Council deemed the proposed regulations to be consistent with Amendment 16, they recognized that, although this provision was not specifically described in Amendment 16 itself, they could not identify any provision in Amendment 16 that would allow carry-over for these stocks without risking that the U.S./Canada Management Area TACs would be exceeded. Although projections could be used to determine if the U.S. TACs for these species would be exceeded during the following year to allow carry over on a year-to-year basis, it would not be possible to implement such a measure, yet ensure that the U.S./Canada TACs for these stocks

would not be exceeded. Further, if the annual TACs are overestimated, as has occurred in the past several years, overfishing could occur if both the entire U.S. TACs for these species and any carry-over ACE are caught in the following FY. Accordingly, NMFS, under the authority of section 305(d) of the Magnuson-Stevens Act, has retained this measure in the final rule.

#### **VMS Requirement**

*Comment 86:* CLF expressed general support for the proposed VMS provisions that would require all vessels participating in sectors or fishing under a DAS to use VMS.

*Response:* This final rule implements the VMS provisions as proposed.

#### **Transfer of ACE by NOAA-sponsored Permit Banks**

*Comment 87:* CLF supported the development of permit banks as proposed by NMFS in the proposed rule as an important management tool that could support community-based fisheries and allow new entrants into the fishery. However, they commented that such provisions were neither analyzed by the Council, nor considered in the Amendment 16 FEIS, and that the details of such NOAA-sponsored permit banks are unknown. Based on this, CLF recommended that this provision should not be implemented in this action and that the Council should consider development of such programs in a future action. Similar comments were submitted by NSC and associated individual members. One commercial fisherman and NHCFA suggested that other institutions that formed permit banks should be recognized and allowed to operate in the same manner as NOAA-sponsored permit banks, while TNC requested clarification on what types of entities would qualify as a state-operated permit bank, what constitutes a NOAA-sponsored permit bank, and from what sector management provisions would such permit banks be exempt.

*Response:* NMFS acknowledges that this measure was not considered by the Council in Amendment 16. The establishment of the NOAA-sponsored permit bank occurred independent of the Council process through a \$1 million Congressional appropriation to provide financial assistance to the New England fisheries and to "support a pilot permit banking program through which fishing opportunity will be preserved for small and remote communities in Maine." Because the initial \$1 million appropriation was specific to the establishment of a pilot permit bank program, NMFS anticipated that, should

the permit bank program with the State of Maine be successful, Congress may provide additional appropriations to establish similar permit bank programs in other states. Thus, NMFS intended this provision of the regulations to serve more broadly than simply the current permit bank program with the State of Maine so that any future permit bank programs established in partnership with other States may operate effectively.

Upon consideration of public comment on the proposed rule, NMFS recognizes that the regulations specific to NOAA-sponsored permit banks have broader implications on the definition of a sector, as developed by the Council in Amendment 16, and on the ability of existing and future permit banks to operate under the sector provisions approved in Amendment 16. Therefore, it may be appropriate for the Council to consider if and how the measures originally proposed to apply only to the NOAA-sponsored permit banks should be revised to accommodate participation by other institutions or permit banks that are not sponsored by NOAA and operated by a state. To foster further discussion on permit banks and how they are affected by the provisions approved under Amendment 16 and implemented by this action, NMFS has removed proposed measures specific to NOAA-sponsored permit banks through this action and will recommend that the Council consider addressing public comments received on this provision through a subsequent Council action.

#### **Changes From the Proposed Rule**

NMFS has made several changes to the proposed rule, including changes as a result of public comment and the disapproval of the GOM Haddock Sink Gillnet Pilot Program in Amendment 16. Some of these changes are administrative in nature, clarify the new or existing management measures, or correct inadvertent omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

The description of the reporting and recordkeeping requirements of this action has been revised to include burdens associated with forwarding trip start/end hauls to NMFS and notifications to vessels, sectors, and NMFS of a dockside or at-sea monitor emergency. These burdens were included in the PRA package reviewed by the OMB as part of this action.

In § 648.10, paragraph (k)(3)(iv), the SNE/MA Stock Area 4, has been reserved and not revised in this final rule, as proposed, so that revisions to the coordinates for this area can be more

efficiently implemented in the final rule for Framework Adjustment 44.

In § 648.10(k)(2), the data elements required to be reported by vessels fishing in multiple broad stock areas on the same trip was clarified to reference reporting total catch of all species for each broad stock area fished. This is not expected to affect the public reporting burden associated with the information collection for this action.

In § 648.10(k)(3)(i), point G9 of the GOM Stock Area I has been revised to align the boundary of the GOM Stock Area 1 near the Cape Cod, MA, coastline at 70°00' W. long. with Northeast Region (NER) statistical areas 514 and 521. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.10(k)(3)(ii), point G9 of the Inshore GB Stock Area 2 has been revised to align the boundary of the Inshore GB Stock Area 2 near the Cape Cod, MA, coastline at 70°00' W. long. with NER statistical areas 514 and 521.

In § 648.10(k)(3)(iii), the Offshore GB Stock Area 3 has been revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.14, paragraph (k)(12)(ix) was removed due to the disapproval of the GOM Haddock Sink Gillnet Pilot Program, and paragraphs (k)(13)(ii)(A) and (B) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action.

In § 648.60, the introductory text for paragraph (a)(5)(ii) and paragraph (a)(5)(ii)(C)(2) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action.

In § 648.81(f)(2)(vi), paragraphs (A) and (D) were removed, and paragraphs (B), (C), and (D) were reclassified as paragraphs (A), (B), and (C), respectively, to delete inaccurate references to Sector Rolling Closure Areas I and V and accurately reflect the Council's intent to exempt sector vessels from the existing GOM Rolling Closure Areas I and V in March and October/November.

In § 648.81(f)(2)(vi)(B), the description for the Sector Rolling Closure Area III has been revised to intersect with the Maine coastline, not New Hampshire, as previously stated.

In § 648.81(f)(2)(vi)(C), the description for the Sector Rolling Closure Area IV has been revised to intersect with the New Hampshire coastline, not Massachusetts, as previously stated.

In § 648.81(n)(2), a duplicate point in the description of the SNE Multispecies Restricted Gear Area, MRAG1, has been removed because it was listed twice.

In § 648.82, the introductory text to paragraph (b)(6) and paragraphs (e)(1)(i) and (n)(1)(ii) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action. Paragraphs (e)(1)(i) and (n)(1)(ii) are instead reserved by this final rule.

In § 648.82(n)(1)(i)(C), point G9 of the Inshore GB Differential DAS Area has been revised to align the boundary of the Inshore GB Differential DAS Area near the Cape Cod, MA, coastline at 70°00' W. long. with NER statistical areas 514 and 521.

In § 648.82(n)(1)(i)(D), the Offshore GB Differential DAS Area was revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(A), point GB3 of the GB Cod Trimester TAC Area has been revised to align the boundary of the GB Cod Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20' N. lat. with NER statistical areas 521 and 526. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(C), point GB3 of the GB Haddock Trimester TAC Area has been revised to align the boundary of the GB Haddock Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20' N. lat. with NER statistical areas 521 and 526. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(E), point GB3 of the GB Yellowtail Flounder Trimester TAC Area has been revised to terminate the area at 40°30' N. lat. and the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(H), point GB8 of the American Plaice Trimester TAC Area has been removed because it was unnecessary and directly in line with two other points for area, with points following renumbered to reflect the removal of point GB8.

In § 648.82(n)(2)(ii)(I), point GB8 of the Witch Flounder Trimester TAC Area has been removed because it was unnecessary and directly in line with two other points for area, with points following renumbered to reflect the removal of point GB8.

In § 648.82(n)(2)(ii)(J), point GB5 of the GB Winter Flounder Trimester TAC Area has been revised to terminate the area at 40°30' N. lat. and the U.S./Canada maritime boundary. Point GB14 has been revised to align with the boundary of statistical area 562.

In § 648.82(n)(2)(ii)(L), point 8 of the SNE/MA Winter Flounder Trimester TAC Area has been revised to ensure that the coordinates accurately reflect intersections with the shoreline of Nantucket, MA.

In § 648.82(n)(2)(ii)(M), point RF18 of the Redfish Trimester TAC Area has been revised to align the boundary of the Redfish Trimester TAC Area near the east-facing shoreline of Nantucket, MA at 41°20' N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(N), point RF18 of the White Hake Trimester TAC Area has been revised to align the boundary of the White Hake Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20' N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(O), point RF18 of the Pollock Trimester TAC Area has been revised to align the boundary of the Pollock Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20' N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(P), point ATWLF21 of the Atlantic Wolffish Trimester TAC Area has been revised to align the boundary of the Atlantic Wolffish Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20' N. lat. with NER statistical areas 521 and 526.

In § 648.85, paragraph (b)(9) was removed due to the disapproval of the GOM Haddock Sink Gillnet Pilot Program. In addition, paragraphs (b)(6)(v)(A), (B), (D), (F) through (I), and (K) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from adjustments specified in the Framework Adjustment 44 final rule may be more efficiently implemented through the final rule for that action. Instead, paragraphs (B), (D), and (F) of this section are reserved by this final rule.

In § 648.85(a)(3)(v)(B), (b)(6)(iv)(I), and (b)(7)(vi)(D), references to statistical area fished were inserted in the reporting requirements for special management programs to ensure that NMFS can accurately attribute catch to the Eastern U.S./Canada Area, and references to ocean pout and Atlantic wolffish were removed to reduce the reporting burden associated with stocks that cannot be landed.

In § 648.85(b)(6)(v)(C), point CCGOM11 of the CC/GOM Yellowtail Flounder Stock Area of the Regular B DAS Program was added, and point CCGOM14 was revised to correct the nearshore boundary of the area as it intersects the east-facing shoreline of MA.

In § 648.85(b)(6)(v)(E), a duplicate point in the SNE/MA Yellowtail Flounder Stock Area for the Regular B DAS Program was removed, and point SNEMA9 was revised to correct the boundary of this area, as it intersects the south-facing shoreline of Cape Cod, MA.

In § 648.85(b)(6)(v)(G), points defining the Witch Flounder Stock Area of the Regular B DAS Program were revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.85(b)(8)(v)(E)(1), text was inserted to allow sector vessels fishing in the Eastern U.S./Canada Haddock SAP to use gear other than the haddock separator trawl or the Ruhle trawl to maintain consistency with the preamble text of the proposed rule and measures adopted by the Council in Amendment 16.

In § 648.86, paragraphs (a)(1), (b)(1), and (m)(1) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action. Paragraph (m)(1) of this paragraph is instead reserved by this final rule.

In § 648.87(b)(1)(ii), the introductory text was revised to include reference to ACE transfers when defining when an ACE is exceeded, and to remove an incorrect reference to gear capable of catching NE multispecies to define a sector trip to ensure that sector vessels may continue to participate in exempted fisheries, as proposed.

In § 648.87(b)(1)(ii)(A) through (F) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from adjustments specified in the Framework Adjustment 44 final rule may be more efficiently implemented through the final rule for that action. Instead, these paragraphs are reserved by this final rule.

In § 648.87(b)(1)(iii)(B)(3), the regulatory text was revised to clarify that a sector vessel shall be prohibited from fishing on a sector trip in a stock area for which the sector's ACE was exceeded during the previous fishing year by removing an incorrect reference to gear capable of catching NE multispecies to define a sector trip in the example provided in this paragraph.

In § 648.87(b)(1)(iv)(B), a definition of "permit/vessel" has been inserted to clarify the application of vessel replacement and sector commitment restrictions to permits/vessels enrolled in sectors.

In § 648.87(b)(5)(i)(A)(1) and (2), the dockside monitoring trip-start and trip-end hail report requirements have been revised to clarify the data elements that

must be reported. In the trip-start hail report, "trip duration" was clarified as the date and time of arrival in port, while language was added to specify that trips less than 6 hr in duration or within 6 hr from port must include the estimated date and time of offload. In the trip-end hail report, the data elements necessary for "all dealers/facilities" were revised to state that the dock/dealer, port/harbor, and state were required for the first dealer/facility where the vessel intends to offload catch, while only the port/harbor and state for the second dealer/facility where the vessel intends to offload catch must be reported. This reduces the amount of information that must be submitted by vessels. In addition, the requirement to report the "estimated total weight of each species on board" was clarified to state that vessels must report the total weight of all regulated NE multispecies species and the total weight of all other species on board. These changes were included in the public reporting burden associated with the information collection for this action.

In § 648.89, paragraph (c)(6) is added to reflect the intent of Amendment 16 to prohibit all vessels, including recreational vessels, from possessing winter flounder from the SNE/MA winter flounder stock area.

In § 648.90(a)(2)(iii), the phrase "the calculation of PSCs" was inserted to clarify the list of measures that may be revised through a framework adjustment.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

#### Classification

The Regional Administrator determined that the management measures implemented by this final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Council prepared a FEIS for Amendment 16 to the FMP. The FEIS was filed with the Environmental Protection Agency on October 23, 2009.

A notice of availability was published on October 30, 2009 (74 FR 56195). In partially approving the Amendment 16 on January 21, 2010, NMFS issued a ROD identifying the measures approved under this action. A copy of the ROD is available from NMFS (see **ADDRESSES**).

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. This final rule is necessary to implement measures that will immediately end overfishing on all stocks, establish rebuilding programs for newly overfished stocks, implement measures to rebuild overfished stocks, and establish a process to specify ACLs and associated AMs to maintain compliance with the Magnuson-Stevens Act. In addition, this final rule includes several provisions that help mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks and increase the economic efficiency of vessel operations, including revisions to the DAS Leasing and Transfer Programs, authorization of 17 new sectors, and other measures. This rule must be in effect at the beginning of FY 2010 on May 1, 2010, to fully capture its environmental and economic benefits. In order to have this action effective at the beginning of FY 2010, it is necessary to waive the 30-day delay period for this rule.

The measures implemented by the 2009 interim action will expire on April 30, 2010. While these measures were expected to substantially reduce F for most stocks, overfishing was expected to continue for several stocks, notably GB cod, witch flounder, pollock, and northern windowpane flounder. As a result, it is imperative to implement measures to achieve  $F_{rebuild}$  for all overfished stocks in the FMP by the start of FY 2010 on May 1, 2010, to end overfishing, ensure that rebuilding programs are not compromised, and increase the likelihood that overfished stocks will rebuild within established rebuilding periods. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2010, and would, therefore, allow for the continuation of overfishing on specific groundfish stocks such as GB cod, witch flounder, pollock, and northern windowpane flounder; stocks in need of substantial F reductions for the start of FY 2010. This would be contrary to not only the interest of the fishing communities, but to the public at large, as overfishing and overfished stocks decreases the ability of the public to enjoy that stock for recreational,

aesthetic, or other reasons, and reduces the availability of seafood.

In addition, delay in the implementation of this rule beyond May 1, 2010, could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities caused by delaying the rebuilding of overfishing stocks and the benefits associated with sustainable fishery resources. Delaying implementation of this final rule would mean that vessels participating in sectors, at least 812 vessels (55% of the groundfish fleet) as of the January 22, 2010, sector rosters, would not be able to take advantage of the flexibility in vessel operations provided by exemptions to trip limits and DAS use implemented by this final rule at the start of the year. Moreover, because vessels committed to a sector may not fish in both the common pool and a sector in the same FY, vessels currently signed into a sector would be forced to cease fishing operations entirely after May 1, 2010, until the end of the full 30-day delayed effectiveness period, or forego sector membership for the entire FY, thereby losing the mitigating economic efficiencies of the restrictions relieved for sector vessels. This would reduce the economic efficiency of the fleet until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels, including the majority of active vessels. As a result, delayed implementation of these measures beyond May 1, 2010, would be contrary to the public interest.

#### FRFA

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in Amendment 16. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses and comments and responses in Amendment 16, and a summary of the analyses completed to support the action. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed and this final rule and is not repeated here.

#### Summary of the Issues Raised by Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

*Comment A:* Although not specific to the IRFA, NHCFA stated that Amendment 16 underestimates the economic impacts of proposed measures, but did not provide additional detail as to what this group contends would be the economic impacts of the proposed measures. Further, Mayor Lang of New Bedford, MA stated that the economic analysis must include impacts on communities, including impacts to the tax base and infrastructure if vessels will no longer remain economically viable.

*Response:* As stated in the response to Comment 4 in this preamble, a full analysis, consistent with guidelines concerning the scope and content of such analyses, of the economic impacts of proposed measures was conducted for this action using the best available scientific information. The analysis notes that there are a number of sources of uncertainty associated with measures in Amendment 16 that make precise evaluation of impacts difficult. A full discussion of the impacts of changes in occupational opportunities and community infrastructure is in Section 7.6.3.4 of the FEIS.

#### Description of and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

This final rule implements changes that affect any vessel holding a limited access NE multispecies permit, an open access handgear permit (Handgear B permit), and vessels that hold an open access charter/party permit. Based on FY 2007 data in Sections 6.2.3 and 6.2.5.5 of the FEIS, the total number of small entities that may be affected is 3,854 permit holders, including 1,530 limited access permit holders, 1,292 open access Handgear B permit holders, and 762 open access charter/party permits. Of the 1,292 vessels issued Handgear B permits, only 75 reported landing cod, suggesting that the number of such permits affected by this action may be substantially smaller than the number of vessels actually issued Handgear B permits. However, past fishing activity may not be an accurate predictor of future fishing activity, particularly because this action substantially increases cod possession limits for vessels issued Handgear B permits. During FY 2007, 128 of the 762 open access charter/party permit

holders reported taking at least one for-hire trip, of which 74 reported keeping NE multispecies on one or more trips. An additional 29 limited access permit holders reported taking passengers for hire, of which 18 reported keeping NE multispecies on one or more for-hire trips. Thus, a total of 92 charter/party operators participated in the charter/party recreational NE multispecies fishery during FY 2007. As of January 22, 2010, 812 vessels elected to join a sector for FY 2010, as determined through the submission of annual sector operations plans. However, vessels may withdraw from sectors until the beginning of FY 2010 on May 1, 2010. Therefore, because participation in sectors is voluntary, the number of vessels that will actually participate in sectors during FY 2010 and future years is likely to fluctuate based upon whether joining a sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The Small Business Administration (SBA) size standard for determining small entities for commercial fishing entities (NAICS code 114111) is \$4 million in sales, while the size standard for charter/party operators (part of NAICS code 487210) is \$7 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million. Available data are not adequate to identify affiliated vessels, so each operating unit is considered a small entity for purposes of the RFA. For regulated charter/party operators, the median value of gross receipts from passengers was just over \$9,000, and did not exceed \$500,000 in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated charter/party operators are determined to be small entities under the RFA, and, accordingly, there are no differential impacts between large and small entities under this final rule.

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

##### Reporting and Recordkeeping Requirements

This final rule contains reporting and recordkeeping requirements and associated information collections subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0605. Measures implemented by this final rule include several provisions

that require either new or revised collection-of-information requirements. Public reporting burden for these collections of information are estimated to average as follows:

1. Sector operations plan and associated NEPA analysis, OMB# 0648–0605, (640 hr/response);
2. Dockside/at-sea monitoring service provider application, OMB# 0648–0605, (10 hr/response);
3. Dockside/at-sea monitoring service provider response to application disapproval, OMB# 0648–0605, (10 hr/response);
4. Data entry for sector discard monitoring system, OMB# 0648–0605, (3 min/response);
5. Sector weekly catch report, OMB# 0648–0605, (4 hr/response);
6. Sector annual report, OMB# 0648–0605, (12 hr/response);
7. Notification of expulsion from a sector, OMB# 0648–0605, (30 min/response);
8. Request to transfer ACE, OMB# 0648–0605, (5 min/response);
9. VMS certification form, OMB# 0648–0605, (10 min/response);
10. VMS confirmation call, OMB# 0648–0605, (5 min/response);
11. VMS area and DAS declaration, OMB# 0648–0605, (5 min/response);
12. VMS trip-level catch reports, OMB# 0648–0605, (15 min/response);
13. Request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, OMB# 0648–0605, (5 min/response);
14. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
15. VMS declaration to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
16. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648–0605, (2 min/response);
17. Trip-end hail report to a dockside monitoring service provider, OMB# 0648–0605, (15 min/response);
18. Confirmation of dockside monitoring trip-end hail report, OMB# 0648–0605, (2 min/response);
19. Dockside/roving service provider data entry, OMB# 0648–0605, (3 min/response);
20. Dockside/roving or at-sea monitor deployment report, OMB# 0648–0605, (10 min/response);
21. Dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, OMB# 0648–0605, (5 min/response);
22. Dockside/roving or at-sea monitor report of harassment and other issues, OMB# 0648–0605, (30 min/response);
23. OLE debriefing of dockside/roving or at-sea monitors, OMB# 0648–0605, (2 hr/response);

24. Copy of dockside/roving or at-sea monitoring service provider contract upon request, OMB# 0648–0605, (30 min/response);

25. Copy of dockside/roving or at-sea monitoring service provider information materials upon request, OMB# 0648–0605, (30 min/response);

26. Observer program pre-trip notification, OMB# 0648–0605, (2 min/response);

27. Daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, OMB# 0648–0605, (15 min/response);

28. Daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, OMB# 0648–0605, (15 min/response);

29. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648–0605, (15 min/response);

30. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648–0605, (2 min/response);

31. Forward trip start/end hails to NMFS, OMB# 0648–0605 (2 min/response); and

32. Notification to vessel/sector/ NMFS of monitor emergency, OMB# 0648–0605 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS will merge these new collections with existing collections approved under OMB control numbers 0648–0202 and 0648–0212 when possible. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see addresses) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### Other Compliance Requirements

The only other compliance requirements associated with this final rule are those associated with the gear requirements specified for the NE multispecies RGAs. Any NE multispecies vessel that elects to fish in the common pool is required to utilize selective fishing gear when fishing in the NE multispecies RGAs. If a vessel does not already possess such selective

gear, a new haddock separator trawl net, rope trawl, or Ruhle trawl is estimated to cost approximately \$13,000, or it would cost about \$750 to modify existing gear. Sector vessels are not subject to the RGA measures or the costs associated with such selective gear.

#### Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

This final rule implements a number of measures that minimize the long-term economic impacts on small entities and provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated economic impacts associated with other measures implemented by this action. Rebuilding programs for overfished stocks implemented by this action ensure that sustainable fisheries can be achieved and maintained so that vessels can ultimately fish for, and land, all stocks managed by the FMP. Similarly, the process to specify ABCs and ACLs for each stock, distribute them among various fishery components that catch regulated species and ocean pout, and trigger applicable AMs once the ACLs are exceeded increases the likelihood that overfishing will be prevented and that overfished stocks will continue to rebuild. This would, in turn, increase vessel revenues by promoting sustainable fisheries over the longterm. Revised reporting requirements provide the timely data necessary to effectively monitor catch toward these ACLs and enhance data available to more accurately assess catch and, therefore, F for each stock. Failure to implement new rebuilding programs or a process to establish ACLs and AMs for each stock through this action would cause the FMP to be out of conformance with the Magnuson-Stevens Act. Further, without more timely and comprehensive reporting requirements, the data necessary to effectively monitor catch would not be available. This could cause ACLs to be unnecessarily exceeded and result in more stringent management measures in the future to end overfishing. Furthermore, if ACLs were not distributed among various components of the fishery that catch regulated species and ocean pout, all fisheries may be subject to additional reductions in fishing effort to end overfishing and achieve the conservation objectives of applicable law and the FMP. Thus, these further economic impacts are avoided through implementation of measures in this action.

Amendment 16 analysis (see Section 7.5.11.1.6 of the Amendment 16 FEIS) indicates that the effort control option selected for common pool vessels (i.e., 24-hr DAS counting in conjunction with an overall DAS reduction) is expected to result in substantially fewer adverse economic impacts, in both total fishing revenue and revenue from trips in which regulated species and ocean pout were the predominant species landed, than the other options considered. The conclusion that the selected alternative was superior with respect to the potential estimated negative economic impacts was the primary reason this particular effort control option was selected by the Council and approved by NMFS. Even though the no action alternative would have resulted in the fewest economic impacts to affected vessels and likely would have provided sufficient DAS for vessels to meet annual expenses, the no action alternative would not have achieved the reductions in F necessary to end overfishing, rebuild overfished stocks, or achieve the biological objectives of the FMP. Therefore, the no action alternative is not consistent with applicable law and cannot be implemented through this action. RGAs implemented under this action help increase the selectivity of the fishery, reducing catch of overfished stocks such as yellowtail flounder and winter flounder, and increasing the likelihood that conservation objectives for these stocks will be achieved. In doing so, economic impacts should be mitigated over the long term by increasing the probability that stocks will rebuild in a timely manner.

Recreational measures implemented by this action include an extended seasonal GOM cod prohibition. This measure is considered to be the most effective measure for reducing actual catch and, therefore, fishing mortality on GOM cod, in contrast to the other alternatives considered. By more effectively reducing catch of GOM cod, it is less likely that recreational catch of GOM cod will exceed the portion of the GOM cod ACL distributed to the recreational fishery and trigger AMs during the following FY. Avoiding implementation of AMs reduces economic impacts to recreational vessels, especially if less effective measures at reducing catch (trip or size limits) are implemented as AMs. These types of AMs would have to be implemented over a longer duration to achieve similar results as a possession prohibition, particularly if implemented late in the FY following an overage. As noted above, the recreational allocation

implemented through this action ensures that the recreational fishery would not be subject to any further effort controls to reduce catch due to excessive catch by other components of the fishery. This should minimize adverse economic impacts to each component of the fishery, as each component would only be responsible for its portion of F on each stock. The elimination of the hook restriction allows the recreational fishery to more efficiently catch allowable limits, while the requirement to maintain at least 2 inches (5.08 cm) of contiguous skin on the fillets maintains existing practices that provide revenue to party/charter vessels, while facilitating the enforcement of size and trip limits.

The measures implemented by this action that specifically help minimize the significant economic impacts on small entities include revisions to the DAS Leasing and Transfer Programs, revisions to existing SAPs to facilitate the targeting of healthy stocks of haddock, increased trip limits for certain stocks, and revisions to sector measures. Changes to the DAS Leasing and Transfer Programs in Amendment 16 are intended to eliminate administrative obstacles that limited participation in these programs. This is likely to increase participation in these programs and, therefore, the economic efficiency of vessel operations. Such changes will also likely increase the possibility that vessels fishing under a NE multispecies DAS, particularly common pool vessels, would be able to acquire sufficient DAS to meet annual operating expenses and remain economically viable, despite additional effort controls in the NE multispecies fishery. These benefits would not have accrued under the no action option for each of these measures. Revisions to the existing SAPs facilitate the harvest of haddock by continuing the Eastern U.S./Canada Haddock SAP, expanding both the season and area for the CA I Hook Gear Haddock SAP, and revising the existing CA II Yellowtail Flounder SAP to provide opportunities to access CA II to target haddock even when there is insufficient GB yellowtail flounder TAC to support a targeted fishery for GB yellowtail flounder both inside and outside the existing CA II Yellowtail Flounder SAP. These revisions increase the likelihood that the fishery will harvest more of the abundant stocks of haddock, particularly on GB. Accordingly, this action will increase vessel revenue due to increased catch of available haddock resources, which may at least help offset reductions in revenue expected from increased effort controls

necessary to rebuild overfished stocks. Although the effort reductions implemented by this action convert some Category A DAS to Category B DAS for common pool vessels, this may increase incentives to fish more selectively within these SAPs to enable vessels to avoid stocks of concern and continue fishing under a Category B DAS, thereby maximizing the economic return on available Category A and B DAS without compromising efforts to rebuild overfished stocks. Increased trip limits for GB cod and CC/GOM and SNE/MA yellowtail flounder are intended to offset the substantial effort reductions in the form of reductions in Category A DAS and 24-hr DAS counting implemented by this action. Because of the commingled nature of the NE multispecies fishery, revisions to these trip limits are expected to narrow the gap between F reductions achieved and F reductions necessary for these stocks under this action. As a result, these trip limits will not only meet the biological objectives of this action based upon supporting analysis in Amendment 16, but will also increase revenue for common pool vessels.

Several of the revisions to sector measures could help mitigate the economic impacts of this action. All approved sectors are exempt from several provisions, including portions of the GOM Rolling Closure Areas, NE multispecies DAS restrictions, seasonal closure areas, trip limits on stocks allocated to sectors, and the requirement to use 6.5-inch (16.51-cm) mesh when using selective trawl gear on GB with a 6-inch (15.24-cm) codend. Such exemptions reduce operational costs of sectors by minimizing the scale and complexity of analyses that need to be developed on a yearly basis to support approval of the sector's operation plans. All of these exemptions also help increase the operational efficiency of sector vessels and would likely lead to increased revenue for participating vessels. Because sector vessels are no longer be limited by DAS allocations and are instead limited by their available ACE, the economic incentive changes from maximizing the value of all species on a DAS to maximizing the value of the ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Therefore, available information suggests that economic performance among sector vessels may be expected to improve relative to continuing to remain under effort controls. ACE trading is also expected to help ensure that sectors



have sufficient ACE available to continue operations in key stock areas and match individual sector ACE portfolios with recent fishing activity by participating vessels or available fishing opportunities. In addition, vessels that declared their intent to participate in one of the existing sectors are allocated GB cod based upon landings history of this stock between FYs 1996 through 2001. This was meant to increase the stability of sector allocations and preserve the value of existing sector permits, particularly for those vessels that invested in permits with high landings histories of this stock during this period. This action also provides the Regional Administrator with the authority to exempt sector vessels from some of the proposed reporting requirements for multi-area trips, or when participating in SMPs. Although such exemptions have not been granted at this time, if such exemptions are granted in the future, this may reduce the operational costs to vessels, as they would not be required to submit daily or trip-level catch reports via VMS that cost as much as \$0.764 per submission. Finally, by authorizing 17 new sectors, participating vessels can pool harvesting resources and consolidate fishing effort onto fewer vessels to increase the flexibility and economic efficiency of fishing operations. Because sectors are self-selecting groups, they provide incentives to self-govern and assurance to participating vessels that sector members would not face catch reductions as a result of overages by other sectors or the common pool. Under the no action alternative, none of the above benefits associated with the proposed revised sector would be realized.

Many of the benefits of reducing costs and increasing the efficiency of vessel operations described above would not be realized had other options been selected by the Council and approved in this action. Even though the no action alternative for some measures would have resulted in the fewest economic impacts to affected vessels, the no action alternative, overall, would not have achieved the reductions in F necessary to rebuild overfished stocks or the biological objectives of the FMP and is, therefore, not consistent with applicable law. In contrast, the measures implemented by this action are consistent with applicable law because they would achieve the biological objectives of the FMP, including implementing rebuilding plans for newly overfished stocks and reducing F for all stocks necessary to rebuild stocks within established

rebuilding periods, while resulting in the fewest economic impacts to affected entities among the other alternatives considered. Over the long-term, economic benefits from rebuilt stocks would mean that this action would produce the most economic benefits to affected entities once stocks rebuild when compared to the alternatives considered in this action. Other measures implemented by this final rule, but not specifically mentioned above, such as sector definitions, sector overage penalties, dockside and at-sea monitoring standards, and Sector joint/several liability provisions are all administrative in nature and have little, if any, influence over economic impacts to affected entities. A complete description of why each measure was selected can be found in the ROD developed in support of this action and in Section 4.2 of the Amendment 16 FEIS (see **ADDRESSES**).

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

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 2010.

**Samuel D. Rauch III,**

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

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. Revising OMB control numbers for the existing entries for sections § 648.4, § 648.7, § 648.9, § 648.10, § 648.14, §§ 648.80 through 648.82, and §§ 648.85 through § 648.89; and

■ b. Adding new OMB control numbers in numerical order and new entries for § 648.90 to read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

##### (b) Display.

| CFR part or section where the information collection requirement is located |       |       | Current OMB control number (all numbers begin with 0648—) |       |
|---|-------|-------|---|-------|
| * * *   | * * * | * * * | * * *   | * * * |
| 50 CFR  |       |       |   |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.4   | ..... |       | –0202, –0212, and –0529.                                  |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.7   | ..... |       | –0018, –0202, –0212, –0229, –0590, and –0605.             |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.9   | ..... |       | –0202, –0404, and –0529.                                  |       |
| 648.10  | ..... |       | –0202, –0529, and –0605.                                  |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.14  | ..... |       | –0202, –0212, –0469, –0602, and –0605.                    |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.80  | ..... |       | –0202, –0422, and –0602.                                  |       |
| 648.81  | ..... |       | –0202, –0412, and –0605.                                  |       |
| 648.82  | ..... |       | –0202 and –0605.  |       |
| * * *   | * * * | * * * | * * *   | * * * |
| 648.85  | ..... |       | –0202, –0212, and –0605.                                  |       |
| 648.86  | ..... |       | –0202, –0391, and –0605.                                  |       |
| 648.87  | ..... |       | –0202 and –0605.  |       |
| 648.88  | ..... |       | –0202 and –0605.  |       |

| CFR part or section where the information collection requirement is located | Current OMB control number (all numbers begin with 0648—) |
|---|---|
| 648.89 .....  | –0202, –0412, and –0605.                                  |
| 648.90 .....  | –0202 and –0605.  |
| * * *   | * *   |

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 4. In § 648.2, revise the definitions for “NE multispecies or multispecies,” “Regulated species,” and “Sector,” and add new definitions for “Annual catch entitlement (ACE),” “At-sea monitor,” “Common pool trip,” “Common pool vessel,” “Dockside/roving monitor,” “Electronic monitoring,” “Observer/sea sampler,” “Potential Sector contribution (PSC),” “Sector trip,” and “Sector vessel” in alphabetical order to read as follows:

### § 648.2 Definitions.

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

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

*Common pool trip*, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear

B permit that lands regulated species or ocean pout.

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

*Dockside/roving monitor*, with respect to the NE multispecies fishery, means any person responsible for observing/verifying the offloads of all species by common pool or sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed weights, as reported by federally permitted dealers, pursuant to this part.

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

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

American plaice—*Hippoglossoides platessoides*.

Atlantic cod—*Gadus morhua*.

Atlantic halibut—*Hippoglossus hippoglossus*.

Atlantic wolffish—*Anarhichas lupus*.

Haddock—*Melanogrammus aeglefinus*.

Ocean pout—*Macrozoarces americanus*.

Offshore hake—*Merluccius albidus*.

Pollock—*Pollachius virens*.

Redfish—*Sebastes fasciatus*.

Red hake—*Urophycis chuss*.

Silver hake (whiting)—*Merluccius bilinearis*.

White hake—*Urophycis tenuis*.

Windowpane flounder—

*Scophthalmus aquosus*.

Winter flounder—*Pleuronectes americanus*.

Witch flounder—*Glyptocephalus cynoglossus*.

Yellowtail flounder—*Pleuronectes ferruginea*.

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

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

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

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

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

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

\* \* \* \* \*

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

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(E) *Replacement vessels*. An owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

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

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions

for obtaining valid tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.

\* \* \* \* \*

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

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(a) \* \* \*

(4) *Facilitation of a dockside/roving monitor report*. Any federally permitted dealer, or any individual acting in the capacity of a dealer, that purchases or receives fish from a vessel operating under the provisions of an approved sector operations plan, as specified in § 648.87(c), or from a common pool vessel starting in fishing year 2012 must provide a copy of any weigh-out documents or dealer receipts for that particular offloading event to the dockside/roving monitor and vessel and allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor that verifies the amount of each species offloaded, as instructed by the Regional Administrator.

(b) \* \* \*

(1) \* \* \*

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a week or month, a report stating so must be submitted for each week or month, as applicable, based upon whether any fishing activity occurred during a particular reporting week or month (i.e., starting a trip, landing, or offloading catch will constitute fishing during a reporting week or month). If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports

electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

(e) *Record retention*—(1) *Dealer records*. Any record, as defined in § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and made available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business.

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

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

(f) \* \* \*

(2) \* \* \*

(i) For any vessel not issued a NE multispecies permit, fishing vessel log

reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either week.

\* \* \* \* \*

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

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

contractor, as instructed by the Regional Administrator.

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

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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

(2) *Reporting requirements for NE multispecies vessel owners or operators fishing in more than one broad stock area per trip.* Unless otherwise provided in this paragraph (k)(2), the owner or operator of any vessel issued a NE multispecies limited access permit that has declared its intent to fish within multiple NE multispecies broad stock

areas, as defined in paragraph (k)(3) of this section, on the same trip must submit a trip-level hail report via VMS detailing the amount of each regulated species retained (in pounds, landed weight) and the total amount of all species retained (in pounds, landed weight), including NE multispecies and species managed by other FMPs, from each broad stock area prior to crossing the VMS demarcation line, as defined in § 648.10, upon its return to port following each fishing trip on which regulated species were caught, as instructed by the Regional Administrator. This reporting requirement is in addition to the reporting requirements specified in paragraph (k)(1) of this section and any other reporting requirements specified in this part. A vessel is exempt from the reporting requirements specified in this paragraph (k)(2) if it is fishing in a special management program, as specified in § 648.85, and is required to submit daily VMS catch reports consistent with the requirements of that program. The Regional Administrator may adjust the reporting frequency specified in this paragraph and may exempt vessels on a sector trip from the reporting requirements specified in this paragraph (k)(2) if it is determined that such reporting requirements would duplicate those specified in § 648.87(b).

(3) *NE multispecies broad stock areas.* For the purposes of the area-specific reporting requirements listed in paragraphs (k)(1) and (2) of this section, the NE multispecies broad stock areas are defined in paragraphs (k)(3)(i) through (iv) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Stock Area 1.* The GOM Stock Area 1 is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

**GOM STOCK AREA 1**

| Point      | N. latitude      | W. longitude     |
|------------|------------------|------------------|
| G1 .....   | ( <sup>1</sup> ) | ( <sup>1</sup> ) |
| CI13 ..... | ( <sup>1</sup> ) | 67°20'           |
| G6 .....   | 42°20'           | 67°20'           |
| G10 .....  | 42°20'           | 70°00'           |
| G9 .....   | ( <sup>2</sup> ) | 70°00'           |

<sup>1</sup> The intersection of the shoreline and the U.S.-Canada maritime boundary.

<sup>2</sup> The intersection of the Cape Cod, MA, coastline and 70°00' W. long.

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

## INSHORE GB STOCK AREA 2

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

<sup>1</sup> The intersection of the Cape Cod, MA, coastline and 70°00' W. long.

<sup>2</sup> South-facing shoreline of Cape Cod, MA.

(iii) *Offshore GB Stock Area 3.* The Offshore GB Stock Area 3 is bounded on the east by the U.S./Canadian maritime boundary and defined by straight lines connecting the following points in the order stated:

## OFFSHORE GB STOCK AREA 3

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| IGB1 ..... | 42°20'      | 68°50'       |
| G6 .....   | 42°20'      | 67°20'       |
| CI13 ..... | (1)         | 67°20'       |
| SNE2 ..... | 39°00'      | (1)          |
| SNE3 ..... | 39°00'      | 69°00'       |
| SNE4 ..... | 39°50'      | 69°00'       |
| SNE5 ..... | 39°50'      | 68°50'       |
| IGB1 ..... | 42°20'      | 68°50'       |

<sup>1</sup> The U.S.-Canada maritime boundary as it intersects with the EEZ.

(iv) [Reserved]

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

**§ 648.11 At-sea sea sampler/observer coverage.**

\* \* \* \* \*

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

(k) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable;

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

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

■ 7. In § 648.14,

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

■ b. Revise paragraphs (e)(1), (k)(3)(i), (k)(5)(vi)(B), (k)(6)(ii)(A)(1), (k)(7)(i)(B),

(k)(9)(iv)(B), (k)(11)(i)(A)(2), (k)(11)(ii), (k)(11)(iii)(D), (k)(11)(iv)(A), (k)(11)(v)(A), (k)(11)(vi), (k)(12)(iii)(A) through (E), (k)(12)(vi)(D), (k)(12)(vi)(G), (k)(12)(vi)(I), (k)(12)(vii)(A)(1) and (2), (k)(12)(viii), (k)(13)(i)(A), (k)(13)(ii)(C), and (k)(14);

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

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

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

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

(3) \* \* \*

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

\* \* \* \* \*

(5) \* \* \*

(vi) \* \* \*

(B) Possess, land, or fish for regulated species or ocean pout, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a LAGC permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for, possesses, or lands NE multispecies exclusively in state waters.

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(A) \* \* \*

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

\* \* \* \* \*

(7) \* \* \*

(i) \* \* \*

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

(C) \* \* \*

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

\* \* \* \* \*

(9) \* \* \*

(ii) \* \* \*

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

(iii) \* \* \*

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

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

(iv) \* \* \*

(B) For any common pool or sector vessel, fail to comply with the gillnet requirements and restrictions specified

in § 648.82(j), unless otherwise exempted pursuant to § 648.87.

\* \* \* \* \*

(11) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b) or exempted under § 648.87.

\* \* \* \* \*

(ii) *Gear requirements for all persons.*

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

(iii) \* \* \*

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

\* \* \* \* \*

(iv) \* \* \*

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

\* \* \* \* \*

(v) \* \* \*

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

\* \* \* \* \*

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

(12) \* \* \*

(iii) *Closed Area II Yellowtail*

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

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

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

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

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

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

\* \* \* \* \*

(vi) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

(vii) \* \* \*

(A) \* \* \*

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

(2) *VMS and declaration requirements.* (i) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP

in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

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

\* \* \* \* \*

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

(13) \* \* \*

(i) \* \* \*

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

(ii) \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

(iii) Fish in a particular stock area, the Eastern U.S./Canada Area, or a SAP if the sector has not been allocated, does

not acquire, or otherwise has insufficient ACE remaining/available for all stocks caught in that area, or fail to operate in a manner that would not catch stocks for which the sector has not been allocated ACE, as described in an approved sector operations plan pursuant to § 648.87(b)(2)(xiv), as prohibited in § 648.87(b)(1)(ii).

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

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

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

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

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

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

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

(xi) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(6)(iii)(A).

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

\* \* \* \* \*

(16) \* \* \*

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

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

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

\* \* \* \* \*

(18) *Trimester TAC AM—(i) Vessel and operator permit holders.* (A) Fish for, harvest, possess, or land regulated species or ocean pout in or from the closed areas specified in

§ 648.82(n)(2)(ii) once such areas are closed pursuant to § 648.82(n)(2)(i).

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

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

(19) *Dockside/roving and at-sea/electronic monitoring service providers.*

It is unlawful for any dockside/roving and at-sea/electronic monitoring service provider, including individual dockside/roving or at-sea monitors, to do any of the following:

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section and § 648.85(b)(6), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the



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

(iv) \* \* \*

(A) \* \* \*

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

\* \* \* \* \*

(B) \* \* \*

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

(2) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

\* \* \* \* \*

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

\* \* \* \* \*

(4) \* \* \*

(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, this paragraph (a)(4)(i), § 648.85(b)(6) and (8), and § 648.87(c)(2)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraphs (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit

and that are fishing exclusively in state waters.

\* \* \* \* \*

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

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

(B) \* \* \*

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

\* \* \* \* \*

(8) \* \* \*

(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i) of this section, and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining

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

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

#### GOM SCALLOP DREDGE EXEMPTION AREA

| Point     | N. latitude      | W. longitude     |
|-----------|------------------|------------------|
| SM1 ..... | 41°35'           | 70°00'           |
| SM2 ..... | 41°35'           | 69°40'           |
| SM3 ..... | 42°49.5'         | 69°40'           |
| SM4 ..... | 43°12'           | 69°00'           |
| SM5 ..... | 43°41'           | 68°00'           |
| SM6 ..... | 43°58'           | 67°22'           |
| SM7 ..... | ( <sup>1</sup> ) | ( <sup>1</sup> ) |

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) \* \* \*

(B) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area under the exemption specified in this paragraph (a)(11) must fish with dredge

gear. The combined dredge width in use by, or in possession on board, may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

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

(B) \* \* \*

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

additional nets not to exceed 160, counting deployed nets.

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

| Point     | N. latitude      | W. longitude |
|-----------|------------------|--------------|
| Sc1 ..... | ( <sup>1</sup> ) | 72°30'       |
| Sc2 ..... | 40°00'           | 72°30'       |
| Sc3 ..... | 40°00'           | 71°40'       |
| Sc4 ..... | 39°50'           | 71°40'       |
| Sc5 ..... | 39°50'           | 70°00'       |
| Sc6 ..... | ( <sup>2</sup> ) | 70°00'       |

| Point     | N. latitude      | W. longitude |
|-----------|------------------|--------------|
| Sc7 ..... | ( <sup>3</sup> ) | 70°00'       |
| Sc8 ..... | ( <sup>4</sup> ) | 70°00'       |

<sup>1</sup> South facing shoreline of Long Island, NY.

<sup>2</sup> South facing shoreline of Nantucket, MA.

<sup>3</sup> North facing shoreline of Nantucket, MA.

<sup>4</sup> South facing shoreline of Cape Cod, MA.

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

| Point      | N. latitude      | W. longitude     |
|------------|------------------|------------------|
| Sc9 .....  | 41°00'           | ( <sup>1</sup> ) |
| Sc10 ..... | 41°00'           | 71°40'           |
| Sc11 ..... | ( <sup>2</sup> ) | 71°40'           |

<sup>1</sup> East facing shoreline of the south fork of Long Island, NY.

<sup>2</sup> South facing shoreline of RI.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

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

(B) \* \* \*

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

\* \* \* \* \*

(h) \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) That are fishing with or using exempted gear as defined under this part, or in the Midwater Trawl Gear Exempted Fishery as specified under 648.80(d), and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

\* \* \* \* \*

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

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

**SECTOR ROLLING CLOSURE AREA II**

[April 1–April 30]

| Point      | N. latitude | W. longitude     |
|------------|-------------|------------------|
| GM1 .....  | 42°00'      | ( <sup>1</sup> ) |
| GM2 .....  | 42°00'      | ( <sup>2</sup> ) |
| GM3 .....  | 42°00'      | ( <sup>3</sup> ) |
| SGM1 ..... | 42°00'      | 70°00'           |
| SGM2 ..... | 43°00'      | 70°00'           |
| SGM3 ..... | 43°00'      | ( <sup>4</sup> ) |

<sup>1</sup> MA shoreline.

<sup>2</sup> Cape Cod, MA shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod, MA shoreline on the Atlantic Ocean.

<sup>4</sup> NH shoreline.

**(B) Sector Rolling Closure Area III.**

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

**SECTOR ROLLING CLOSURE AREA III**

[May 1–May 31]

| Point      | N. latitude | W. longitude     |
|------------|-------------|------------------|
| SGM4 ..... | 42°30'      | ( <sup>1</sup> ) |
| SGM5 ..... | 42°30'      | 70°00'           |
| SGM6 ..... | 43°00'      | 70°00'           |
| SGM7 ..... | 43°00'      | 69°30'           |
| SGM8 ..... | 43°30'      | 69°30'           |
| GM18 ..... | 43°30'      | ( <sup>2</sup> ) |

<sup>1</sup> MA shoreline.

<sup>2</sup> ME shoreline.

**(C) Sector Rolling Closure Area IV.**

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

**SECTOR ROLLING CLOSURE AREA IV**

[June 1–June 30]

| Point       | N. latitude      | W. longitude     |
|-------------|------------------|------------------|
| SGM9 .....  | 43°00'           | ( <sup>1</sup> ) |
| SGM6 .....  | 43°00'           | 70°00'           |
| SGM10 ..... | 43°30'           | 70°00'           |
| SGM11 ..... | 43°30'           | 69°00'           |
| GM22 .....  | ( <sup>2</sup> ) | 69°00'           |

<sup>1</sup> NH shoreline.

<sup>2</sup> ME shoreline.

(g) \* \* \*

(2) \* \* \*

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

(v) That are fishing under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c).

\* \* \* \* \*

(j) \* \* \*

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

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

#### Offshore Boundary

|           |           |           |
|-----------|-----------|-----------|
| to 69     |           |           |
| 120 ..... | 40°06.4'  | 68°35.8'  |
| 121 ..... | 40°05.25' | 68°39.3'  |
| 122 ..... | 40°05.4'  | 68°44.5'  |
| 123 ..... | 40°06.0'  | 68°46.5'  |
| 124 ..... | 40°07.4'  | 68°49.6'  |
| 125 ..... | 40°05.55' | 68°49.8'  |
| 126 ..... | 40°03.9'  | 68°51.7'  |
| 127 ..... | 40°02.25' | 68°55.4'  |
| 128 ..... | 40°02.6'  | 69°00.0'  |
| 129 ..... | 40°02.75' | 69°00.75' |
| 130 ..... | 40°04.2'  | 69°01.75' |
| 131 ..... | 40°06.15' | 69°01.95' |
| 132 ..... | 40°07.25' | 69°02.0'  |
| 133 ..... | 40°08.5'  | 69°02.25' |
| 134 ..... | 40°09.2'  | 69°02.95' |
| 135 ..... | 40°09.75' | 69°03.3'  |
| 136 ..... | 40°09.55' | 69°03.85' |

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

\* \* \* \* \*

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

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

#### WESTERN GB MULTISPECIES RESTRICTED GEAR AREA

| Point       | N. latitude | W. longitude |
|-------------|-------------|--------------|
| G8 .....    | 42°00'      | 69°30'       |
| GM5 .....   | 42°00'      | 68°30'       |
| MRGA1 ..... | 41°00'      | 68°30'       |
| YTA5 .....  | 41°00'      | 69°30'       |
| G8 .....    | 42°00'      | 69°30'       |

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

#### SNE MULTISPECIES RESTRICTED GEAR AREA

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

<sup>1</sup> East-facing shoreline of RI.

<sup>2</sup> North-facing shoreline of Martha's Vineyard, MA.

<sup>3</sup> South-facing shoreline of Martha's Vineyard, MA.

<sup>4</sup> South-facing shoreline of Long Island, NY.

<sup>5</sup> North-facing shoreline of Long Island, NY.

<sup>6</sup> South-facing shoreline of CT.

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

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

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

paragraphs (n)(3)(i)(A)(1) through (3) of this section.

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

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

(3) *Escape opening.* The escape opening must be positioned in the bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (n)(3)(i)(A)(2) of this section. Longitudinal lines may be used to maintain the shape of the escape

opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

(B) [Reserved]

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

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

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

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

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

(i) If fishing exclusively under a NE multispecies DAS or under both a NE multispecies DAS and a monkfish DAS with gear other than gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; 500 lb (227 kg) of monkfish (whole weight), unless also subject to the monkfish possession restrictions in § 648.94(b)(3); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.

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

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

#### ■ 10. In § 648.82:

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

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

(2) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

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

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

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

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

(ii) \* \* \*

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

(e) \* \* \*

(1) When a vessel is participating in the NE multispecies DAS program, as

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

(i) [Reserved]

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

\* \* \* \* \*

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

\* \* \* \* \*

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

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

\* \* \* \* \*

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

(1) *Day gillnet vessels.* Unless otherwise exempted in this part, a Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS, the

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

\* \* \* \* \*

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, a Day gillnet vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section shall be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies, ocean pout, or non-exempt species harvested with gillnet gear and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b) while fishing under a NE multispecies DAS, the provisions of the small vessel category permit, or on a sector trip from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise exempt pursuant to § 648.87.

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

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

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

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the

Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

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

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

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

\* \* \* \* \*

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

(k) \* \* \*

(2) \* \* \*

(ii) Subject to the conditions and requirements of this part, DAS associated with a confirmation of permit history may be leased to another vessel without placing the permit on an active vessel.

\* \* \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(x) *Leasing by vessels fishing under a sector allocation.* A sector vessel may not lease DAS to or from common pool vessels, but may lease DAS to or from

another sector vessel during the fishing year in which the vessel is a member of a sector.

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

\* \* \* \* \*

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

(C) *Duration of the one-time DAS Leasing Program baseline downgrade.* Unless otherwise specified in this paragraph (k)(4)(xi)(C) of this section, the downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer. With the exception of vessels combining DAS Leasing Program baselines from two different vessels through the DAS Transfer Program as outlined in paragraph (k)(4)(xi)(C)(2) of this section, once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit.

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

(2) *DAS Transfer Program.* For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid. For vessels



involved in a DAS Transfer Program transaction where a combination of the transferor and transferee vessel baselines is adopted resulting in a new vessel baseline, any previous DAS Leasing Program baseline downgrade for either the transferor or transferee vessel will be voided and the transferee vessel would have an additional opportunity to downgrade its combined DAS Leasing Program baseline.

(l) \* \* \*

(1) \* \* \*

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded either its size (including LOA, GRT, and NT) or HP under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A subsequent upgrade to another specification through a subsequent action (either a vessel replacement or DAS transfer) is not permissible. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

\* \* \* \* \*

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

\* \* \* \* \*

(vi) *Confirmation of permit history.* NE multispecies DAS associated with a

Confirmation of Permit History may be transferred.

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

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

\* \* \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(n) *NE multispecies common pool accountability measure (AM).* Common pool vessels are subject to the following AMs, in addition to the DAS accrual provisions specified in paragraph (e) of this section and other measures specified in this part.

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4). This projection shall be updated once available information regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery to determine if excessive catch by such vessels resulted in the overall ACL for a

particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's share of the overage of the overall ACL for that stock shall be added to the catch of each stock of regulated species or ocean pout by common pool vessels pursuant to § 648.90(a)(5). If the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 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  $\times$  1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished— $1.2 \times 1.5 \times 24$ -hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

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

(A) *Inshore GOM Differential DAS Area.* The Inshore GOM Differential DAS Area applies to the following

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

#### INSHORE GOM DIFFERENTIAL DAS AREA

| Point        | N. latitude      | W. longitude |
|--------------|------------------|--------------|
| INGOM1 ..... | ( <sup>1</sup> ) | 69°30'       |
| INGOM2 ..... | 43°00'           | 69°30'       |
| INGOM3 ..... | 43°00'           | 70°00'       |
| INGOM4 ..... | ( <sup>2</sup> ) | 70°00'       |

<sup>1</sup> Intersection with ME shoreline.

<sup>2</sup> North-facing shoreline of Cape Cod, MA.

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

#### OFFSHORE GOM DIFFERENTIAL DAS AREA

| Point         | N. latitude      | W. longitude |
|---------------|------------------|--------------|
| CI13 .....    | 42°22'           | 67°20'       |
| OFFGOM1 ..... | 42°20'           | 67°20'       |
| OFFGOM2 ..... | 42°20'           | 70°00'       |
| OFFGOM5 ..... | 43°00'           | 70°00'       |
| INGOM2 .....  | 43°00'           | 69°30'       |
| INGOM1 .....  | ( <sup>1</sup> ) | 69°30'       |

<sup>1</sup> Intersection with ME shoreline.

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

#### INSHORE GB DIFFERENTIAL DAS AREA

| Point     | N. latitude      | W. longitude |
|-----------|------------------|--------------|
| G9 .....  | ( <sup>1</sup> ) | 70°00'       |
| G10 ..... | 42°20'           | 70°00'       |

#### INSHORE GB DIFFERENTIAL DAS AREA—Continued

| Point      | N. latitude      | W. longitude |
|------------|------------------|--------------|
| IGB1 ..... | 42°20'           | 68°50'       |
| IGB2 ..... | 41°00'           | 68°50'       |
| IGB3 ..... | 41°00'           | 69°30'       |
| IGB4 ..... | 41°10'           | 69°30'       |
| IGB5 ..... | 41°10'           | 69°50'       |
| IGB6 ..... | 41°20'           | 69°50'       |
| IGB7 ..... | 41°20'           | 70°00'       |
| G12 .....  | ( <sup>2</sup> ) | 70°00'       |

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

<sup>2</sup> South-facing shoreline of Cape Cod, MA.

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

#### OFFSHORE GB DIFFERENTIAL DAS AREA

| Point      | N. latitude      | W. longitude     |
|------------|------------------|------------------|
| IGB1 ..... | 42°20'           | 68°50'           |
| OGB1 ..... | 42°20'           | 67°20'           |
| CI13 ..... | ( <sup>1</sup> ) | 67°20'           |
| OGB2 ..... | 40°10'           | ( <sup>1</sup> ) |
| OGB3 ..... | 40°10'           | 68°50'           |
| IGB1 ..... | 42°20'           | 68°50'           |

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

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

#### SNE/MA DIFFERENTIAL DAS AREA

| Point        | N. latitude      | W. longitude |
|--------------|------------------|--------------|
| G12 .....    | ( <sup>1</sup> ) | 70°00'       |
| IGB7 .....   | 41°20'           | 70°00'       |
| IGB6 .....   | 41°20'           | 69°50'       |
| IGB5 .....   | 41°10'           | 69°50'       |
| IGB4 .....   | 41°10'           | 69°30'       |
| IGB3 .....   | 41°00'           | 69°30'       |
| IGB2 .....   | 41°00'           | 68°50'       |
| SNEDA1 ..... | 40°10'           | 68°50'       |
| SNEDA2 ..... | 40°10'           | 73°10'       |

**SNE/MA DIFFERENTIAL DAS AREA—  
Continued**

| Point        | N. latitude | W. longitude |
|--------------|-------------|--------------|
| SNEDA3 ..... | 39°50'      | 73°10'       |
| SNEDA4 ..... | 39°50'      | (2)          |

<sup>1</sup> South-facing shoreline of Cape Cod, MA.

<sup>2</sup> East-facing shoreline of NJ.

(ii) [Reserved]

(iii) *Mixed-stock exception.* When determining the differential DAS counting AM specified in this paragraph (n)(1), the Regional Administrator shall conduct an analysis to determine whether the mixed-stock exception, as specified in § 600.310(m), may be

applicable. If the analysis concludes that the mixed-stock exception is applicable, the Regional Administrator shall modify or not apply a differential DAS counting AM on specific stocks, as appropriate, in accordance with the mixed-stock exception.

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

AM specified in paragraph (n)(2) of this section.

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

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

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

| Stock                              | Trimester 1<br>(percent) | Trimester 2<br>(percent) | Trimester 3<br>(percent) |
|------------------------------------|--------------------------|--------------------------|--------------------------|
| GOM Cod .....                      | 27                       | 36                       | 37                       |
| GB Cod .....                       | 25                       | 37                       | 38                       |
| GOM Haddock .....                  | 27                       | 26                       | 47                       |
| GB Haddock .....                   | 27                       | 33                       | 40                       |
| CC/GOM Yellowtail Flounder .....   | 35                       | 35                       | 30                       |
| GB Yellowtail Flounder .....       | 19                       | 30                       | 52                       |
| SNE/MA Yellowtail Flounder .....   | 21                       | 37                       | 42                       |
| GOM Winter Flounder .....          | 37                       | 38                       | 25                       |
| GB Winter Flounder .....           | 8                        | 24                       | 69                       |
| SNE/MA Winter Flounder .....       | 36                       | 50                       | 14                       |
| Witch Flounder .....               | 27                       | 31                       | 42                       |
| American Plaice .....              | 24                       | 36                       | 40                       |
| Pollock .....                      | 28                       | 35                       | 37                       |
| Redfish .....                      | 25                       | 31                       | 44                       |
| White Hake .....                   | 38                       | 31                       | 31                       |
| Northern Windowpane Flounder ..... | 33                       | 33                       | 34                       |
| Southern Windowpane Flounder ..... | 33                       | 33                       | 34                       |
| Ocean Pout .....                   | 33                       | 33                       | 34                       |
| Atlantic Halibut .....             | 33                       | 33                       | 34                       |
| Atlantic Wolffish .....            | 75                       | 13                       | 12                       |

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

(ii) *Stock area closures.* With the exception of both stocks of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified

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

Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

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

**GB COD TRIMESTER TAC AREA**

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| GB1 ..... | 42°20'      | 70°00'       |

GB COD TRIMESTER TAC AREA—  
Continued

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

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

## (B) GOM Cod Trimester TAC Area.

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

## GOM COD TRIMESTER TAC AREA

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

<sup>1</sup> Intersection with ME shoreline.<sup>2</sup> North-facing shoreline of Cape Cod, MA.

## (C) GB Haddock Trimester TAC Area.

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

## GB HADDOCK TRIMESTER TAC AREA

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

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

## (D) GOM Haddock Trimester TAC

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

GOM HADDOCK TRIMESTER TAC  
AREA

| Point       | N. latitude | W. longitude |
|-------------|-------------|--------------|
| GOM1 .....  | (1)         | 69°20'       |
| GOM2 .....  | 43°40'      | 69°20'       |
| GOM3 .....  | 43°40'      | 69°00'       |
| GOM4 .....  | 43°20'      | 69°00'       |
| GOM5 .....  | 43°20'      | 67°40'       |
| GOM6 .....  | (2)         | 67°40'       |
| GOM7 .....  | 42°53.1'    | 67°44.4'     |
| GOM8 .....  | (2)         | 67°40'       |
| GOM9 .....  | 42°20'      | 67°40'       |
| GOM10 ..... | 42°20'      | 70°00'       |
| GOM12 ..... | (3)         | 70°00'       |

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

## (E) GB Yellowtail Flounder Trimester

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

GB YELLOWTAIL FLOUNDER  
TRIMESTER TAC AREA

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| GB1 ..... | 42°20'      | 68°50'       |
| GB2 ..... | 42°20'      | (1)          |
| GB3 ..... | 40°30'      | (1)          |
| GB4 ..... | 40°30'      | 66°40'       |
| GB5 ..... | 39°50'      | 66°40'       |
| GB6 ..... | 39°50'      | 68°50'       |
| GB1 ..... | 42°20'      | 68°50'       |

<sup>1</sup> U.S./Canada maritime boundary.

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

SNE/MA YELLOWTAIL FLOUNDER  
TRIMESTER TAC AREA

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

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

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

CC/GOM YELLOWTAIL FLOUNDER  
TRIMESTER TAC AREA

| Point        | N. latitude | W. longitude |
|--------------|-------------|--------------|
| CCGOM1 ..... | 42°50'      | (1)          |
| CCGOM2 ..... | 42°50'      | 69°40'       |
| CCGOM3 ..... | 42°20'      | 69°40'       |
| CCGOM4 ..... | 42°20'      | 68°50'       |
| CCGOM5 ..... | 41°00'      | 68°50'       |
| CCGOM6 ..... | 41°00'      | 69°30'       |
| CCGOM7 ..... | 41°10'      | 69°30'       |

CC/GOM YELLOWTAIL FLOUNDER  
TRIMESTER TAC AREA—Continued

| Point         | N. latitude | W. longitude |
|---------------|-------------|--------------|
| CCGOM8 .....  | 41°10'      | 69°50'       |
| CCGOM9 .....  | 41°20'      | 69°50'       |
| CCGOM10 ..... | 41°20'      | (2)          |
| CCGOM11 ..... | (3)         | 70°00'       |
| CCGOM12 ..... | (4)         | 70°00'       |

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

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

AMERICAN PLAICE TRIMESTER TAC  
AREA

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

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

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

WITCH FLOUNDER TRIMESTER TAC  
AREA

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

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

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

GB WINTER FLOUNDER TRIMESTER  
TAC AREA

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| GB1 .....  | 42°20'      | 68°50'       |
| GB2 .....  | 42°20'      | 67°40'       |
| GB3 .....  | 41°50'      | 67°40'       |
| GB4 .....  | 41°50'      | (1)          |
| GB5 .....  | 40°30'      | (1)          |
| GB6 .....  | 40°30'      | 66°40'       |
| GB7 .....  | 40°40'      | 66°40'       |
| GB8 .....  | 40°40'      | 66°50'       |
| GB9 .....  | 40°50'      | 66°50'       |
| GB10 ..... | 40°50'      | 67°00'       |
| GB11 ..... | 41°00'      | 67°00'       |
| GB12 ..... | 41°00'      | 67°10'       |
| GB13 ..... | 41°10'      | 67°10'       |
| GB14 ..... | 41°10'      | 67°40'       |
| GB15 ..... | 41°20'      | 67°40'       |
| GB16 ..... | 41°20'      | 68°10'       |
| GB17 ..... | 41°10'      | 68°10'       |
| GB18 ..... | 41°10'      | 68°20'       |
| GB19 ..... | 41°00'      | 68°20'       |
| GB20 ..... | 41°00'      | 68°50'       |
| GB1 .....  | 42°20'      | 68°50'       |

<sup>1</sup> U.S./Canada maritime boundary.

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

GOM WINTER FLOUNDER TRIMESTER  
TAC AREA

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| GOM1 ..... | 42°50'      | (1)          |
| GOM2 ..... | 42°50'      | 69°40'       |
| GOM3 ..... | 42°20'      | 69°40'       |
| GOM4 ..... | 42°20'      | 70°00'       |
| GOM5 ..... | (2)         | 70°00'       |

<sup>1</sup> Intersection with MA shoreline<sup>2</sup> North-facing shoreline of Cape Cod, MA

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

SNE/MA WINTER FLOUNDER  
TRIMESTER TAC AREA I

| Point    | N. latitude | W. longitude |
|----------|-------------|--------------|
| 1 .....  | 42°20'      | 70°00'       |
| 2 .....  | 42°20'      | 68°50'       |
| 3 .....  | 41°00'      | 68°50'       |
| 4 .....  | 41°00'      | 69°30'       |
| 5 .....  | 41°10'      | 69°30'       |
| 6 .....  | 41°10'      | 69°50'       |
| 7 .....  | 41°20'      | 69°50'       |
| 8 .....  | 41°20'      | (1)          |
| 9 .....  | (2)         | 70°00'       |
| 10 ..... | (3)         | 70°00'       |
| 11 ..... | (4)         | 70°00'       |

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

SNE/MA Winter Flounder Trimester TAC Area II is bound on the west by the U.S. coastline, defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER  
TRIMESTER TAC AREA II

| Point          | N. latitude | W. longitude |
|----------------|-------------|--------------|
| SNE/MA12 ..... | (1)         | 71°10'       |
| SNE/MA13 ..... | 41°20'      | 71°10'       |
| SNE/MA14 ..... | 41°20'      | (2)          |
| SNE/MA15 ..... | 41°20'      | (3)          |

SNE/MA WINTER FLOUNDER  
TRIMESTER TAC AREA II—Continued

| Point          | N. latitude | W. longitude |
|----------------|-------------|--------------|
| SNE/MA16 ..... | 41°20'      | (4)          |
| SNE/MA17 ..... | (5)         | 70°00'       |
| SNE/MA18 ..... | 39°50'      | 70°00'       |
| SNE/MA19 ..... | 39°50'      | 71°40'       |
| SNE/MA20 ..... | 40°00'      | 71°40'       |
| SNE/MA21 ..... | 40°00'      | (6)          |

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

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

## REDFISH TRIMESTER TAC AREA

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

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

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

## WHITE HAKE TRIMESTER TAC AREA

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| RF1 ..... | (1)         | 69°20'       |

WHITE HAKE TRIMESTER TAC AREA—  
Continued

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

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

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

## POLLOCK TRIMESTER TAC AREA

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

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

(P) *Atlantic Wolffish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Atlantic

Wolffish Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

ATLANTIC WOLFFISH TRIMESTER TAC  
AREA

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

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

(iii) *Trimester TAC overage/underage.* If any trimester TAC, as specified in paragraph (n)(2)(i) of this section, is not caught during Trimester 1 or 2, the uncaught portion of the trimester TAC shall be carried forward into the next trimester. Uncaught portions of any trimester TAC following Trimester 3 may not be carried over into the following fishing year. If any trimester TAC is exceeded during the Trimesters 1 or 2, the overage shall be deducted from the Trimester 3 TAC for that stock. If the entire sub-ACL for a particular stock that is allocated to the common pool is exceeded (i.e., the common pool catch of that stock at the end of the fishing year, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds all three trimester TACs for that stock combined), an amount equal to the overage shall be deducted from the sub-ACL for that stock that is allocated to common pool vessels pursuant to § 648.90(a)(4) for the following fishing year.

(iv) *Monitoring requirements.* Starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean

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

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

(B) *Dockside/roving monitor service provider standards.* For fishing year 2012 and beyond, a common pool vessel must employ a service provider approved/certified by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved/certified to provide the services specified in paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards listed in § 648.87(b)(4).

(v) *Adjustments to trimester TACs.* The distribution of trimester TACs specified in paragraph (n)(2)(i) of this

section may be revised pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2) and shall use the distribution of landings of the most recent 5-year period available.

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

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

**§ 648.83 Multispecies minimum fish sizes.**

(a) \* \* \*

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

**MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS**

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

\* \* \* \* \*

■ 12. In § 648.85:

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

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

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

**§ 648.85 Special management programs.**

\* \* \* \* \*

(a) \* \* \*

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

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

described in paragraphs (a)(1)(i) and (ii) of this section.

\* \* \* \* \*

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

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

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

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

(D) To the extent practicable, by October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year as a subset of the ACLs for these stocks available to the commercial fishery pursuant to § 648.90(a)(4). NMFS shall review the Council's recommendations and shall publish the proposed TACs in the **Federal Register** and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider



modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

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

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

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

(i) *VMS requirement.* A NE multispecies vessel fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must

have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

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

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

(1) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area, as instructed by the Regional Administrator. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS and vessels on a sector trip that are not fishing under a NE multispecies DAS for the purposes of complying with the restrictions of other fisheries, once a vessel elects to fish outside of the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel

crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(5)(iii).

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

(3) [Reserved]

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

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

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

(iii) *Gear requirements.* A NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (8) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(1) of this section, or a haddock separator trawl, or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Unless otherwise

restricted by § 648.80(n), gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net, or gear authorized under paragraphs (b)(6) and (8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations in § 648.23(b). The description of the haddock separator trawl and the flounder trawl net, and the description of the Ruhle trawl may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, in a manner consistent with the Administrative Procedure Act.

\* \* \* \* \*

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

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

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

(2) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the

Administrative Procedure Act, close the Eastern U.S./Canada Area to NE multispecies DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit all vessels from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

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

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

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

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

(2) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from

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

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

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

(D) *Other restrictions or inseason adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or to facilitate achieving the TAC specified in paragraph (a)(2) of this section. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement

different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (*i.e.*, haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed

in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

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

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

(B) Date fish were caught and statistical area in which fish were caught; and

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

\* \* \* \* \*

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

\* \* \* \* \*

(b) \* \* \*

(3) *Closed Area II Yellowtail Flounder/Haddock SAP—(i) Eligibility.* Any vessel issued a valid limited access NE multispecies permit fishing under a NE multispecies DAS or on a sector trip,

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

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

**CLOSED AREA II YELLOWTAIL  
FLOUNDER/HADDOCK SAP AREA**

| Point         | N. latitude | W. longitude |
|---------------|-------------|--------------|
| Ytail 1 ..... | 41°30'      | 67°20'       |
| Ytail 2 ..... | 41°30'      | 66°34.8'     |
| G5 .....      | 41°18.6'    | 66°24.8'1    |
| CII 2 .....   | 41°00'      | 66°35.8'     |
| CII 1 .....   | 41°00'      | 67°20'       |
| Ytail 1 ..... | 41°30'      | 67°20'       |

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

(B) *Season when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the CA II Yellowtail Flounder/Haddock SAP from August 1 through January 31.

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

performance criteria specified in §§ 648.9 and 648.10.

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

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

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

(vii) *Opening criteria—(A) Opening the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator, as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP for each fishing year shall be as announced by the Regional Administrator on or about June 1, after consultation with the Council, in a manner consistent with the Administrative Procedure Act. Except as

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

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

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

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

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

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

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

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

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

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

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

Category A DAS, and not Category B DAS.

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

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

(4) [Reserved]

(5) *Incidental Catch TACs*. Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, witch flounder, and pollock. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, GB winter flounder, and pollock*. With the exception of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod and pollock*. Each of the Incidental Catch TACs for GB cod and pollock specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder*. Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP

described in paragraph (b)(8) of this section.

(6) \* \* \*  
(iv) \* \* \*

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, and pollock; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A), or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(j) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(j) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

(E) *No-discard provision and DAS flips*. A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species or ocean pout is prohibited, as specified in §§ 648.85 and 648.86. If such a vessel harvests and brings on board legal-sized regulated species or ocean pout in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits

specified in § 648.85(a) or § 648.86 and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in an area subject to differential DAS counting pursuant to § 648.82(n)(1), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by the applicable differential DAS counting factor specified in § 648.82(n)(1)(ii). For example, if a vessel plans a trip under the Regular B DAS Program in the Inshore GOM Differential DAS Area during a fishing year in which the area is subject to a differential DAS counting factor of 1.2, and the vessel has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 8 (10 divided by 1.2 = 8.33, but since Regular B DAS are charged in 24-hr intervals, 8 Regular B DAS is the maximum that can be used for this trip). A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(1).

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(1).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C)

of this section, the reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described in paragraph (b)(6)(iv)(E) of this section.

(J) \* \* \*  
(1) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(3) of this section, respectively, or other type of gear if approved as described in this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program pursuant to § 648.23(b).

\* \* \*  
(4) *Mesh size.* An eligible vessel fishing in the Regular B DAS Program pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(v) *Definition of stock areas.* The species stock areas associated with the incidental catch TACs for the Regular B DAS Program are defined in paragraphs (b)(6)(v)(A) through (K) of this section. Where specified, these areas also identify stock areas applicable for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of ACE pursuant to § 648.87(b). Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) [Reserved]

(B) [Reserved]

(C) *CC/GOM yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

#### CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

| Point         | N. latitude | W. longitude |
|---------------|-------------|--------------|
| CCGOM 1 ..... | 43°00'      | (1)          |
| CCGOM 2 ..... | 43°00'      | 70°00'       |
| CCGOM 3 ..... | 42°30'      | 70°00'       |
| CCGOM 4 ..... | 42°30'      | 69°30'       |

#### CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

| Point         | N. latitude | W. longitude |
|---------------|-------------|--------------|
| CCGOM 5 ..... | 41°30'      | 69°30'       |
| CCGOM 6 ..... | 41°30'      | 69°00'       |
| CCGOM 7 ..... | 41°00'      | 69°00'       |
| CCGOM 8 ..... | 41°00'      | 69°30'       |
| CCGOM 5 ..... | 41°30'      | 69°30'       |
| CCGOM 9 ..... | 41°30'      | 70°00'       |
| CCGOM 10 .... | (2)         | 70°00'       |
| CCGOM 11 .... | 42°00'      | 70°00'       |
| CCGOM 12 .... | 42°00'      | (3)          |
| CCGOM 13 .... | 42°00'      | (4)          |
| CCGOM 14 .... | 42°00'      | (5)          |

<sup>1</sup> Intersection with the NH coastline.

<sup>2</sup> Intersection of the south-facing shoreline of Cape Cod, MA.

<sup>3</sup> Intersection with the east-facing shoreline of Cape Cod, MA.

<sup>4</sup> Intersection with the west-facing shoreline of Cape Cod, MA.

<sup>5</sup> Intersection with the east-facing shoreline of Massachusetts.

(D) [Reserved]

(E) *SNE/MA yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the SNE/MA stock area is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

#### SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

| Point         | N. latitude | W. longitude |
|---------------|-------------|--------------|
| SNEMA1 .....  | 40°00'      | 74°00'       |
| SNEMA2 .....  | 40°00'      | 72°00'       |
| SNEMA3 .....  | 40°30'      | 72°00'       |
| SNEMA4 .....  | 40°30'      | 69°30'       |
| SNEMA5 .....  | 41°10'      | 69°30'       |
| SNEMA6 .....  | 41°10'      | 69°50'       |
| SNEMA7 .....  | 41°20'      | 69°50'       |
| SNEMA8 .....  | 41°20'      | (1)          |
| SNEMA9 .....  | (2)         | 70°00'       |
| SNEMA10 ..... | 41°00'      | 70°00'       |
| SNEMA11 ..... | 41°00'      | 70°30'       |
| SNEMA12 ..... | (3)         | 70°30'       |
| SNEMA13 ..... | (4)         | 72°00'       |
| SNEMA14 ..... | (5)         | 72°00'       |
| SNEMA15 ..... | (6)         | 73°00'       |
| SNEMA16 ..... | 40°30'      | 73°00'       |
| SNEMA17 ..... | 40°30'      | 74°00'       |
| SNEMA1 .....  | 40°00'      | 74°00'       |

<sup>1</sup> East-facing shoreline of Nantucket, MA.

<sup>2</sup> South-facing shoreline of Nantucket, MA.

<sup>3</sup> Intersection of the south-facing shoreline of Cape Cod, MA.

<sup>4</sup> South-facing shoreline of CT.

<sup>5</sup> North-facing shoreline of Long Island, NY.

<sup>6</sup> South-facing shoreline of Long Island, NY.

(F)–(I) [Reserved]

(J) *White hake stock area.* The white hake stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded



on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00' N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

\* \* \* \* \*

(7) *CA I Hook Gear Haddock SAP*—

(i) *Eligibility.* A vessel issued a valid limited access NE multispecies permit operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the CA I Hook Gear Haddock SAP and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided any such vessel complies with the requirements of this section, the SAP is not closed according to the provisions specified in paragraph (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section, or the sector in which the vessel is participating no longer has ACE available for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i). Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock SAP Area.* The CA I Hook Gear Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CA I HOOK GEAR HADDOCK SAP  
AREA

| Point        | N. latitude | W. longitude |
|--------------|-------------|--------------|
| Hook 1 ..... | 41°09'      | 68°30'       |
| CI4 .....    | 41°30'      | 68°30'       |
| CI1 .....    | 41°30'      | 69°23'       |
| Hook 2 ..... | 41°04'      | 69°01.1'     |

(iii) *Season.* The season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels, as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to sector and common pool vessels are specified in paragraphs (b)(7)(v) and (vi) of this section, respectively.

(A) *DAS use restrictions.* A vessel fishing in the Closed Area I Hook Gear Haddock SAP under a NE multispecies DAS may not initiate a DAS flip. A vessel is prohibited from fishing in the

Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement.* An eligible NE multispecies vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* To fish in the CA I Hook Gear Haddock SAP prior to departure from port, a vessel must declare into the SAP via VMS, and, for a vessel fishing under a NE multispecies DAS, indicate the type of DAS that it intends to fish, prior to departure from port, as instructed by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described in paragraph (b)(7)(ii) of this section on a declared trip.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraph (b)(7)(v)(A) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula:  $\text{BiomassYEAR X} = (1,130 \text{ mt live weight}) \times (\text{Projected WGB Haddock Exploitable BiomassYEAR X} / \text{WGB Haddock Exploitable Biomass2004})$ . The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by

a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP. A vessel operating under a NE multispecies DAS must end the trip if the vessel exceeds the applicable landing limits described in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section.

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise specified in this part, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels, including both common pool and sector vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a sector vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(v).

(A) *Gear restrictions.* A sector vessel is subject to the gear requirements of the sector Operations Plan as approved under § 648.87(c) and those specified under paragraph (b)(7)(iv)(E) of this section.

(B) *Landing limits.* A sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the landing limits for regulated species in effect under the sector's Operations Plan, as approved under § 648.87(c).

(C) *Reporting requirements.* The owner or operator of a sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the sector Manager, consistent with instructions to be provided by the sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The



sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake discarded; date fish were caught; and VTR serial numbers for each trip declared into the CA I Hook Gear Haddock SAP, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) or (H) of this section.

(D) *Incidental catch TACs.* There are no incidental catch TACs specified for regulated species or ocean pout for sector vessels declared into the CA I Hook Gear Haddock SAP. All regulated species or ocean pout caught by sector vessels fishing in the SAP count toward the sector's annual ACE for each stock, as specified in § 648.87(b)(1)(i).

(vi) *Common pool vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a common pool vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(vi).

(A) *DAS use restrictions.* A common pool vessel may only use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A common pool vessel is prohibited from using Category A DAS and may not initiate a DAS flip when declared into the SAP. A common pool vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section.

(C) *Landing limits.* A common pool vessel may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A common pool vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions to be

provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2359 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

(E) *Incidental catch TACs.* The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by a common pool vessel from the CA I Hook Gear Haddock SAP Area in a fishing year is the amount specified in paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC.* When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, the CA I Hook Gear Haddock SAP Area shall be closed to all common pool vessels in a manner consistent with the Administrative Procedure Act.

(8) \* \* \*

(i) *Eligibility.* A vessel issued a valid limited access NE multispecies permit and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section while operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the Eastern U.S./Canada Haddock SAP and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section and provided the SAP is not closed according to the provisions specified in paragraph (b)(8)(v)(K) or (L) of this section, the Eastern U.S./Canada Area is

not closed as described under paragraph (a)(3)(iv)(E) of this section, or the sector to which the vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i).

\* \* \* \* \*

(v) \* \* \*

(A) *Area and DAS use restrictions.* A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS in accordance with § 648.82(d)(2), or in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP may elect to fish in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A).

\* \* \* \* \*

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, and, for common pool vessels fishing a NE multispecies DAS, while under either a Category A DAS or a Category B DAS.

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder/Haddock SAP Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided a common pool vessel fishes under a Category A DAS and all eligible vessels comply with the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(4) A common pool vessel fishing under a NE multispecies DAS that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements of the areas fished for the entire trip. A vessel on a sector trip that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must comply with the most restrictive reporting requirements of the areas fished for the entire trip, unless otherwise specified by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(B) *VMS requirement.* A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

\* \* \* \* \*

(D) *VMS declaration.* To fish in the Eastern U.S./Canada Haddock SAP, a vessel issued a limited access NE multispecies permit must declare into the SAP via VMS and provide information on the areas within the Eastern U.S./Canada Area that it intends to fish and the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, if operating under the provisions of the common pool, prior to departure from port, in accordance with paragraph (b)(8)(v)(A) of this section and any instructions provided by the Regional Administrator.

(E) \* \* \*

(I) Unless otherwise specified in this paragraph (b)(8)(v)(E)(1), a vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or the Ruhle Trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(3) of this section, respectively, or another type of gear, if approved as described in this paragraph (b)(8)(v)(E). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP is not restricted to only using the haddock separator trawl or the Ruhle trawl, but may use any gear authorized in paragraph (a)(3)(iii) of this section, unless otherwise restricted by a sector operations plan approved pursuant to § 648.87(c). Other gear may be on board the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, provided that the gear is stowed in accordance with § 648.23(b).

\* \* \* \* \*

(3) *Mesh size.* A vessel eligible to fish in the Eastern U.S./Canada Haddock SAP pursuant to paragraph (b)(8) of this section must use trawl gear described in this paragraph (b)(8)(v)(E) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the

haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited.

\* \* \* \* \*

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated or ocean pout unless otherwise required due to a prohibition of the possession of such species specified in this part. If a common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified in paragraph (b)(8)(v)(F) of this section, or in § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified in § 648.85(a) or § 648.86. If a common pool vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified in paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined in paragraph (b)(8)(ii) of this section for the remainder of the trip. For a common pool vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS

pursuant to § 648.82(e)(1), and not Category B DAS.

\* \* \* \* \*

(d) *Incidental catch allowance for some limited access herring vessels.* The incidental catch allowance for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit is 0.2 percent of the combined ACLs for GOM haddock and GB haddock (U.S. landings only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year.

(e) *Authorized gear performance standards.* Unless otherwise restricted in this part, in areas and times when a special management program, as specified in this section, requires the use of gear authorized by that program to reduce catches of stocks of concern, participating vessels are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

■ 13. In § 648.86, revise the introductory text to this section; revise paragraphs (a)(2)(iii), (b)(2) through (4), (e), (g), and (j); and add paragraphs (l), and (m) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

Except as provided in § 648.17 or elsewhere in this part, the following possession restrictions apply:

(a) \* \* \*

(2) \* \* \*

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels also issued limited access NE multispecies permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

\* \* \* \* \*

(b) \* \* \*

(2) *GB cod landing and maximum possession limits.* Unless otherwise restricted under § 648.85, a vessel

fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(4) of this section and this paragraph (b)(2). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) [Reserved]

(4) *Exemption.* A common pool vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the GOM Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a common pool vessel that fishes or intends to fish under a NE multispecies DAS south of the line described in paragraph (b)(4) of this section, under the cod trip limits described in paragraph (b)(2) of this section, must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A common pool vessel exempt from the GOM cod landing limit pursuant to paragraph (b)(4)(i) of this section may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

\* \* \* \* \*

(e) *White hake.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under

the monkfish Category C or D permit provisions is not restricted in the amount of white hake the vessel may land per trip during fishing years 2010 and 2011. Starting in fishing year 2012, unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 2,000 lb (907.2 kg) per trip.

\* \* \* \* \*

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined in § 648.85(a)(1), may land or possess on board up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,500 lb (680.4 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is subject to the GB yellowtail flounder limit described in paragraph § 648.85(a)(3)(iv)(c).

\* \* \* \* \*

(j) *GB winter flounder.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is not restricted in the

amount of GB winter flounder the vessel may land per trip.

\* \* \* \* \*

(l) *Ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish. In addition, such vessels may not fish for, possess, or land winter flounder caught in or from the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b).

(m) *Additional possession restrictions*—

(1) [Reserved]

(2) *Possession limits for vessels fishing in multiple areas.* If a vessel fishes in more than one stock area on the same trip, as defined in § 648.85(b)(6)(v) or § 648.87(b)(1)(ii), the most restrictive trip limit for a species applies for the entire trip.

■ 14. Revise § 648.87 to read as follows:

#### § 648.87 Sector allocation.

(a) *Procedure for approving/ implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the sector wants to begin operations in accordance with the conditions and restrictions of this section. The sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a sector allocation proposal, the Council must decide whether to initiate a management action to implement the sector proposal. Should a biennial adjustment or framework adjustment to authorize a sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation—(A) Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework

process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(1) of this section.

(B) *Eastern GB stocks.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over up to 10 percent of unused ACE for each stock into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(D) *Maximum ACE allocation.* There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE

multispecies stock as specified in paragraphs (b)(1)(i)(E)(1) and (2) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(1) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(2) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, dealer landings of each stock of NE multispecies caught while operating under the restrictions associated with a limited access NE multispecies permit, including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, that are available in the commercial dealer database to NMFS shall be summed for fishing years 1996 through 2006. This value shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. This produces an individual permit's share of the ACL for each regulated species or ocean pout stock available to the NE multispecies fishery. The landings history for each permit includes all landings that can be attributed to that permit pursuant to this paragraph (b)(1)(i)(E). For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during fishing years 1996 through 2003 before the adoption of the limited access Handgear A permit category in 2004.

(2) *Calculation of GB cod PSC.* The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(2) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(i) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each valid NE multispecies permit that committed to participate in either the

GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be based upon the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(1) of this section.

(ii) *GB cod PSC for all other permits.* For all NE multispecies permits that have not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (o)(2)(i) of this section, the GB cod PSC shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (o)(2)(i) of this section. First, each permit's individual share of the available GB cod PSC shall be calculated by dividing the sum of the individual permit's landings of GB cod available in the commercial dealer database for fishing years 1996 through 2006 by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008, during that period. This individual share shall then multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(2)(i) of this section from one. This shall provide each vessel's share of the available GB cod PSC.

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to

paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceed the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(A–F) [Reserved]

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allocated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase

in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(1) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another sector during that fishing year.

(2) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(3) *Fishing prohibition.* If a sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participating in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e., through June 30) to allow time to process any ACE transfers submitted by May 15 pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement—(A) Sector compliance and joint/several liability.*

Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector.* A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an approved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For the purposes of this paragraph, "permit/vessel" refers to the fishing and landings history associated with a particular

permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported



to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* Beginning in fishing year 2010, a sector must develop, implement, and pay for, to the extent not funded by NMFS, an independent third-party dockside/roving and at-sea/electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service providers providing dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea/electronic monitoring program proposed by sectors must meet the operational standards specified in paragraph (b)(5) and (b)(6) of this section, respectively, and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act.

(1) *Dockside/roving monitors.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout by sector vessels at the first point of offload, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(3) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. The details of the dockside/roving monitoring program used by each sector must be specified in the sector's operations plan and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the

dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act.

(2) *At-sea/electronic monitoring program.* Beginning in fishing year 2012, in addition to the dockside/roving monitoring requirement specified in paragraph (b)(1)(v)(B)(1) of this section, an at-sea/electronic monitoring program must be implemented to verify area fished as well as catch and discards by species and gear type. A sector may elect to develop an at-sea/electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea/electronic monitoring program developed and implemented by each sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea/electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(3) of this section.

(3) *Coverage levels.* Any service provider providing dockside/roving or at-sea monitoring services required under this paragraph (b)(1)(v)(B)(3) must provide coverage that is fair, equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all sector vessel operations throughout the fishing year.

(i) *Dockside/roving monitoring.* For fishing year 2010, at least 50 percent of all sector trips shall be monitored by dockside/roving monitors. Beginning in fishing year 2011, at least 20 percent of all Sector trips shall be monitored by dockside/roving monitors.

(ii) *At-sea/electronic monitoring.* Beginning in fishing year 2012, coverage

levels for an at-sea monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

(4) *Hail reports.* For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (6) of this section.

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

(vi) *Sector reporting requirements.* In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout



landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 2359 hr on Thursday of the week following the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries—*

(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in

§ 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.*

Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14) to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B).

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.*

Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for

the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section.

(ix) *Trip limits.* With the exception of stocks listed in § 648.87(l), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations. This operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved operations plan. At least the following elements must be contained in either the operations plan or sector contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of

such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's dockside/roving and at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide dockside/roving and at-sea/electronic monitoring services; the mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea monitors and electronic monitoring equipment; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations

to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not

limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

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

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

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

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

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

(K) Evidence that the company is in good financial standing;

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

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other

at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

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

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

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

(4) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

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

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

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

(C) The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the

standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

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

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

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

(1) If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

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

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

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

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

performance or nonperformance of the official duties of service providers;

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

(1) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

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

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

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

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

(iii) *Standards for individual dockside/roving monitors.* For an individual to be approved/certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS, such as being certified by a physician to be physically fit to work as a dockside/roving monitor after consideration that a monitor may be required to climb a ladder to inspect fish holds and/or trucks;

(D) Absence of fisheries-related convictions based upon a thorough background check; and

(E) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(iv) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels,

pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

- (1) Susceptibility to chronic motion sickness;
- (2) Ability to live in confined quarters;
- (3) Ability to tolerate stress;
- (4) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);
- (5) Ability to drag heavy objects up to 200 lb (90.7 kg); and
- (6) Ability to climb a ladder.
- (D) A current Red Cross (or equivalent) CPR/first aid certification;
- (E) Absence of fisheries-related convictions, based upon a thorough background check; and
- (F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *Dockside monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(1) of this section, or required as part of the trimester TAC AM specified in § 648.82(n)(2) must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements—(A) Reporting/recordkeeping requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of independent dockside and roving monitors pursuant to § 648.82(n)(2)(iv) and paragraph (b)(1)(v) of this section, the operator of a vessel fishing under the provisions of the common pool or on a sector trip must comply with the following requirements:

(1) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hours or within 6 hours of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-

start hail report from the dockside/roving monitor service provider within 10 minutes of sending the original trip-start hail report, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

(2) *Trip-end hail report.* Prior to returning to port upon the completion of a fishing trip, the vessel operator must submit a trip-end hail report notifying the dockside/roving monitor service provider of the vessel permit number; trip ID submitted pursuant to paragraph (b)(5)(i)(A)(1) of this section; intended offloading location(s), including the dock/dealer, port/harbor, and state for 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; estimated total amount of regulated species on board (in pounds, landed weight); and estimated total amount of all other species retained (in pounds, landed weight), including species managed by other FMPs, on board. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted within sufficient time to allow the deployment of the dockside/roving monitor to the offloading site, as specified by the dockside/roving monitoring service provider in consultation with NMFS Office of Law Enforcement. These reports may be in the form of an email to the dockside/roving monitor service provider or another means of communication specified by the service provider.

(B) *Copies of trip documents.* The operator of a sector vessel that is issued a waiver from the dockside/roving monitoring requirements specified in paragraph (b)(1)(v)(B) of this section for a particular trip must provide copies of all VTRs and dealer receipts associated with that trip to the sector or designated third party contractor, as appropriate, within 24 hr of offloading.

(C) *Vessel offloads.* A vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor(s) assigned to that trip is present, as specified in paragraph (b)(5)(ii)(A) of this section.

(ii) *Dockside/roving monitor service provider requirements—(A) Confirmation of vessel hail reports.* Upon receipt of a trip-start or trip-end hail reports pursuant to paragraphs

(b)(5)(i)(A)(1) and (2) of this section, the service provider shall immediately send confirmation that the trip-start or trip-end hail report was received to the vessel. A service provider must establish an independent back-up system to the primary hail report system (e.g., a phone number if the primary hail report system is based upon email) to ensure receipt of such trip-start or trip-end hail reports. In confirming the receipt of a trip-end hail report, the service provider will inform the vessel operator that the offload(s) associated with that trip will be monitored by a dockside/roving monitor or that the vessel is issued a dockside/roving monitor waiver for that trip. If a dockside/roving monitor is assigned to observe a trip's offloads, but cannot meet the vessel as scheduled, the service provider must inform the vessel, the sector, and NMFS Office of Law Enforcement, as appropriate, as soon as possible, to specify the time when the dockside/roving monitor will arrive, or issue the vessel a waiver for that particular trip. The service provider or sector manager must also provide NMFS Office of Law Enforcement with the information contained in the trip-start and trip-end hail reports, including whether the vessel has been assigned a dockside/roving monitor for that trip, at the same time that the confirmation is sent to the vessel.

(B) *Documentation of offloads—(1) Offloads directly to a dealer.* Upon the completion of the offload, the dockside/roving monitor shall retain a copy of all VTRs associated with the trip, including all information submitted (i.e., no blocked cells) provided by the sector vessel; record whether the dealer scales were certified by an appropriate state agency; observe and record whether ice and box weights are tared by the dealer before catch is added, or record the estimated weight of ice and the box from the dealer; record the weight of catch offloaded by species (and market category, if culled); determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; sign the dealer receipt associated with the offload for each trip (i.e., dealer/weighout slip or other form of documentation of the amount of catch offloaded by the dealer), or have the dealer sign the dockside/roving monitor report, as appropriate; provide data summarizing the offloads of each trip, including copies of the VTR(s), dockside/roving monitor report, and dealer receipt(s), if separate from the

dockside/roving monitor report, to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator.

(2) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (i.e., no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species and market class in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate.

(C) *Record retention.* The dockside/roving monitor service provider shall retain an electronic record of each offload observed and make electronic and other records that document an offload available to NMFS upon request.

(D) *Safe-harbor provision.* The dockside/roving monitor service provider must work with the sector and NMFS Office of Law Enforcement to establish an acceptable process for safe-harbor situations where a vessel is unable to follow normal dockside/roving monitor protocols outlined in

paragraph (b)(5) of this section due to an emergency situation.

(iii) *Adjustment to operational standards.* The dockside/roving monitor operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(6) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(2) of this section must meet the following operational standards to be approved by NMFS:

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

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(3) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements—(A) Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(2) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether

an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, 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)(6)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(6)(ii) of this section.

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

(iv) *Safety hazards—(A) Vessel requirements.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(6)(iii)(B)(1) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(6)(iv)(B) of this section, until the identified safety deficiency has been resolved pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port

onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(6)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (b)(6) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator.* (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements or SAP-specific reporting requirements specified in this part). This list may be modified through a framework adjustment, as specified in § 648.90.

(ii) *Universal sector exemptions.* All sector vessels are exempt from the

following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.81(f)(1) and (g), respectively, provided sector vessels comply with the sector-specific GOM Rolling Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(j)(3) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

(1) *GB Cod Hook Sector.*

(2) *GB Cod Fixed Gear Sector.*

(3) *Sustainable Harvest Sector.*

(4) *Port Clyde Community Groundfish Sector.*

(5) *Northeast Fishery Sector I.*

(6) *Northeast Fishery Sector II.*

(7) *Northeast Fishery Sector III.*

(8) *Northeast Fishery Sector IV.*

(9) *Northeast Fishery Sector V.*

(10) *Northeast Fishery Sector VI.*

(11) *Northeast Fishery Sector VII.*

(12) *Northeast Fishery Sector VIII.*

(13) *Northeast Fishery Sector IX.*

(14) *Northeast Fishery Sector X.*

(15) *Northeast Fishery Sector XI.*

(16) *Northeast Fishery Sector XII.*

(17) *Northeast Fishery Sector XIII.*

(18) *Tristate Sector.*

(19) *Northeast Coastal Communities Sector.*

■ 15. In § 648.88, revise paragraph (a)(1) to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

(a) \* \* \*

(1) The vessel may possess and land up to 200 lb (90.7 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. Should the GOM cod trip limit specified in § 648.86(b)(1) be adjusted in the future, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

\* \* \* \* \*

■ 16. In § 648.89, revise the heading of paragraph (c); revise paragraphs (a), (b)(1), (b)(4), (c)(1)(v), and (c)(2)(v); and add paragraphs (c)(6), (c)(7), and (f) to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

(a) *Recreational gear restrictions.* Persons aboard charter/party vessels permitted under this part and not fishing under the DAS program or under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), and recreational fishing vessels in the EEZ, are prohibited from fishing with more than one line per angler, and must stow all other fishing gear on board the vessel as specified in § 648.23(b).

(b) \* \* \*

(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) of this section, persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved sector operations plan, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than

the minimum fish sizes, measured in total length (TL), as follows:

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

\* \* \* \* \*

(4) Fish fillets, or parts of fish, must have at least 2 square inches (5.1 square cm) of skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. The skin must be contiguous and must allow ready identification of the fish species.

\* \* \* \* \*

(c) *Possession restrictions.*

(1) \* \* \*

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for or possess any cod from November 1 through April 15. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

\* \* \* \* \*

(2) \* \* \*

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels permitted under this part and not fishing under the NE multispecies DAS program or on a sector trip that are fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for, possess, or land any cod from November 1 through April 15. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

\* \* \* \* \*

(6) *Atlantic wolffish.* Possession of Atlantic wolffish by charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program and recreational fishing vessels fishing in the EEZ is prohibited.

(7) *SNE/MA winter flounder.* Private recreational and charter/party vessels fishing in the SNE/MA winter flounder

stock area, as defined in § 648.85(b)(6)(v)(F), may not fish for, possess, or land winter flounder. Recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

\* \* \* \* \*

(f) *Recreational fishery AM—(1) Catch evaluation.* As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if the regulated species or ocean pout sub-ACL specified for the recreational fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock, as follows:

(i) For fishing year 2010, recreational catch shall be compared to the recreational sub-ACL for that stock for fishing year 2010.

(ii) For fishing year 2011, the average recreational catch for fishing years 2010 and 2011 shall be compared to the average recreational sub-ACLs for that stock during fishing years 2010 and 2012.

(iii) Starting in fishing year 2012, the 3-year average recreational catch shall be compared to the 3-year average of the recreational sub-ACLs for that stock.

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

■ 17. In § 648.90, revise the introductory text for this section; revise paragraphs (a)(2)(i) through (iv), (a)(2)(vi), and (c)(1)(i); add introductory text to paragraph (a); and add paragraphs (a)(4) through (6) to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures, setting of ACLs and other allocations, AMs, specifications, and flexible area action system.**

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process.

(a) *NE multispecies.* For the purpose of this paragraph (a), the term “NE multispecies fishery” is defined as common pool vessels, sector vessels, and private recreational and charter/party vessels, as defined in this part; the term “NE multispecies commercial fishery” is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term “NE multispecies recreational fishery” is defined as private recreational vessels and charter or party boats, as further defined in this part.

\* \* \* \* \*

(2) \* \* \*

(i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, including changes to the Northeast Region SBRM.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use,



sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information.

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identification and distribution of ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures;

sector reporting requirements; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

(iv) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management

measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

\* \* \* \* \*

(4) *Process for setting ABCs and ACLs*—(i) *ABC/ACL recommendations*. As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(5) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(A) *ABC recommendations*. The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommend by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In

addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

(ii) *Timing.* The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law. After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner consistent with the Administrative Procedure Act.

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

this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (E) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP.* The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

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

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. At a minimum, these values must be consistent with the incidental catch

amounts for yellowtail flounder specified for the closed area access programs described in §§ 648.60(a)(5) and 648.85(c).

(D) *Haddock catch by the Atlantic herring fishery.* The GOM and GB haddock ABC/ACL shall each be reduced by 0.2 percent to account for haddock bycatch in the Atlantic herring fishery, pursuant to the restrictions at §§ 648.85(d) and 648.86(a)(3) and pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4).

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

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

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

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

(2) *Commercial allocation.* The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(1) of this section, shall be divided between

vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(2) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

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

(iv) *ACL monitoring—(A) Landings.* For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

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

(v) *Adjustments to ACLs.* The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) and (D) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

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

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then the AMs described in § 648.82(n) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not

exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(E)(2) of this section, then no AMs shall take effect for that sector.

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

(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, including the catch of regulated species or ocean pout by vessels fishing in state waters outside of the FMP, or in exempted fisheries, as defined in this part, or the catch of yellowtail flounder by the Atlantic sea scallop fishery, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after

consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(6) *Specifications process*—(i) *PDT recommendations*. Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines*. As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations*. Based on the PDT's recommendations and any public comment received, the Groundfish

Oversight Committee shall recommend to the Council appropriate specifications a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis*. Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(c) \* \* \*

(1) \* \* \*

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, sector requirements,

recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

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