

refund amount, regardless of whether the refund is granted or denied.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

\* \* \* \* \*

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120912442-3197-01]

**RIN 0648-XC240**

#### **Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2013 Sector Operations Plans and Contracts and Allocation of Northeast Multispecies Annual Catch Entitlements**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** We propose to approve 18 sector operations plans and contracts for fishing year (FY) 2013, provide allocations of Northeast (NE) multispecies to these sectors, and grant regulatory exemptions. We request comment on the proposed sector operations plans and contracts; the environmental assessment (EA) analyzing the impacts of the operations plans; and our proposal to grant 25 of the 39 regulatory exemptions requested by the sectors. Approval of sector operations plans is necessary to allocate quotas to the sectors and for the sectors to operate. The NE Multispecies Fishery Management Plan (FMP) allows limited access permit holders to form sectors, and requires sectors to submit their operations plans and contracts to us, NMFS, for approval or disapproval. Approved sectors are exempt from certain effort control regulations and receive allocation of NE multispecies (groundfish) based on its members' fishing history.

Written comments must be received on or before March 29, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2013-0007, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0007](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2013-0007), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Allison Murphy, 55 Great Republic Drive, Gloucester, MA 01930.

- **Fax:** 978-281-9135; Attn: Allison Murphy.

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

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Amendment 13 to the FMP (69 FR 22906, April 27, 2004) established a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocations of a total allowable catch (TAC) for specific NE multispecies species to a sector. Amendment 16 to the FMP (74 FR 18262, April 9, 2010) expanded sector management, revised the two existing sectors to comply with the expanded sector rules (summarized below), and authorized an additional 17 sectors. Framework Adjustment (FW) 45 to the FMP (76 FR 23042, April 25, 2011) further revised the rules for sectors and authorized 5 new sectors (for a total of 24 sectors). FW 48, as proposed by the New England Fishery Management Council (Council), would eliminate dockside monitoring (DSM) requirements, revise at-sea monitoring (ASM) requirements, and modify

minimum sizes for NE multispecies stocks. If approved, FW 48 is expected to be in effect at the start of FY 2013 (May 1, 2013).

The FMP defines a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives." Sectors are self-selecting, meaning each sector can choose its members.

The NE multispecies sector management system allocates a portion of the NE multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE). These allocations are a portion of a stock's annual catch limit (ACL) available to commercial NE multispecies vessels, and are based on the collective fishing history of a sector's members. Currently, sectors may receive allocations of most large-mesh NE multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and the Southern New England/Mid-Atlantic (SNE/MA) stock of winter flounder; however, FW 50 proposes to allocate SNE/MA winter flounder to the NE multispecies fishery. A sector determines how to harvest its ACEs and may decide to consolidate operations to fewer vessels.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several "universal" exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; the Georges Bank (GB) Seasonal Closure Area; NE multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear on GB; and portions of the Gulf of Maine (GOM) Rolling Closure Areas. The FMP currently prohibits sectors from requesting exemptions from year-round mortality closed areas (CA), permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements or DSM requirements). FW 48, expected to be effective on May 1, 2013, proposes to allow sectors to request access to portions of the year-round mortality CAs that were not put in place to protect essential fish habitat. Sectors have, consequently, requested

exemptions from year-round mortality CAs in their 2013 operations plans.

We received operations plans and preliminary contracts for FY 2013 from 18 sectors, while 6 sectors did not submit operations plans or contracts. The operations plans are similar to previously approved versions, but include additional exemption requests and proposals for industry-funded ASM plans. Two sectors submitted proposals to fish when one or more of their allocations are exhausted.

We have made a preliminary determination that the proposed 18 sector operations plans and contracts, and 25 of the 39 regulatory exemptions, are consistent with the goals of the FMP and meet sector requirements outlined in the regulations at § 648.87. We summarize many of the sector requirements in this proposed rule and request comments on the proposed operations plans, the accompanying EA, and our proposal to grant 25 of the 39 regulatory exemptions requested by the sectors, but deny the rest. Copies of the operations plans and contracts, and the EA, are available at <http://www.regulations.gov> and from NMFS (see **ADDRESSES**). Northeast Fishery Sector IV and Sustainable Harvest Sector 3 propose to operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits to active vessels.

Six sectors chose not to submit operations plans and contracts for FY 2012: The GB Cod Hook Sector; Northeast Fishery Sector I; the State of Maine Permit Bank Sector; the State of New Hampshire Permit Bank Sector; the Commonwealth of Massachusetts Permit Bank Sector; and the State of Rhode Island Permit Bank Sector. Amendment 17 to the FMP allows a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural

requirements for sectors (77 FR 16942, March 23, 2012). These permit banks are required to submit a list of participating permits to us by a date specified in the permit bank's Memorandum of Agreement, typically April 1.

#### Sector Allocations

Sectors typically submit membership information to us on December 1 prior to the start of the FY. Due to uncertainty regarding ACLs for several stocks in FY 2013 and a corresponding delay in distributing a letter describing each vessel's potential contribution to a sector's quota for FY 2013, we have extended the deadline to join a sector until March 29, 2013. Based on sector enrollment trends from the past 3 FYs, we expect sector participation in FY 2013 will be similar to FY 2012. Thus, we are using FY 2012 rosters as a proxy for FY 2013 sector membership and calculating the FY 2013 projected allocations in this proposed rule. In addition to the membership delay, all permits that change ownership after December 1, 2012, retain the ability to join a sector through April 30, 2013. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2013, to withdraw from a sector and fish in the common pool for FY 2013. We will publish final sector ACEs and common pool sub-ACL totals, based upon final rosters, as soon as possible after the start of FY 2013.

We calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock, as proposed by FW 50. Since FW 50 includes a range of ACLs for GB yellowtail flounder, we are displaying the sector's allocation for this stock as to be determined (TBD). Table 2 shows the total percentage of each commercial sub-ACL each sector would receive for FY 2013, based on

their FY 2012 rosters. Tables 3 and 4 show the allocations each sector would be allocated for FY 2013, based on their FY 2012 rosters. At the start of the FY, we provide the final allocations, to the nearest pound, to the individual sectors, and we use those final allocations to monitor sector catch. While the common pool does not receive a specific allocation, the common pool sub-ACLs have been included in each of these tables for comparison.

We do not assign an individual permit a PSC for Eastern GB cod or Eastern GB haddock; instead, we assign a permit a total PSC for these GB stocks. Each sector's GB cod and GB haddock allocation is then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area.

At the start of FY 2013, we will withhold 20 percent of each sector's FY 2013 allocation until we finalize FY 2012 catch information. Further, we will allow sectors to transfer ACE for 2 weeks to reduce or eliminate any overages. If necessary, we will reduce any sector's FY 2013 allocation to account for a remaining overage in FY 2012. We will notify the Council and sector managers of this deadline in writing and will announce this decision on our Web site at <http://www.nero.noaa.gov/>.

**BILLING CODE 3510-22-P**

Table 1. Cumulative PSC (percentage) each sector would receive by stock for FY 2013.\* ^

Sector Name	FY 2012 Permit Count	GB Cod †	GOM Cod	GB haddock †	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder ‡	CC/GOM Yellowtail Flounder ‡	Palace	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
GB Cod Fixed Gear Sector (Fixed Gear Sector)	106	28.297077	2.23640732	6.36202198	1.3528997	0.01254637	0.30348404	1.92651296	0.55293978	0.83687364	0.02770397	2.03791209	2.89294116	5.85484085	7.84544274	1.34631806
Maine Permit Bank	11	0.13361998	1.14926373	0.04435742	1.11977749	0.01377659	0.03202607	0.31799551	1.16454821	0.72691418	0.00021743	0.42514427	0.82162937	1.65243143	1.68807578	0.01803106
Northeast Coastal Communities Sector (NCCS)	27	0.17112756	0.72927834	0.12128594	0.34258284	0.83885015	0.72837559	0.60989424	0.14839327	0.21717413	0.0885523	0.90303141	0.44005166	0.85721153	0.44998377	0.29918253
Northeast Fishery Sector (NEFS) 2	81	6.02612811	18.2758911	11.850878	16.5160408	1.91056695	1.41448029	19.0646645	8.02317952	12.8878547	3.27779292	18.2260485	15.9754735	6.29573988	12.1623817	3.27295492
NEFS 3	81	1.26791895	15.2319478	0.14637196	9.79664549	0.00983061	0.35817239	9.1226851	4.20647888	2.94187165	0.02664237	10.5984202	1.37619617	4.79524782	7.03200715	0.81310893
NEFS 4	49	4.12296684	8.92287336	5.31633682	8.28646479	2.16227996	2.27843672	5.05397207	9.26061003	8.4819934	0.69482172	5.11101543	6.63082642	8.00860806	5.86912272	0.83260774
NEFS 5	30	1.78119394	0.08608478	3.46376281	0.30222111	6.15272726	23.4330175	0.63569904	1.13042449	1.2908881	1.84589322	0.08499373	0.23544789	0.19167961	0.25319909	12.612252
NEFS 6	19	2.85803149	2.48111142	2.9224335	3.81143265	2.69894087	5.1882894	2.86121024	3.80393566	5.08550885	1.42060745	3.68653845	5.30799653	3.91197357	3.28780047	1.92322939
NEFS 7	21	4.48460908	0.42658072	3.74884815	0.56208837	9.35817105	4.08713115	2.66916536	3.45614985	3.13698824	11.4103051	0.85367698	0.54085096	0.75160492	0.70193076	5.80539721
NEFS 8	20	6.14587542	0.49774919	5.67107922	0.21438394	10.943048	5.61467684	6.41896817	1.65093041	2.54413559	14.5667345	3.38208286	0.53508283	0.50280708	0.59747217	10.1364979
NEFS 9	61	14.5954018	1.73634215	11.8444801	4.79529081	27.9240243	8.25104857	10.5674874	8.32692051	8.30775639	42.6938424	2.43939228	5.83126789	4.15320871	4.23003223	19.1306076
NEFS 10	54	1.18665077	5.98820063	0.31250449	2.60428528	0.01729814	0.55158413	14.5290029	2.09329379	3.70172488	0.01394519	29.412036	0.56897614	0.9765518	1.51673183	1.09138866
NEFS 11	42	0.39391634	11.2178164	0.03566645	2.35454724	0.00080292	0.01738451	2.10445914	1.35253633	1.46687131	0.00089611	1.93373125	0.93657382	2.34478878	6.46137312	0.0181122
NEFS 12	11	0.01544192	2.42504165	0.00263497	0.85919914	0.00075483	0.00225958	0.4827496	0.74895981	0.60752176	0.00250316	0.31607507	1.05934489	2.49635629	2.96056082	0.00360101
NEFS 13	40	6.87095779	0.79634106	13.8229541	0.90375021	16.6707823	14.8586159	3.67078317	3.76898145	4.81822328	5.38540436	1.76812138	3.88140621	1.70573678	2.17270688	10.0915439
New Hampshire Permit Bank	4	0.002125	1.13718652	0.00025965	0.03111747	2.0573E-05	2.0334E-05	0.02180972	0.02848939	0.00615995	5.9866E-06	0.06027462	0.01939591	0.08126819	0.11089343	7.9026E-05
Maine Coast Community Groundfish Sector (MCCGS)	45	0.20828588	4.58907653	0.03757668	2.53001209	0.00351803	0.66496359	1.05176509	7.52094581	5.02756849	0.0065623	1.96277981	2.48931464	4.26339025	3.75726954	0.19387192
Sustainable Harvest Sector 1	112	18.6953063	19.2745888	32.2067928	42.1860366	12.441201	7.94376514	12.8293905	39.3694466	34.3347969	15.8851821	9.48927561	49.829961	50.1142043	38.1506488	18.3102586
Sustainable Harvest Sector 3	19	0.4304407	0.55488564	0.3671855	0.28452918	0.43792109	2.8994008	2.31123392	0.79542099	1.19740256	0.17017439	2.49489514	0.21828658	0.22534057	0.07409997	2.1209896
Tri-State Sector	18	0.6763948	0.36086124	1.44830987	0.44038621	7.25499329	1.35708849	1.33100555	0.9280913	0.85320364	1.92173843	1.39886502	0.00377571	0.0172148	0.03310197	0.21068652
Common Pool	530	1.63653031	1.8804717	0.27425965	0.70630859	1.14794574	20.0157789	2.41954577	1.66932394	1.52688837	0.58047463	3.41568986	0.40520066	0.79979478	0.64516507	11.7692812

\* The data in this table are based on FY 2012 sector rosters.

^ Percentages have been rounded to two decimal places this table, but seven decimal places are used in calculating ACEs. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

† For FY 2013, 5.31 percent of the GB cod ACL would be allocated for the Eastern U.S./Canada Area, while 15.09 percent of the GB haddock ACL would be allocated for the Eastern U.S./Canada Area.

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

Table 2. Proposed ACE (in 1,000 lbs), by stock, for each sector for FY 2013.\*^†

Sector Name	FY 2012 Permit Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder ‡	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	106	57	1,070	41	527	3,148	6	TBD	4	20	17	11	2	32	646	433	2,230	36
MCCGS	45	0	8	84	3	19	10	TBD	8	11	235	68	1	31	556	315	1,068	5
Maine Permit Bank	11	0	5	21	4	22	5	TBD	0	3	36	10	0	7	184	122	480	0
NCCS	27	0	6	13	10	60	1	TBD	9	6	5	3	5	14	98	63	128	8
NEFS 2	81	12	228	334	981	5,863	68	TBD	18	201	251	173	255	287	3,568	465	3,457	87
NEFS 3	81	3	48	279	12	72	40	TBD	5	96	132	40	2	167	307	354	1,999	22
NEFS 4	49	8	156	163	440	2,630	34	TBD	29	53	290	114	54	81	1,481	592	1,668	22
NEFS 5	30	4	67	2	287	1,714	1	TBD	294	7	35	17	144	1	53	14	72	336
NEFS 6	19	6	108	45	242	1,446	16	TBD	65	30	119	68	110	58	1,186	289	935	51
NEFS 7	21	9	170	8	310	1,855	2	TBD	51	28	108	42	887	13	121	56	200	155
NEFS 8	20	12	232	9	469	2,806	1	TBD	71	68	52	34	1,133	53	120	37	170	270
NEFS 9	61	30	552	32	980	5,860	20	TBD	104	112	261	112	3,321	38	1,303	307	1,202	510
NEFS 10	54	2	45	110	26	155	11	TBD	7	153	66	50	1	463	127	72	431	29
NEFS 11	42	1	15	205	3	18	10	TBD	0	22	42	20	0	30	209	173	1,837	0
NEFS 12	11	0	1	44	0	1	4	TBD	0	5	23	8	0	5	237	184	842	0
NEFS 13	40	14	260	15	1,144	6,839	4	TBD	187	39	118	65	419	28	867	126	618	269
New Hampshire Permit Bank	4	0	0	21	0	0	0	TBD	0	0	1	0	0	1	4	6	32	0
Sustainable Harvest Sector 1	112	38	707	353	2,665	15,935	174	TBD	100	135	1,232	462	1,236	150	11,131	3,703	10,844	488
Sustainable Harvest Sector 3	19	1	16	10	30	182	1	TBD	36	24	25	16	13	39	49	17	21	57
Tri-State Sector	18	1	26	7	120	717	2	TBD	17	14	29	11	149	22	1	1	9	6
Sectors Total	851	200	3,719	1,795	8,253	49,340	409	TBD	1,005	1,030	3,078	1,324	7,733	1,522	22,247	7,331	28,241	2,354
Common	530	3	62	34	23	136	3	TBD	252	26	52	21	45	54	91	59	183	314

\*The data in this table are based on FY 2012 sector rosters. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs and FY 2012 membership to estimate each sector's ACE.

‡ FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

Table 3. Proposed ACE (in metric tons), by stock, for each sector for FY 2013.\*^†

Sector Name	FY 2012 Permit Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder ‡	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock	SNE/MA Winter Flounder
Fixed Gear Sector	106	26	485	19	239	1,428	3	TBD	2	9	8	5	1	15	293	196	1,012	16
MCCGS	45	0	4	38	1	8	5	TBD	4	5	107	31	0	14	252	143	484	2
Maine Permit Bank	11	0	2	10	2	10	2	TBD	0	2	17	4	0	3	83	55	218	0
NCCS	27	0	3	6	5	27	1	TBD	4	3	2	1	2	6	45	29	58	4
NEFS 2	81	6	103	152	445	2,660	31	TBD	8	91	114	79	116	130	1,619	211	1,568	40
NEFS 3	81	1	22	126	5	33	18	TBD	2	44	60	18	1	76	139	161	907	10
NEFS 4	49	4	71	74	200	1,193	15	TBD	13	24	132	52	25	37	672	268	757	10
NEFS 5	30	2	31	1	130	777	1	TBD	134	3	16	8	65	1	24	6	33	153
NEFS 6	19	3	49	21	110	656	7	TBD	30	14	54	31	50	26	538	131	424	23
NEFS 7	21	4	77	4	141	841	1	TBD	23	13	49	19	403	6	55	25	90	70
NEFS 8	20	6	105	4	213	1,273	0	TBD	32	31	23	16	514	24	54	17	77	123
NEFS 9	61	13	250	14	445	2,658	9	TBD	47	51	118	51	1,506	17	591	139	545	231
NEFS 10	54	1	20	50	12	70	5	TBD	3	70	30	23	0	210	58	33	196	13
NEFS 11	42	0	7	93	1	8	4	TBD	0	10	19	9	0	14	95	79	833	0
NEFS 12	11	0	0	20	0	1	2	TBD	0	2	11	4	0	2	107	84	382	0
NEFS 13	40	6	118	7	519	3,102	2	TBD	85	18	54	29	190	13	393	57	280	122
New Hampshire Permit Bank	4	0	0	9	0	0	0	TBD	0	0	0	0	0	0	2	3	14	0
Sustainable Harvest Sector 1	112	17	321	160	1,209	7,228	79	TBD	45	61	559	209	560	68	5,049	1,680	4,919	222
Sustainable Harvest Sector 3	19	0	7	5	14	82	1	TBD	17	11	11	7	6	18	22	8	10	26
Tri-State Sector	18	1	12	3	54	325	1	TBD	8	6	13	5	68	10	0	1	4	3
Sectors Total	851	90	1,687	814	3,744	22,380	186	TBD	456	467	1,396	601	3,508	690	10,091	3,325	12,810	1,068
Common	530	2	28	16	10	62	1	TBD	114	12	24	9	20	24	41	27	83	142

\*The data in this table are based on FY 2012 rosters. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE at the start of the FY.

† We have used preliminary ACLs and FY 2012 membership to estimate each sector's ACE.

‡ FW 50 includes a range of ACLs for GB yellowtail flounder. We will determine the ACL in the final rule implementing FW 50.

### Sector Operations Plans and Contracts

We received 18 sector operations plans and contracts by the September 4, 2012, deadline. Each sector has elected to submit a single document that is both its contract and operations plan. Therefore, these submitted operations plans not only contain the rules under which each sector would fish, but also provide the legal contract that binds each member to the sector. The sector formerly known as the Port Clyde Community Groundfish Sector has submitted its operations plan under a new name, the Maine Coast Community Groundfish Sector. Despite the extended time for joining a sector, most sectors have already demonstrated that at least three members plan to join the sector for FY 2013. The Tri-State Sector has not yet complied with this requirement, and will not be approved in the final rule unless it can demonstrate that three members plan to join the sector. Most sectors proposed operations plans are for a single FY, i.e., FY 2013. NEFS 4 submitted a 2-year operations plan, however, because the EA only analyzes operations in FY 2013, we are only proposing to approve NEFS 4 to operate in FY 2013. Each sector's operations plan, and sector members, must comply with the regulations governing sectors, which are found at § 648.87. In addition, each sector must conduct fishing activities as detailed in its approved operations plan.

Any permit holder with a limited access NE multispecies permit that was valid as of May 1, 2008, is eligible to participate in a sector, including an inactive permit currently held in confirmation of permit history (CPH). If a permit holder officially enrolls a permit in a sector and the FY begins, then that permit must remain in the sector for the entire FY, and cannot fish in the NE multispecies fishery outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted in the letter of authorization (LOA) issued by the Regional Administrator, which details any approved exemptions from regulations. If, during a FY, a sector requests an exemption that we have already approved, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any amendments require modifications to LOAs, we would include these changes in updated LOAs and provide these to the appropriate sector members.

Each sector is required to ensure that it does not exceed its ACE during the

FY. Sector vessels are required to retain all legal-sized allocated NE multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated NE multispecies stocks by a sector's vessels count against the sector's allocation. Catch from a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery or with exempted gear) targeting dogfish, monkfish, skate, and lobster (with non-trap gear) would be deducted from the sector's ACE because these trips use gear capable of catching groundfish. Catch from a trip in an exempted fishery does not count against a sector's allocation because the catch is assigned to a separate ACL sub-component.

We provide sectors with calculated discard rates to apply to unobserved sector trips, based on discard rates from observed trips. Amendment 16 required sectors to develop independent third-party DSM programs to verify landed weights reported by the dealer. We previously funded DSM for FY 2010 and part of FY 2011, but suspended DSM for the remainder of FY 2011 and 2012. However, the Council, through FW 48, has proposed to eliminate the requirement for DSM for FY 2013. Therefore, as the most conservative option, we are proposing the sector's DSM programs as described in their operations plans, which mirror standards included in the regulations at § 648.87b(5).

For FYs 2010 and 2011, there was no requirement for an industry-funded ASM program, but NMFS was able to fund an ASM program with a target ASM coverage rate of 30 percent of all trips. For FY 2012, we conducted an analysis to determine the FY 2012 ASM coverage rate that would be necessary to achieve the same level of precision as attained by the target 30-percent ASM coverage rate used for FY's 2010 and 2011, and ultimately set a target ASM coverage rate for FY 2012 of 25 percent, which was 17 percent more than the 8-percent Northeast Fishery Observer Program (NEFOP) coverage that supports the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments.

Sectors are required to design, implement, and fund an ASM program in FY 2013 that will provide a level of ASM coverage specified by NMFS. Amendment 16 regulations require NMFS to specify a level of ASM coverage that is sufficient to at least meet the same coefficient of variation (CV) specified in the SBRM and also to accurately monitor sector operations.

FW 48 includes proposed provisions intended to clarify what level of ASM coverage is expected to meet these goals. Regarding meeting the SBRM CV level, FW 48 proposes that this determination should be made at the overall stock level which is consistent with the level NMFS determined was necessary in FY 2012. FW 48 also amends the goals of the sector monitoring program to include achieving an accuracy level sufficient to minimize effects of potential monitoring bias.

Taking these proposed provisions of FW 48 into account, and interpreting the ASM monitoring provision in the context of Magnuson-Stevens Act requirements and National Standards, we have determined that the appropriate level of ASM coverage should be set at the level that meets the CV requirement specified in the Standardized Bycatch Reporting Methodology and minimizes the cost burden to sectors and NMFS to the extent practicable, while still providing a reliable estimate of overall catch by sectors needed for monitoring ACEs and ACLs. Based on this standard, NMFS has determined that the appropriate ASM coverage rate for FY 2013 is 14 percent, in addition to the expected 8-percent coverage rate provided under NEFOP. We expect these two programs to result in coverage of 22 percent of all sector trips, and we will use the discards from these observed and monitored trips to calculate discards for unobserved sector trips. We have published a more detailed summary of the supporting information, explanation and justification for this decision at: [http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013\\_Multi-species\\_Sector\\_ASM\\_Requirements\\_Summary.pdf](http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multi-species_Sector_ASM_Requirements_Summary.pdf).

This summary, in addition to providing sectors and the public with a full and transparent explanation of the appropriate level of ASM coverage of sector operations, complies with a settlement agreement entered into by NMFS and Oceana, Inc. The settlement agreement resolved a lawsuit brought by Oceana challenging the approval of the 2012 sector operations plans primarily on grounds that the agency failed to adequately justify and explain that the ASM coverage rate specified for FY 2012 would accurately monitor the catch to effectively enforce catch limits in the groundfish fishery.

FW 48 includes an option to remove the requirement for industry to pay for ASM coverage in FY 2013, but the decision to approve or disapprove this proposed measure will be made by NMFS in its review of FW 48. Therefore, as the most conservative option, we are

proposing the sector's ASM programs as described in their operations plans. We gave sectors the option to design their own programs in compliance with regulations, or opt for the program that we have previously utilized during FYs 2010–2012. ASM programs proposed by the sectors are described in detail later in this rule.

Sectors are required to monitor their allocations and catch, and submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all fishing operations in that stock area until it acquires more fish, unless that sector has an approved plan to fish without ACE for that stock. ACE may be transferred between sectors, but transfers to or from common pool vessels is prohibited. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract. A sector and sector members can be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector operations plan submitted for FY 2013 states that the sector would withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract details the method for initial ACE sub-allocation to sector members. For FY 2013, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector.

#### Requested FY 2013 Exemptions

Sectors requested 39 exemptions from the NE multispecies regulations through their FY 2013 operations plans. We evaluate each exemption to determine whether it is consistent with the goals and objectives of the FMP. Requests are grouped into several categories in this rule: Exemptions previously approved

that we propose to approve for FY 2013 (numbers 1–16); exemptions previously approved for which we have concern (17–19); requested exemptions that were previously denied, but we are proposing for approval (numbers 20–22); new exemption requests we propose to approve for FY 2013 (numbers 23–25); requested exemptions that we propose to deny because they are being considered in a future rulemaking (26–30); requested exemptions that we propose to deny because they are prohibited (numbers 31–35), and requested exemptions that we propose to deny because they were previously rejected and no new information was provided (numbers 36–39). A discussion of the 25 exemptions proposed for approval appears below. We request public comment on the proposed sector operations plans and our proposal to grant 25 requested exemptions and deny 14 requested exemptions, as well as the EA prepared for this action. We are particularly interested in receiving comments on several exemptions and other sector provisions, as discussed below.

#### *Exemptions We Propose To Approve in FY 2013 (1–16)*

In FY 2012, we exempted sectors from the following requirements, all of which have been requested for FY 2013: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) prohibition on a vessel hauling another vessel's gillnet gear; (4) limits on the number of gillnets that may be hauled on GB when fishing under a NE multispecies/monkfish DAS; (5) limits on the number of hooks that may be fished; (6) DAS Leasing Program length and horsepower restrictions; (7) prohibition on discarding; (8) daily catch reporting by sector managers for sector vessels participating in the CA I Hook Gear Haddock Special Access Program (SAP); (9) powering vessel monitoring systems (VMS) while at the dock; (10) DSM for vessels fishing west of 72° 30' W. long.; (11) DSM for Handgear A-permitted sector vessels; (12) DSM for monkfish trips in the monkfish Southern Fishery Management Area (SFMA); (13) Prohibition on fishing inside and outside of the CA I Hook Gear Haddock SAP while on the same trip; (14) 6.5-inch (16.51-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, including the use of codend mesh size as small as 4.5-inch (11.4-cm); (15) Prohibition on a vessel hauling another vessel's hook gear; and (16) the requirement to declare intent to fish in the Eastern U.S./Canada SAP and

the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. A detailed description of these 16 previously approved exemptions can be found in the FY 2012 proposed rule for sector operations (77 FR 8780, February 15, 2012), which is also available at: <http://www.nero.noaa.gov/sfd/multifr/77FR8780.pdf>.

Recently, we expanded the exemption from 6.5-inch (16.51-cm) minimum mesh size requirement for trawl nets to target redfish in the GOM, to include the use of codend mesh size as small as 4.5-inch (11.4-cm) (78 FR 14226, March 5, 2013) which is available at: <http://www.nero.noaa.gov/regs/2013/March/13redfishfr.pdf>. We approved this exemption based on catch information from ongoing research. Along with the exemption that would allow sectors to use a codend with mesh as small as 4.5 inches (11.43 cm) when an observer or at-sea monitor is onboard, we provided sectors with the opportunity to develop industry-funded at-sea monitoring programs for trips specifically targeting redfish. Monitoring all trips targeting redfish is necessary to adequately monitor bycatch thresholds and ensure compliance.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns about the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips utilizing the 4.5-inch (11.4-cm) redfish exemption are not representative of standard sector trips, we are concerned that including

the data from the 4.5-inch (11.4-cm) redfish exemption in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we propose to allow sectors to use the 4.5-inch (11.4-cm) redfish exemption only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent of 4.5-inch (11.4-cm) redfish exemption trips. A sector vessel wishing to use this exemption would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use the 4.5-inch (11.4-cm) redfish exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of the 4.5-inch (11.4-cm) redfish exemption and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke the 4.5-inch (11.4-cm) redfish exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of these exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption during the FY, if necessary to mitigate impacts.

#### *Exemptions of Concern That We Previously Approved (17–19)*

In FY 2012, we granted sectors exemptions from the following requirements, all of which have been requested again for FY 2013: (17) Limits on the number of gillnets imposed on Day gillnet vessels; (18) the GOM sink gillnet mesh exemption in May, and January through April; and (19) gear requirements in the Eastern U.S./Canada Management Area. We are concerned about continuing to grant these requests based on data analyzed for this rule and are requesting additional comment on these exemptions. Below is a description of these exemptions and our concerns:

#### **17. Limits on the Number of Gillnets Imposed on Day Gillnet Vessels**

The NE Multispecies FMP limits the number of gillnets a Day gillnet vessel may fish in the groundfish regulated mesh areas (RMA) to prevent an uncontrolled increase in the number of nets being fished, thus undermining the applicable DAS effort controls. The limits are specific to the type of gillnet within each RMA: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). We previously approved this exemption in FYs 2010, 2011, and 2012 to allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA to provide greater operational flexibility to sector vessels in deploying gillnet gear. Sectors argued that the gillnet limits were designed to control fishing effort and are no longer necessary because sectors' ACEs limit overall fishing mortality. However, a preliminary effort analysis of all sector vessels using gillnet gear indicates an increase in gear used in the RMA with no corresponding increase in catch efficiency, resulting in no increase in efficiency and more gear being deployed, which could lead to an increase in interactions with protected species. We are concerned that continued approval of the exemption on gillnet limits could ultimately lead to a rise in interactions with protected species and are requesting comment on approving this exemption for FY 2013.

#### **18. GOM Sink Gillnet Mesh Exemption in May, and January Through April**

The minimum mesh size requirements of 6.5 inches (16.5 cm) in the GOM RMA was implemented to reduce overall mortality on groundfish

stocks, to reduce discarding, and improve survival of sub-legal groundfish. We previously approved two separate seasonal exemptions from the minimum mesh size requirement in the GOM for FYs 2010–2012 to allow a sector vessel to use 6-inch (15.24-cm) mesh stand up gillnets in the GOM RMA. The initial exemption allowed use of the exemption January–April. The second exemption added the month of May. We are now combining these requests into a single exemption. Both exemptions provide the opportunity to catch more GOM haddock, a stock previously considered rebuilt, during the months that haddock are most prevalent.

A sector vessel using this exemption would be prohibited from using tie-down gillnets in the GOM during this period. Sector vessels may transit the GOM RMA with tie-down gillnets, provided the nets are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b). Day gillnet vessels in sectors granted the exemption from Day gillnet net limits (exemption 17) will not be subject to the general net limit in the GOM RMA, and will be able to fish up to 150 nets in the GOM RMA. If approved, the LOA issued to a sector vessel that requests this exemption would specify the 150 net restriction to help ensure that the provision is enforceable. If approved, The LOA would not include limits for trip gillnet vessels, because there is currently no limit on the number of nets that participating Trip gillnet vessels may fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

We have two concerns for which we are seeking comment. First, we officially notified the Council on May 30, 2012, that the GOM haddock stock is subject to overfishing and is approaching an overfished condition, based on results from an operational stock assessment. As the GOM haddock ACL and corresponding sector ACEs are reduced, GOM haddock may become a limiting stock, and a sector may no longer need to deploy nets below the minimum mesh size to catch its allocation.

Second, we previously authorized vessels granted this exemption to fish up to 150 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA, and are proposing the same 150 6-inch (15.24-cm) mesh stand-up gillnet limit for FY 2013; however, we are concerned that additional nets could lead to an increase in interactions with protected species, as described in Exemption 17. Given



these concerns, we request public comment on the feasibility of allowing up to 150 nets when fishing under this exemption, as well as overall approval of the GOM Sink Gillnet Mesh exemption in FY 2013.

#### **19. Gear Requirements in the Eastern U.S./Canada Management Area**

The regulations require a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area to use either a Ruhle trawl, a haddock separator trawl, or a flounder trawl (§ 648.85(a)(3)(iii)) to ensure that the U.S./Canada quotas are not exceeded. We approved an exemption from this requirement in FYs 2011 and 2012 to enhance operational flexibility of sectors, reasoning that their overall fishing mortality would continue to be restrained by the sector ACEs.

The proposed FY 2013 ACLs for GB cod and GB yellowtail flounder approved by the Council in FW 50 are dramatically smaller than previous years when we granted this exemption. While each sector remains constrained by its ACE, continued approval of this exemption could limit a sector's ability to target the relatively healthy GB haddock stock. Use of less-selective gears under this exemption could inadvertently hasten the catch of GB cod and yellowtail flounder. This would result in sectors catching their entire FY 2013 allocation for these stocks before they can catch their allocation of GB haddock.

The SAP exemptions discussed below also provide the opportunity for a vessel to catch GB haddock during particular seasons as long as the vessel is using selective gear. Since these SAPs are geographically within the Eastern U.S./Canada Area, extending this gear exemption to the SAP areas may be inconsistent with the original intent of the SAPs. Because of our concern, we propose to restrict this exemption from gear requirements to areas outside of any SAP and are seeking comment on this approach.

#### ***Previously Disapproved Exemptions Under Consideration for Approval (20–22)***

Sectors requested previously disapproved exemptions from the following requirements for FY 2013: (20) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP; (21) seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; and (22) DSM requirements for vessels using hand-operated jig gear. A detailed description of each exemption is included below:

#### **20. Seasonal Restriction for the Eastern U.S./Canada Haddock SAP**

The Eastern U.S./Canada Haddock SAP consists of a portion of the Eastern U.S./Canada Area and a portion CA II. We implemented this SAP in FW 40A to provide a vessel with additional opportunity to target haddock while fishing on a Category B DAS in, and near, CA II (69 FR 67780, November 19, 2004). The May 1 through December 31 opening of the SAP allowed a vessel to fish in the area using gear that reduces the catch of cod and other stocks of concern. In FW 42 (71 FR 62156; October 23, 2006), we extended the approval of this SAP and shortened the season to August 1 through December 31 to further reduce cod catch. We subsequently approved additional gear types for use in this SAP through other actions.

For FY 2012, sectors requested an exemption from the seasonal restrictions of the Eastern U.S./Canada Haddock SAP, to access the SAP area year-round. Because it was unclear whether the Council intended to allow or prohibit access to these SAPs, we disapproved these exemptions for FY 2012. We subsequently proposed the exemption, but expressed concern that an exemption from the seasonal restrictions of SAPs could have negative effects on allocated stocks by allowing an increase in effort in a time and place where those stocks, particularly haddock, aggregate to spawn. The Council subsequently discussed these exemptions in June 2012. In a letter dated June 22, 2012, the Council asked us to open the Eastern U.S./Canada Haddock SAP to trawl vessels using selective gear on May 1, which would provide additional fishing opportunities for the NE multispecies fishery to target healthy stocks.

Sectors argue that because their catch is restricted by ACE, their access to the SAP area, including the northern tip of CA II, should not be seasonally restricted. Sectors further argue that impacts to the physical environment and essential fish habitat (EFH) will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

Data provided by the NMFS Northeast Fisheries Science Center (NEFSC) suggest that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. Therefore, we are concerned that granting this exemption year round, as requested by the sectors, may negatively affect allocated stocks by allowing an

increase in effort in a time and place where those stocks aggregate to spawn. We propose to extend the SAP season, which typically is open from August 1 through December 31; however, due to spawning concerns, we are proposing to allow access to this area from June 1 through December 31, and request comment on whether this limited season is appropriate. For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. To remain consistent with the Council's June 22, 2012, request, we propose limiting a sector vessel to using selective trawl gear when fishing in this SAP.

#### **21. Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP**

We implemented the CA II Yellowtail Flounder SAP through Amendment 13 in 2004 to provide an opportunity for vessels to target yellowtail flounder in CA II on a Category B DAS. This SAP requires a vessel to use either a flounder net or other gears approved for use in the Eastern U.S./Canada Area during the open season from June 1 through December 31. In 2005, we extended the approval of this SAP through FW 40B, but shortened the season to July 1 through December 31 to reduce interference with spawning yellowtail flounder (70 FR 31323, June 1, 2005).

Through Amendment 16, we further revised this SAP in 2010 by opening the SAP to target haddock from August 1 through January 31, when the SAP is not open for targeting of GB yellowtail flounder. Sectors are currently required to comply with the SAP reporting requirements and the restricted season of August 1 through January 31 (§ 648.85(b)(3)(iii)). When the season is open only to target haddock, a vessel may only use approved trawl gear or hook gear; the flounder net is not authorized. We implemented these gear requirements to limit vessels from catching yellowtail flounder when the SAP was open only for targeting haddock.

Unlike the Eastern U.S./Canada Haddock SAP, the CA II Yellowtail Flounder/Haddock SAP provides access to a large area of CA II. Sectors are required to use the same approved gears as the common pool (i.e., haddock separator trawl, Ruhle trawl, or hook gear) to reduce the advantage sector vessels have over common pool vessels. We initially put the seasonal restriction in place to allow vessels to target denser populations of yellowtail flounder and haddock while avoiding cod in the

summer, and spawning NE multispecies in the spring. Sectors argue that their catch is restricted by ACE and their access to the SAP area in CA II should not be restricted. Sectors further argue that impacts to the physical environment and EFH will be negligible because any increase in effort will be minor and the portion of CA II included in this SAP is outside any habitat areas of particular concern (HAPC).

Data provided by the NEFSC suggest that fishing activity in CA II may disrupt spawning stocks of GB winter flounder between March and May, and GB cod between February and April. For FY 2013, we are concerned that granting this exemption year round may negatively effect allocated stocks by allowing an increase in effort in a time and place where those stocks aggregate to spawn. We are proposing to extend the SAP season, which typically is open from August 1 through January 31; however, due to spawning concerns we are proposing to allow access to this area from June 1 through January 31, and request comment on whether this limited season is appropriate. For FYs 2011 and 2012, we granted sectors an exemption from the selective trawl gear requirements of the Eastern U.S./Canada Area, allowing sector vessels to use a standard otter trawl in this SAP. To remain consistent with the Council's June 22, 2012, request, we propose limiting a sector vessel to using selective trawl gear when fishing in this SAP.

## **22. DSM Requirements for Vessels Using Hand-Operated Jig Gear**

In the NE multispecies fishery, we define jigging as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, and which is moved with an up and down motion (§ 648.2). Jigging gear is not exempted gear and, therefore, a vessel using this gear is required to participate in the DSM program so that offload of all NE multispecies trips are adequately monitored.

We received a request to exempt sector vessels using jig gear from DSM requirements, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector argues that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

To gauge the potential impact of approving this exemption, we reviewed observer and ASM data from the 12 monitored trips in FYs 2010 and 2011

that used jig gear. For these trips, discards accounted for approximately 6 percent of the roughly 16,000 lb (7,257 kg) of catch. We believe these discards to be a *de minimis* amount, and are proposing this exemption for approval. This exemption request may be unnecessary, if we approve a proposed provision in FW 48 that would remove DSM requirements beginning in FY 2013.

### ***New Exemptions Proposed for FY 2013 (23–25)***

Sectors requested three new exemptions from the following requirements for FY 2013: (23) The prohibition on fishing in the SNE/MA winter flounder stock area with winter flounder onboard; (24) prohibition on combining small-mesh exempted fishery and sector trips; and (25) sampling exemption. A detailed description of each exemption is included below:

#### **23. Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder on Board**

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.85(b)(6)(v)(F)). A vessel with GOM or GB winter flounder on board may transit through the SNE/MA winter flounder stock area, but may not fish in the SNE/MA winter flounder stock area, and its gear must be stowed in accordance with the provisions of § 648.23(b). This restriction is in place to ensure that the winter flounder on board the vessel did not come from the SNE/MA winter flounder stock area.

Sectors have requested an exemption from the prohibition on fishing in the SNE/MA winter flounder stock area when GOM or GB winter flounder is on board the vessel when either a NEFOP observer or an at-sea monitor is onboard. Sectors assert that the data collection protocols used by observers and at-sea monitors, including documentation of catch (both landings and discards), as well as stock area, would provide the data necessary to differentiate the catch of winter flounder and correctly apportion the winter flounder onboard to the appropriate stock area. Sectors believe that, if approved, this exemption would increase flexibility and efficiency of fishing vessels, allowing vessels to move freely between stock areas when an observer or at-sea monitor is onboard, increase gross revenue per trip, and decrease operating costs.

As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and we are proposing to

require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since a trip returning to fish in the SNE/MA winter flounder stock area with winter flounder onboard is not representative of standard sector trips where this behavior is not allowed, we are concerned that including the data from these exemption trips in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are considering allowing sectors to fish in the SNE/MA winter flounder stock area with winter flounder onboard only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption may therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to fish in the SNE/MA winter flounder stock area with winter flounder onboard would likely not call into PTNS, but would likely provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would likely require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use a closed area exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that

100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved in a future action, we would monitor the impacts of fishing in the SNE/MA winter flounder stock area with winter flounder onboard and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

At its January 30, 2013, meeting, the Council approved a motion to set an ACL for the SNE/MA winter flounder stock for the commercial fishery, and allocate this stock to sectors. Final approval of these measures will be considered in FW 50. If this FW 50 measure is approved, this exemption is no longer needed. We propose this exemption in the event that the FW 50 measure is disapproved. If approved, this exemption may require increased attention to the winter flounder stocks, but we believe that it will remain feasible to adequately monitor catch. However, as we will be relying on observer/monitor data to monitor this exemption, we have some concern that observers and at-sea monitors could be viewed as playing an enforcement role in this situation.

#### **24. Prohibition on Combining Small Mesh Exempted Fishery and Sector Trips**

We implemented minimum mesh size restrictions for the GOM, GB, and SNE regulated mesh areas (RMAs) (§ 648.80(a)(3)(i), (a)(4)(i), (b)(2)(i)) under Amendment 13 (69 FR 22906, 4/27/04) and FW 42, to reduce overall mortality on groundfish stocks, change the selection pattern of the fishery to target larger fish, improve survival of sublegal fish, and allow sublegal fish

more opportunity to spawn before entering the fishery. FW 42 set requirements for trawl codends in the SNE RMA to be made of either square or diamond mesh no smaller than 6.5 inches (16.51 cm), in an effort to reduce discards of yellowtail flounder and increase the rate of yellowtail flounder rebuilding.

Approved large and small mesh exempted fisheries, as described in the regulations, allow a vessel to fish for particular species, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the minimum mesh size allowed in each regulated mesh area. To approve an exempted fishery, after consultation with the Council, we must determine minimal bycatch of regulated NE multispecies (i.e., less than 5 percent, by weight, of total catch), and that the exempted fishery will not jeopardize fishery mortality objectives, publish a proposed rule, solicit comment, and publish a final rule. Exempted fishery regulations allow vessels to fish with small mesh, but prohibit the retention of regulated NE multispecies.

Sectors requested an exemption that would allow their vessels to possess and use both small mesh in an exempted fishery, and large mesh as they normally would on a standard sector trip, on the same fishing trip for the following small-mesh exemption areas: The Cultivator Shoal Whiting Fishery Exemption Area, the Southern New England Small Mesh Exemption Area, and the Mid-Atlantic Small Mesh Exemption Area. The Cultivator Shoal Whiting Fishery is open annually from June 15 through October 31. A vessel participating in this exempted fishery must obtain an LOA, comply with specific gear requirements, may not possess regulated NE multispecies species, and must properly stow gear capable of catching NE multispecies. A vessel may participate in either the SNE or MA Small Mesh exempted fishery year-round, without needing an LOA.

Sectors have stated that they would only utilize this exemption when either a NEFOP observer or an at-sea monitor is aboard the vessel. The sectors propose to count any allocated NE multispecies caught on these combined trips against the sector's allocation. The goal is to allow a vessel to engage in exempted fisheries while on a sector trip and to increase efficiency of time at sea and gross revenue per trip while decreasing vessel-operating costs.

We have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and we propose to require industry-funded monitoring on 100 percent of

trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since a vessel fishing combining sector and small-mesh trips are not representative of standard sector trips, we are concerned that including the data from this exemption in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we propose to allow a sector vessel to combine sector and small-mesh trips only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption if a federally funded observer or at-sea monitor is onboard. Sectors combining sector and small-mesh trips would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to use this exemption would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip.

To aid in identifying these trips, a vessel intending to utilize this exemption on a sector trip would be required to submit a trip start hail identifying the trip as one that will fish on a sector trip and in one of the small mesh exempted fishery areas under the exemption. Since behavior on a trip using this exemption may differ from another standard sector trip, data from a trip using this exemption would not be applied to the calculated discard rate for unobserved trips, nor would the trip count toward the targeted ASM coverage rate for that stratum. To ensure that this

exemption does not negatively affect fish stocks, we would establish a catch threshold that, if exceeded by a sector, could result in the NMFS Northeast Regional Administrator rescinding the approval of this exemption for that sector. To help mitigate catches of groundfish in these exempted fisheries, total groundfish discards would not be allowed to exceed 5 percent of all catch when trawling with small-mesh nets. This threshold was determined to be consistent with incidental catch information used to establish these exempted fishery programs. We would retain the authority to further adjust this threshold, if necessary, to help ensure that vessels are catching minimal amounts of groundfish when fishing with small-mesh nets under this exemption. We request comment on our approach to this exemption.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

We have some concern that, through this exemption, a vessel could target allocated NE multispecies with small mesh, and therefore increase catch of juvenile fish, negatively affecting fish stocks. Currently, large and small-mesh exempted fishery trips are only subject to the 8-percent NEFOP monitoring requirements, and do not receive ASM coverage. Therefore, the vast majority of NEFOP observers and at-sea monitors do not receive the training necessary to accurately observe the small-mesh portion of these trips as proposed, and we are concerned about accurately monitoring both portions of these proposed trips. In addition, we have some concern that observers and at-sea monitors could be viewed as playing an enforcement role when monitoring these trips as proposed. If approved, we would monitor the impacts of combining sector and small-mesh trips and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

## 25. Sampling Exemption

Conducting scientific research on regulated fishing trips may require special permits, depending on the activities proposed. A temporary research permit authorizes a federally permitted fishing vessel that is accompanied by a research technician, typically staff for the principal investigator, to temporarily retain fish that are not compliant with applicable fishing regulations to collect catch data such as length and weight. Under a temporary possession permit, a vessel may be exempt from specific regulations, including: Minimum fish sizes, closures, and possession limits. Sampled fish are returned to the sea as soon as practicable after sampling.

Some sectors proposed independent sampling programs, where data would be collected from fish that otherwise must be immediately discarded, as described above. Since sectors already provide much of the information required in an application as part of the sector's operations plan, we propose to approve sectors for temporary possession permits for research purposes. If approved, this provision would be included in a sector vessel's LOA, which will aid enforcement officials in determining approved activities, with the same restrictions as when a temporary permit is obtained through the application process.

### *Exemptions We Propose To Deny for FY 2013 Due to Separate Rulemaking*

Amendment 16 prohibited sectors from requesting access to year-round closed areas. To increase operational flexibility for vessels participating in sectors as mitigation for reduced ACLs, the Council has included a measure in FW 48 to allow a sector to request access to year-round mortality closure areas through its sector operations plan. Sectors would not be allowed to request access to areas that are closed to protect EFH.

Sectors have requested exemptions for access to the following five year round CAs: (26) Year-round access to the Cashes Ledge Closure Area; (27) year-round access to CA I; (28) year-round access to CA II; (29) year-round access

to the Western GOM Closure Area; and (30) year-round access to the Nantucket Lightship Closed Area. Including these five exemption requests in this rulemaking could delay the approval of sector operations plans and allocations beyond May 1, 2013, due to the rigorous analysis necessary. We intend to deny all exemption requests for access to year-round mortality CAs through this rule, but intend to consider all exemption requests for access to year-round mortality closed areas in a separate action, and anticipate implementation of that action early in FY 2013.

While analysis of these exemptions and development of additional requirements to fish in CAs is not yet complete, we are considering requiring 100 percent monitoring on trips using CA exemptions. As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trip using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips in the closed areas may not be representative of standard sector trips, we are concerned that including the data from these exemptions in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are considering allowing sectors to fish in closed areas only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using these exemptions if a federally funded observer or at-sea monitor is onboard.

Sectors fishing in a closed area may therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption trips. A sector vessel wishing to use this exemption likely would not call into PTNS, but would likely provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we may require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that fishes in a closed area.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of fishing in closed areas and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke these exemptions during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

#### *Requested Exemptions We Propose To Deny Because They Are Prohibited*

We propose denying, and do not analyze in the EA, the following five exemption requests, because they are prohibited or not authorized by the NE multispecies regulations: (31) ASM requirements; (32) ASM requirements for vessels using jig gear; (33) ASM requirements for handgear vessels; (34) Year-round access to the Eastern U.S./Canada Area for trawl vessels; and (35) the prohibition on a vessel hauling another vessel's trap gear.

Sectors are prohibited from requesting exemptions from permitting restrictions,

gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements and DSM requirements). In a letter dated September 1, 2010, we notified the Council that we interpret the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including ASM, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter (copies are available from NMFS, see **ADDRESSES**), we also requested that the Council define which reporting requirements sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to include in FW 45 the removal of DSM from the list of regulations that sectors may not be exempted from, but did not take such action for ASM. Therefore, we will not consider requests for exemptions from ASM.

We propose to deny two additional FY 2013 exemption requests (year-round access to the Eastern U.S./Canada Area for trawl vessels and the prohibition on a vessel hauling another vessel's trap gear) because they fall outside the authorization for exemptions provided in the NE multispecies regulations. The Regional Administrator may impose restrictions or in-season adjustments on a vessel fishing in the Eastern U.S./Canada Area, consistent with the Administrative Procedure Act, including: Gear restrictions; modification of access to the area or the number of trips in the area; or closure of the area to prevent over-harvesting or to facilitate achieving a quota. Since this discretion is left to the Regional Administrator, this request will be considered when determining access to the Eastern U.S./Canada Area, but cannot be considered under the exemption process. Also, tagging requirements for trap gear are not included in the NE multispecies regulations. Vessels holding an American lobster permit are bound by the American lobster tagging requirements.

#### *Requested Exemptions We Propose To Deny Because They Were Previously Rejected and No New Information Was Provided*

We propose to deny the following four exemption requests because they were previously rejected, and the requesting sectors provided no new information that would change our previous decision: (36) Minimum Hook Size for Demersal Longline; (37) Access to the April GOM Rolling Closure (Blocks 124 and 132); (38) Access to the May GOM Rolling Closure (Block 138);

and (39) all DSM requirements. We did not analyze these exemptions in the FY 2013 sector EA because no new information was available to change the analyses previously published in past EAs. Detailed information on these exemption requests and the reasons they were previously denied is contained in the proposed and final sector rule for FY 2012 (77 FR 8780, February 15, 2012; and 77 FR 26129, May 2, 2012, respectively), and its accompanying EA (as well as previous years' rules and EAs).

#### **Additional Sector Provisions**

##### *Provisions To Fish Without ACE*

Under regulations at § 648.87(b)(2)(xiv), a sector may propose a program to fish on a sector trip in fisheries that are known to have a bycatch of NE multispecies when it does not have ACE for certain NE multispecies stocks, if the sector can show that the limiting NE multispecies will be avoided. The regulations currently restrict this provision to participation in other fisheries (e.g., dogfish, monkfish, and skate) that have a bycatch of groundfish that would count against the sector's ACE. We had intended to make a correction to this regulation to make the regulations consistent with Section 4.2.3.4 (Mortality/Conservation Controls) of Amendment 16, which would allow a sector to request authorization to target allocated NE multispecies under this provision in FY 2013. That section of Amendment 16 specified that a sector operations plan should detail “\* \* \* a plan for operations or stopping once the ACEs of one or more species are taken.” That paragraph concluded by stating, “The plan must provide assurance that the sector would not exceed the ACEs allocated to it (either through landings or discards).” Knowing that we intended to make this correction, sectors submitted requests to target allocated NE multispecies stocks. However, based on a review of Amendment 16, we believe that additional impacts analysis may be necessary, and intend to make this correction in a future action for FY 2014.

Prior to developing requests to fish with no ACE for a particular stock, we provided sectors with guidance that they must provide specific operational requirements (location, time, and gear), the species or stocks they intend to target, and demonstrate zero catch of any stock for which they do not have ACE (“limiting stock”) using their observer and ASM data from FY 2011. We received multiple requests from the GB Cod Fixed Gear Sector and NEFS 5

to fish under this provision. These requests are summarized in the table below.

TABLE 4—SECTOR REQUESTS TO FISH WITH NO ACE

Requesting sector	Target stock	Limiting stock	Season	Location (statistical area)	Gear restrictions	Overlap with existing exempted fishery?†
NEFS 5 .....	Monkfish .....	GB West Cod .....	September thru April.	539, 613 and 616	Trawl .....	Yes.
NEFS 5 .....	Monkfish .....	GB Yellowtail .....	June .....	522 .....	Trawl .....	No.
NEFS 5 .....	Summer Flounder.	GB West Cod .....	October thru April	611, 613 and 616	Trawl .....	No.
NEFS 5 .....	Little Skate (bait)	GB West Cod .....	February .....	537 and 613 .....	Trawl .....	Yes.
NEFS 5 .....	Winter Skate Wing.	GB West Cod .....	June .....	522 .....	Trawl .....	No.
NEFS 5 .....	Witch flounder ....	GB West Cod .....	February thru April.	539 .....	Trawl .....	No.
NEFS 5 .....	GB yellowtail flounder.	GB West Cod .....	January thru April	525 and 613 .....	Trawl .....	No.
Fixed Gear Sector .....	Monkfish .....	one or more ACE stocks.	November through June.	521 .....	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Monkfish .....	one or more ACE stocks.	Year-round .....	526 .....	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Monkfish .....	one or more ACE stocks.	May through March.	537 .....	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	Year-round .....	521 .....	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	Year-round .....	526 .....	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Winter Skate .....	one or more ACE stocks.	November through June.	521 .....	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Winter Skate .....	one or more ACE stocks.	Year-round .....	526 .....	Extra Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Winter Skate .....	one or more ACE stocks.	Year-round .....	537 .....	Extra Large Mesh Gillnet.	Yes.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	Year-round .....	514 .....	Large Mesh Gillnet.	Yes.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	August through June.	521 .....	Large Mesh Gillnet.	Yes.*
Fixed Gear Sector .....	Winter Skate .....	one or more ACE stocks.	Year-round .....	521 .....	Large Mesh Gillnet.	No.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	Year-round .....	514 .....	Longline .....	No.
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	September through June.	521 .....	Longline .....	Yes.*
Fixed Gear Sector .....	Spiny Dogfish ....	one or more ACE stocks.	Year-round .....	521 .....	Handgear .....	Yes.*

\*Overlap with a proposed exempted fishery.

†Exempted fisheries have been demonstrated to catch less than 5 percent bycatch of regulated NE multispecies and not jeopardize fishing morality objectives.

Many of these proposals to continue fishing after the sector catches one or more ACEs have some geographical and temporal overlap with existing, or proposed, large-mesh exempted fisheries, including: The SNE Monkfish and Skate Exemption Area for both trawl and gillnet vessels; the Mid-Atlantic Exemption Area; the GOM/GB Dogfish Exemption Area for gillnet vessels; and a proposed GB Dogfish Exemption for gillnet, longline, and handgear vessels (77 FR 64305; October 19, 2012). These exempted fisheries were, or are in the process of being, established because the incidental catch

of regulated NE multispecies stocks has been demonstrated to be less than 5 percent of all catch, and the exempted fishery will not jeopardize fishing mortality objectives. A vessel participating in an exempted fishery declares out of the NE multispecies fishery and therefore may not retain any regulated NE multispecies caught. Any sector vessel may currently fish in these large-mesh exempted fisheries, as well as small-mesh exempted fisheries, outside of the sector program without requiring ACE. Descriptions and additional information on approved exempted fisheries are available on our

Web site at: <http://www.nero.noaa.gov/nero/regs/info.html>.

We reviewed both vessel trip report (VTR) and observer/ASM data from FYs 2010 and 2011 for the requests to fish without ACE. This data indicate that very few sector trips from FYs 2010 and 2011 met the standard of zero catch of the limiting stock outlined in the guidance we issued to sectors. However, the data for several of the requests indicate that the limiting stock was less than 1 percent of the total catch. The requests meeting the less than 1-percent threshold are summarized below and are proposed for approval.

TABLE 5—REQUESTS TO FISH WITHOUT ACE PROPOSED FOR APPROVAL

Sector	Limiting stock	Stat area	Gear	Target stock	Time period
GB Cod Fixed Gear Sector	All ACE Stocks .....	526	Extra Large Mesh Gillnet	Monkfish .....	Year Round.
		537	Extra Large Mesh Gillnet	Dogfish	
				Winter Skate	
			Large Mesh Gillnet .....	Monkfish .....	May–March.
NEFS 5 .....	GB West Cod .....	611	Standard Otter Trawl .....	Winter Skate .....	Year Round.
				Summer Flounder .....	Year Round.
		613		Summer Flounder Monkfish	Oct–April.

Unlike approved exemptions, which may be granted to any interested sector, these provisions to fish without ACE are sector-specific. Should any of these provisions be approved, it would be based on the documented behavior of individual sectors; therefore, the approval would be limited to the requesting sector.

For this provision, NEFS 5 proposed to require its participating vessels to submit trip start and trip end hails to the sector manager. If an NEFS 5 vessel encountered a limiting stock, the sector proposed requiring the vessel to land any amount of that limiting stock of legal size, and prevent that vessel from taking a subsequent fishing trip until that specific ACE is covered through a transfer. Under this proposal, the NEFS 5 may charge the member additional fees for encountering the limiting stock. The GB Cod Fixed Gear sector did not propose such provisions. To implement a consistent program for both sectors, we are proposing the following requirements for a vessel participating in an approved program to fish without ACE.

To aid in identifying these trips, a vessel intending to utilize this exemption on a sector trip would be required to submit a trip start hail identifying the trip as one that will fish in an approved program to fish with no ACE for a given stock. These hail reports would help us, as well as the sector manager, identify a trip fishing under this provision for monitoring purposes. Either sector may also require its participating vessels to submit a trip end hail, as detailed in the operations plan.

We also propose to allow these sectors to catch a *de minimis* amount of the limiting stock (up to 100 lb (45.36 kg)), prior to canceling a sector's ability to utilize that approved program. The sector would be required to account for

any amount of the limiting stock that is landed and therefore would need to transfer in additional ACE by the end of the FY to cover such an overage. Once a sector reaches the *de minimis* threshold of 100 lb (45.36 kg), the sector may transfer in additional ACE and resume normal fishing activity, but may not attempt to fish under this provision for the remainder of this FY.

We propose to require 100-percent ASM coverage of trips wishing to fish under this provision. We have significant concern with approving a provision to allow a sector to fish without ACE, and believe that 100-percent ASM coverage would be necessary for accurate monitoring, given the very low 2013 quotas for some of the stocks. Because all sector trips that currently are not assigned an observer or monitor receive a calculated discard rate based on the total catch from that trip and actual discards from monitored trips in the same area with the same gear, we cannot apply a calculated discard rate for the limiting stock or the sector could automatically exceed its ACE for the limiting stock on every trip. Requiring 100-percent monitoring ensures that the trip will have accurate discard information.

As explained above, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trips using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We are also concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for

federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, this provision may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips fishing with no ACE of a limiting stock are not representative of standard sector trips, we are concerned that including the data from this provision in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are proposing to allow sectors to fish with no ACE of a limiting stock only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this provision if a federally funded observer or at-sea monitor is onboard. Sectors fishing with no ACE of a limiting stock would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent this provision trips. A sector vessel wishing to use this provision would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this provision to submit trip start hail identifying the trip as one that is fishing with no ACE of a limiting stock.

Third, given the need to have additional at-sea monitors available to



cover these trips and the administrative costs to NMFS associated with industry-funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of fishing with no ACE of a limiting stock and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this provision during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

We have significant concern with approving a provision to allow a sector to fish without ACE, given the very low 2013 quotas for some NE multispecies stocks. We request comment on these proposed programs to fish with no ACE.

#### *Inshore GOM Restrictions*

Several sectors (with the exception of the Northeast Coastal Communities Sector, NEFS 4, Port Clyde Community Groundfish Sector, and the Tri-State Sector) have proposed a provision to limit and more accurately document a vessel's behavior when fishing in what they consider the inshore portion of the GOM Broad Stock Area (BSA), or the area to the west of 70° 15' W. long. A trip that is carrying an observer or at-sea monitor would remain free to fish without restriction. As proposed under the Inshore GOM Restriction provision, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip in the GOM west of 70° 15' W. long, the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or at-sea monitor and fishes any part of its trip outside the GOM BSA, this provision would prohibit a vessel from fishing west of 70° 15' W. long. in the GOM BSA. The sector's proposal

includes a requirement for a vessel to declare whether or not it intends to fish in the inshore GOM area through the trip start hail. We are providing sector managers with the ability to monitor this provision through the Sector Information Management Module (SIMM), a Web site where we currently provide roster, trip, discard, and observer information to sector managers. If approved, final declaration requirements would be outlined in the final rule and included in each vessel's LOA. We propose to allow a sector to use a federally funded NEFOP observer or at-sea monitor on these trips because we do not believe will create bias in coverage or discard estimates, as fishing behavior is not expected to change as a result of this provision, as fishing behavior is not expected to change as a result of this provision.

#### *At-Sea Monitoring Proposals*

For FY 2013, each sector is required to develop and fund an ASM program that must be reviewed and approved by NMFS. In the event that a proposed ASM program could not be approved, all sectors were asked to include an option to use the current NMFS-designed ASM program as a back-up. NEFS 4 has not included provisions for an ASM program because the sector operates as a private permit bank and explicitly prohibits fishing. Sustainable Harvest Sectors 1 and 3 have proposed to utilize the ASM program that we developed and used for FYs 2010–2012. We propose this program for the Sustainable Harvest Sectors because we believe the existing program to be consistent with goals and objectives of monitoring, and with regulatory requirements. As requested, the remaining 15 sectors stated that they would use the NMFS-developed ASM program in the event that we did not approve their individual ASM program for FY 2013.

We propose to approve the ASM programs proposed by the GB Cod Fixed Gear Sector, the Northeast Coastal Communities Sector, the Port Clyde Community Groundfish Sector, and the Tri-State Sector. These programs state that they will: Contract with a NMFS-approved ASM provider, meet the specified coverage level, and utilize the PTNS for random selection of monitored trips and notification to providers. In addition, these proposed ASM programs detail protocols for waivers, incident reporting, and safety requirements. We believe that the proposed programs are consistent with goals and objectives of monitoring, and with regulatory requirements.

The NEFS 2–13 (excluding NEFS 4) submitted similar ASM proposals, which included two alternatives. The first alternative included a “fixed discard rate method,” where a fixed discard rate would be applied to each stratum (sector, stock, gear combination) throughout the year, and adjusted as necessary based on NEFOP observer coverage, and no ASM coverage would be required. The second proposal is a program that would meet the required coverage levels, as well as vessel call-in requirements and selection protocols through the NMFS pre-trip notification system. We propose to deny the “fixed discard rate method” because it is not consistent with the 2009 Peer Review of the discard rate methodology, which recommended continual and retroactive in-season updates to the discard rates for all trips using data from the ASM and NEFOP programs. Further, the 2009 Peer Review recommended revisiting the methodology after at least 3 full years of data are collected. Given that sectors are in the midst of their third year of operations (FY 2012), it is too soon to revisit the methodology. A review of the cumulative discard methodology is planned for the summer/fall of 2013. At that time, we will reconsider other possible methods of determining discards. The “fixed discard rate method” did not meet the coverage rate requirements specified in the regulations at § 648.87(b)(1)(v)(B)(3)(ii). Finally, the “fixed discard rate method” did not include a proposed ASM program that addressed the ASM operations requirements at § 648.87(b)(6). Consequently, we propose to deny the “fixed discard rate method.”

The second alternative mirrors the ASM programs proposed by other sectors, and states that the NEFS 2, 3, and 5–13 will: Contract with a NMFS-approved ASM provider, meet the specified coverage level, and utilize the PTNS for random selection of monitored trips and notification to providers. In addition, these proposed ASM programs detail protocols for waivers, incident reporting, and safety requirements. We therefore propose to approve Alternative 2 for ASM for NEFS 2, 3, and 5–13 and believe the proposed Alternative is consistent with goals and objectives of monitoring and with regulatory requirements.

The current regulations require a sector to fund its ASM program beginning in FY 2013. We hope to be able to help the industry's transition to entirely funding its ASM costs through a short-term program that mitigates the industry's costs in FY 2013. However, the portion of industry's ASM costs that



we can defray, and a mechanism for this transitional program, are not yet settled. Additional information on funding and implementation of ASM for FY 2013 will be provided at a future date. We are working on a solution to help with this transition that will be flexible and help defray the industry's costs to the extent we are able.

#### *Additional Industry-Funded ASM*

This rule proposes several exemptions requiring observer or ASM coverage. Additional monitoring coverage for these exemptions and provisions was not included in any FY 2013 operations plan; however, additional coverage could be considered, if a sector requests an industry-funded ASM program through its operations plans. If approved, any additional industry-funded ASM plan would be implemented through an amendment to the sector's operations plan.

For 2013, we have received requests to use several new exemptions when only an observer or at-sea monitor is onboard, and are proposing to require industry-funded monitoring on 100 percent of trip using one of these exemptions or certain other proposed provisions, discussed in Other Sector Provisions. We have numerous concerns with the impact of additional monitoring requirements on existing required monitoring programs. We also are concerned that the cost of this monitoring may limit the benefit of these exemptions to industry.

First, we are concerned that allowing trips that are randomly selected for federally-funded NEFOP or ASM coverage through the pre-trip notification system (PTNS) to use one of these exemptions/provisions would provide an incentive to use the exemption/provision on this trip. This

would reduce the number of observers/monitors available to cover standard sector trips (i.e., trips not utilizing these exemptions/provisions). If fewer observers/monitors deploy on standard sector trips, these exemptions/provisions may undermine the ability to meet required coverage levels on standard sector trips, and the reliability of discard rates calculated for unobserved trips.

Second, since trips utilizing these exemptions/provisions are not representative of standard sector trips, we are concerned that including the data from these exemptions/provisions in the pool of data used to calculate discard rates for unobserved standard sector trips would bias discard estimates. To address this concern, we are proposing to allow sectors to use the exemptions/provisions only if an industry-funded monitor is onboard the trip, and to prohibit a sector vessel from using this exemption/provision if a federally funded observer or at-sea monitor is onboard. Sectors using this exemption/provision would therefore be required to pay for 100 percent of the at-sea cost for a monitor on 100 percent these exemption/provision trips. A sector vessel wishing to use this exemption/provision would not call into PTNS, but would provide notification through a separate system, to prevent a federally funded observer/monitor from being assigned to the trip. To aid in identifying these trips for monitoring purposes, we would require a vessel utilizing this exemption to submit trip start hail identifying the trip as one that use the exemption/provision.

Third, given the need to have additional at-sea monitors available to cover these trips and the administrative costs to NMFS associated with industry-

funded monitors, we are concerned that 100-percent monitoring coverage for one or more of these exemptions/provisions could prevent us from providing the required regulatory observer or ASM coverage.

If approved, we would monitor the impacts of this exemption/provision and the associated industry-funded monitoring on stocks and required monitoring programs. We propose to revoke this exemption/provision during the FY, if necessary, to mitigate any negative impacts. For example, if we were to find an increase in the number of ASM waivers being issued to standard sector trips from FY 2012, we may consider revoking these exemptions/provisions to decrease the number of monitors being deployed on exemption/provision trips to increase monitoring coverage for standard sector trips.

We specifically request comment on requiring industry-funded monitoring on 100 percent of trips using one or more of these exemptions/provisions and the degree to which industry would be able to take advantage of the exemptions/provisions, if required to pay for this monitoring. We also request comment on revoking this exemption/provision during the FY, if necessary to mitigate impacts.

#### **Approved ASM and DSM Providers**

We published a notice (78 FR 10136) on February 13, 2013, announcing approved providers for ASM and DSM in the NE multispecies fishery for FY 2013, which included incorrect approval information. Table 6 correctly indicates the companies approved to provide ASM and DSM. A bulletin dated February 12, 2013, was provided to the industry with the correct information.

TABLE 6—APPROVED MONITORING PROVIDERS

Provider name	At-sea monitoring	Dockside monitoring	Address	Phone	Fax	Web site
A.I.S., Inc .....	X	X	89 North Water Street, New Bedford, MA 02747.	(508) 990–9054	(508) 990–9055	<a href="http://www.aisobservers.com">www.aisobservers.com</a>
MRAG Americas.	X	X	65 Eastern Ave., Unit B2C, Essex, MA 01929.	(978) 768–3880	(978) 768–3878	<a href="http://www.mragamericas.com">www.mragamericas.com</a>
Atlantic Catch Data, Ltd.	X	X	99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5.	(902) 422–4745	(902) 422–9780	<a href="http://www.atlanticcatchdata.ca">www.atlanticcatchdata.ca</a>

TABLE 6—APPROVED MONITORING PROVIDERS—Continued

Provider name	At-sea monitoring	Dockside monitoring	Address	Phone	Fax	Web site
East West Technical Services, LLC.	X	.....	34 Batterson Drive, New Britain, CT 06053.	(860) 223-5165	(860) 223-6005	<a href="http://www.ewts.com">www.ewts.com</a>

### Withdrawing a Sector Exemption In-Season

Previously, we have retained the right to revoke several exemptions in-season if a sector is not meeting certain requirements. To date, we have not used this authority, but are proposing a process for revoking a sector exemption. A sector exemption may be revoked if we determine that it jeopardizes management measures or rebuilding efforts, results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources, causes enforcement concerns, or if catch from trips utilizing the exemption cannot properly be monitored. At that time, we will weigh the need to revoke the exemption as quickly as possible to prevent conservation or management objectives from being undermined with the necessity or practicability of, or public interest in, a delay to receive comments.

### Sector EA

In order to comply with NEPA, one EA was prepared encompassing all 18 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit <http://www.regulations.gov> to view the EA prepared for the 18 sectors that this rule proposes to approve.

### Classification

The Administrative Procedure Act (5 U.S.C. 553) requires advance notice of rulemaking and opportunity for public comment. Due to unexpected changes in stock status, the Council required additional time to determine stock allocations for FY 2013, which delayed our ability to present this to the public. We are providing a 15-day comment

period for this rule. A longer comment period would be impracticable and contrary to the public interest since we must publish a final rule prior to the start of FY 2013 on May 1 to enable sectors to fish. A vessel enrolled in a sector may not fish in FY 2013 unless its sectors' operations plan is approved. If the final rule is not published prior to May 1, the permits enrolled in sectors must either stop fishing until their operations plan is approved, or elect to fish in the common pool for the entirety of FY 2013. Both of these options would have negative impacts for the permits enrolled in the sectors. Delaying the implementation beyond May 1, 2013, would result in an unnecessary economic loss to the sector members because vessels would be prevented from fishing in a month when sector vessels landed approximately 10 percent of several allocations, including GB cod east and GB winter flounder. Finally, without a seamless transition between FY 2012 and 2013, a delay would require sector vessels to remove gear that complies with an exemption, and redeploy the gear once the final rule is effective. Taking these additional trips would require additional fuel and staffing when catch may not be landed.

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

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The SBA

defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to \$4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the **SUMMARY** section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This action will likely affect approximately 303 ownership entities, which represents the number of entities we expect to enroll in sectors that have requested exemptions. A total of 301 ownership entities would be considered a small entity, based on the definition as stated above. The economic impact resulting from this action on these small entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, FW 44, and FW 45, and upcoming FW 48, and FW 50, which have placed

additional effort restrictions on the NE multispecies fleet.

### Description of the Reasons Why Action by Agency Is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have NE multispecies catch limited by DAS allocations and are instead limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels fished in FY 2011, in comparison to FY 2010, may be related to owners with multiple vessels fishing fewer vessels. It is also likely that some vessels that have not landed NE multispecies have received revenue from leasing their NE multispecies allocation or have been fishing in other fisheries. Fewer vessels are actively fishing for, and landing, regulated species and ocean pout, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, thus seemingly continuing a trend of consolidation in the fishery. However, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to FYs prior to the expansion of sector management by Amendment 16.

### The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to authorize the operations of 18 sectors in FY 2013, and to allow the benefits of sector operations to accrue to permits enrolled in sectors and the New England communities where they dock and land. The legal basis for the proposed action is the NE Multispecies FMP and promulgating regulations at § 648.87.

### Estimate of the Number of Small Entities

The SBA size standard for commercial fishing entities (North American Industry Classification System code 114111) is \$4 million in annual sales. Section 3 of the Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)). We have recently worked to identify ownership affiliations, and incorporated that data into this analysis; consequently, this analysis may differ from analysis conducted in previous years. Although work to more accurately identify ownership affiliations is ongoing; for the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 303 ownership entities (301 qualifying as small entities)—the number of entities anticipated to enroll in the 18 sectors that have submitted an operations plan for FY 2013. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2013, the number of permits participating in sectors on May 1, 2013, and the resulting sector ACE allocations, are likely to change. Additionally, new permit holders who acquire their permits through an ownership change that occurred after December 1, 2012, may enroll their permit in a sector or change the permit's sector affiliation through April 30, 2013.

### Reporting, Recordkeeping and Other Compliance Requirements

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action reduces reporting requirements compared to the no-action alternative. Exemptions implemented through this action would be documented in a LOA issued to each vessel participating in an approved sector. The exemptions from the 20-day spawning block and the 120-day gillnet block would reduce the reporting

burden for ownership entities with sector vessels, because exemptions from these requirements eliminate the need to report the blocks to the NMFS Interactive Voice Response system.

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

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

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

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

In order to utilize the exemption from the minimum trawl mesh size to target redfish, an ownership entity would need to purchase or utilize a codend of small mesh. At the time this IRFA was prepared, no cost information was available for a 4.5-inch (11.43-cm) mesh codend. The purchase of a 4.5-inch (11.43-cm) mesh codend would depend

on a ownership entities perceived economic benefit of utilizing the exemption, which may be based on market conditions.

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

Other exemptions proposed in this action involve no additional reporting requirements. Sector reporting and recordkeeping regulations do not exempt participants from state and Federal reporting and recordkeeping, but are mandated above and beyond current state and Federal requirements. A full list of compliance, recording, and recordkeeping requirements can be found in the final rules implementing Amendment 16, each approved FY 2012 sector operations plan, and in the draft FY 2013 sector operations plans.

#### **Duplication, Overlap or Conflict With Other Federal Rules**

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

#### **Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities**

The proposed action would create a positive economic impact for the participating ownership entities that include sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Little quantitative data on the precise economic impacts to individual ownership entities is available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30' in length and for vessels 75' and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses.

Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

#### **Economic Impacts on Small Entities Resulting From Proposed Action**

The EIS for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rule for the approval of the FY 2010 sector operations plans and contracts (75 FR 18113, April 9, 2010) and its accompanying EAs discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the supplemental sector rule (75 FR 80720, December 23, 2010) and its accompanying supplemental EA discussed the impacts of additional exemptions requested by sectors. The final rule for the approval of the FY 2011 sector operations plans and contracts (76 FR 23076, April 25, 2011) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year. The final rule for the approval of the FY 2012 sector operations plans and contracts (77 FR 26129, May 2, 2012) and its accompanying EA discussed the economic impacts of the exemptions requested by sectors that year.

The EA prepared for this rule evaluates the impacts of each exemption individually relative to the no-action alternative (i.e., no sectors are approved), and the exemptions may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each exemption would be implemented for all sectors; however, each exemption will only be implemented for the sector(s) which requested that exemption.

Increased "operational flexibility" generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures) sectors help create a more simplified regulatory environment. This simplified regulatory

environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on the market. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed FY 2013 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the exemptions granted by this action.

#### ***Exemption From the Day Gillnet 120-Day Block Out of the Fishery***

Existing regulations require that vessels using gillnet gear remove all gillnet gear from the water for 120 days per year. Under an output-control management system, this type of input control is unnecessary. Many affected ownership entities have purchased additional vessels in order to be able to fish continuously. The exemption from the 120-day block allows sector members to reduce costs by retiring the redundant vessel. Furthermore, this exemption may allow ownership entities with sector vessels to take advantage of other exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

#### ***Exemption From the 20-Day Spawning Block Out of the Fishery***

Exemption from the 20-day spawning block would improve operational flexibility by allowing participants to match trip planning decisions to environmental and economic conditions. The increased operational flexibility may result in higher revenues (improved timing of delivery to market) or lower costs for participating ownership entities.

#### ***Exemption From the Prohibition on a Vessel Hauling Another Vessels' Gillnet Gear***

This community fixed-gear exemption would allow sector vessels in the Day gillnet category to share gillnet gear. This exemption would reduce the total

amount of gear that would have to be purchased, maintained, and tended by ownership entities participating in sectors, resulting in lower costs and possibly lower amount of gear fished.

*Exemption From the Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a NE Multispecies/Monkfish DAS*

This exemption would increase operational flexibility by allowing a sector vessel to haul its monkfish gillnets and NE multispecies gillnets on the same trip. This exemption may reduce costs for those ownership entities participating in a sector.

*Exemption From the Limitation on the Number of Hooks That May Be Fished*

This exemption would increase operational flexibility by allowing operators to adapt to environmental and economic conditions. This exemption may result in higher revenues or reduced costs.

*Exemption From DAS Leasing Program Length and Horsepower Restrictions*

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased operational flexibility is likely to result in either higher revenues or lower costs for participating ownership entities. Because DAS are no longer required while fishing for NE multispecies, ownership entities with vessels participating in other fisheries (e.g., monkfish) which require the use of DAS are likely to be positively impacted by this exemption.

*Exemption From Prohibition of Discarding Legal-Size Allocated Species*

Sector vessels are required to retain legal-size unmarketable fish, which must be stored on the vessel while at sea. This requirement may create unsafe work conditions and reduce safety at sea. In addition, sector vessels must determine a method of disposal for landed unmarketable fish. An exemption from this regulation would allow sector vessels to discard unmarketable fish, thereby enabling ownership entities that include sector vessels to increase flexibility, improve safety conditions at sea, and reduce costs associated with disposing of the landed unmarketable fish.

*Exemption From the Requirement That the Sector Manager Submit Daily Catch Reports for the CA I Hook Gear Haddock SAP*

Eliminating the daily catch reporting by sector managers would reduce the administrative burden on the sector managers. The reporting burden of individual participating vessels remains unchanged. In addition to reducing administrative burden, this exemption may result in slightly lower operating costs for sectors.

*Exemption From the Requirement To Power a VMS While at the Dock*

Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators. This exemption will reduce the operating costs for fishing operations and would result in some improved profitability.

*Exemption From DSM Requirements for Handgear A-Permitted Sector Vessels, Vessels Fishing West of 72°30' W. Long., and Vessels on Monkfish DAS When Using 10-Inch (25.4-cm) or Greater Mesh in the Monkfish SFMA*

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2013. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of NE multispecies catch, and so would otherwise be disproportionately burdened compared to larger operations.

*Exemption From the Prohibition on Fishing Inside and Outside the CA I Hook Gear Haddock SAP While on the Same Trip*

FW 40A established the CA I Hook Gear Haddock SAP. Multispecies vessels fishing on a trip within this SAP are prohibited from deploying fishing gear outside of the SAP on the same trip when they are declared into the SAP. This exemption would increase operational flexibility by allowing sector vessels to fish both inside and outside the SAP on the same trip. This exemption would reduce costs to ownership entities by reducing the amount of travel time to haul gear in the SAP and in other areas.

*Exemption From the 6.5-Inch (16.5-Cm) Minimum Mesh Size Requirement for Trawl Nets*

This exemption would allow sector vessels to use codends below the minimum mesh size to target redfish. To take advantage of this exemption, participating ownership entities would need to purchase a net below the 6.5-inch (16.5-cm) minimum size; however, this gear change would be voluntary and the gear would be adopted only if the ownership entities anticipated positive returns from the switch. The exemption could increase the operational flexibility of ownership entities with sector vessels and could increase revenues of sector fishermen if they are able to increase the catch rate of redfish.

*Exemption From the Prohibition on a Vessel Hauling Another Vessel's Hook Gear*

This exemption would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in lower costs and a possible reduction in total gear fished.

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

Multispecies vessels are currently required to declare that they will be fishing in the Eastern U.S./CA Haddock SAP or the CA II Yellowtail Flounder/Haddock SAP prior to leaving the dock. The requested exemption would reduce the administrative burden of declaring intent to fish and increase operational flexibility by allowing the vessel to make trip planning decisions while at-sea. This exemption could reduce costs to ownership entities by reducing the amount of travel time for vessels to fish in the SAP without first returning to port.

*Exemption From the Limit on the Number of Nets for Day Gillnet Vessels*

This exemption would increase operational flexibility by allowing participating sector members to deploy fishing gear according to operational and market needs. The increased flexibility is likely to result in higher revenues or lower costs for participating ownership entities.

*GOM Sink Gillnet Exemption (May, and January Through April)*

This exemption would allow sector members to use 6-inch (15.2-cm) mesh gillnets in the GOM RMA in May, 2013 and from January 1, 2014, through April 30, 2014. This exemption will allow participating ownership entities with sector vessels to retain more GOM haddock and increase revenues. To take advantage of this exemption, participating ownership entities would need to purchase 6-inch (15.2-cm) mesh gillnets; however, this gear change would be voluntary and the gear would be adopted only if the ownership entities anticipated positive returns from the switch. In FY 2011, 82.7 percent of the available GOM haddock ACE was not caught.

*Exemption From the Trawl Gear Requirements in the U.S./Canada Management Area*

This exemption would allow the use of any NE multispecies trawl gear, rather than approved conservation gears, provided the gear conforms to regulatory requirements for using trawl gear to fish for NE multispecies in the GB RMA. This exemption would result in greater operational flexibility to participating ownership entities with sector vessels. This increased operational flexibility may translate into lower costs if ownership entities can reduce the amount of gear, effort or type of gear necessary to catch NE multispecies in the U.S./Canada Management Area.

*Exemption From Seasonal Restriction for the Eastern U.S./Canada Haddock SAP*

The Eastern U.S./Canada Haddock SAP was implemented by FW 40A in 2004 to provide an opportunity to target haddock. In 2006, FW 42 shortened the season of this SAP to August 1 through December 31 to reduce cod catch. For ownership entities that include sector vessels, the SAP provides access to the northern tip of CA II, which may increase haddock catch and revenue for fishermen.

*Exemption From Seasonal Restriction for the CA II Yellowtail Flounder/Haddock SAP*

The CA II Yellowtail Flounder/Haddock SAP was implemented by Amendment 13 in 2004 to provide an opportunity to target yellowtail flounder in CA II. In 2005, FW 40B shortened the season of this SAP to July 1 through

December 31 to reduce interference with spawning yellowtail flounder.

Amendment 16 further revised this SAP to allow participating vessels to target haddock from August 1 through January 31. This exemption would increase a sector's operational flexibility and efficiency by allowing the opportunity to fish year-round in the SAP area. It could allow for a greater catch of haddock and increased revenues for fishermen.

*Prohibition on Fishing in the SNE/MA Winter Flounder Stock Area With Winter Flounder Onboard*

Amendment 16 prohibited all NE multispecies vessels from fishing for, possessing, or landing SNE/MA winter flounder (§ 648.85(b)(6)(v)(F)). However, a vessel may fish for other species in the SNE/MA winter flounder stock area but can only transit the SNE/MA winter flounder stock area with GOM or GB winter flounder on board the vessel. This exemption would allow a vessel to fish in the SNE/MA winter flounder stock area after retaining GOM or GB winter flounder, when an observer is on board. By increasing operational flexibility this exemption would likely increase the expected profits of sector fishermen.

*Prohibition on Combining Small-Mesh Exempted Fishery and Sector Trips*

Exempted fisheries allow a vessel to fish for specific species, such as whiting or northern shrimp, in designated areas using mesh sizes smaller than the minimum mesh size allowed in each regulated mesh area. This exemption would increase a sector's operational flexibility and efficiency by allowing the opportunity to combine a sector trip with a trip into an exempted fishery. It could allow for a greater catch of both allocated and non-allocated stocks and increased revenues for fishermen.

*Sampling Exemption*

This exemption would allow sector vessels to temporarily retain NE multispecies below the minimum size to collect scientific information. This exemption is largely administrative, but the findings from this research could ultimately contribute to stock assessment or other fisheries science and could be used to improve the health and productivity of fish stocks.

*Exemption From DSM Requirements for Jig Vessels*

FW 45 revised DSM requirements and stipulated that sectors must comply with any DSM program specified by NMFS in FY 2013. This exemption would reduce the regulatory cost and burden of any DSM coverage level above zero. The ownership entities with vessels qualifying for these exemptions generally are the smallest operations, or have the smallest amount of NE multispecies catch, and so would otherwise be disproportionately burdened compared to larger operations.

**Other Significant Alternatives**

Amendment 16 allowed each sector to submit an operations plan, including specific exemption requests and other fishing provisions. The purpose and need of this action is to facilitate the implementation of the FY 2013 sector operations plans and associated exemptions. Therefore, we can only propose to approve, partially approve, or deny what the sectors have proposed.

There were several exemptions requested by the sectors for FY 2013 that the regulations implemented by Amendment 16 prohibited NMFS from considering. NMFS also received requests for exemptions that NMFS previously disapproved in FYs 2010, 2011 or 2012; however, no new data or information has become available that would convince NMFS to reconsider the previously disapproved exemptions further in FY 2013.

Some sectors proposed additional provisions as part of its operations plans. Like the exemptions highlighted above, these provisions may provide additional operational flexibility and may generate positive social and economic effects for sector members and ports. The following discussion concentrates on cost and revenues in order to focus on the mechanism by which profits are expected to change due to the provisions approved by this action.

*Fishing With No ACE*

Two sectors have requested approval to continue fishing operations despite having used its entire ACE for at least one allocated stock. This provision would provide the two requesting sectors with additional operational flexibility and could potential land a greater proportion of their ACE and other non-target stocks, such as monkfish, dogfish, and skates.

*Inshore GOM Declaration*

Most sectors have also included a provision to limit and more accurately document a vessel's behavior when fishing in the GOM Broad Stock Area (BSA). A sectors usage of this provision is voluntary, and is not expected to substantially change fishing behavior. Usage of this provision is expected to have negligible effects on most ownership entities; however, there is

the potential for a decrease in flexibility for some vessels that would fish on Georges Bank and then the Gulf of Maine on the same trip. However, the analysis indicates that this would affect very few ownership entities.

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

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

Dated: March 11, 2013.

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