

Conservation Plan (HCP) that will provide the framework for distribution and management of former Fort Ord lands has not been completed. Therefore, for the purpose of the draft economic analysis, FORA was not classified as a small entity. From this analysis, we certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Prunedale, Unit 7) contains 17 ac (7 ha) of land held in a conservation easement owned by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of revised critical habitat is not expected to have an adverse effect on energy production. Although the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* is considered a significant regulatory action under E.O. 12866 because it may raise novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), the Service makes the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments,” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary

Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or tribal governments “lack authority” to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens*, there is expected to be no impact on small governments or small entities. There is no record of consultations between the Service and any of these governments since *C. p. var. pungens* was listed as threatened on February 4, 1994 (59 FR 5499). It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving section

7 consultations for *C. p. var. pungens* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government’s budget.

Consequently, we do not believe that the designation of revised critical habitat for the *C. p. var. pungens* would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing revised critical habitat for *Chorizanthe pungens* var. *pungens*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of revised critical habitat for *C. p. var. pungens* does not pose significant takings implications.

Authors

The primary authors of this notice are the staff of the Ventura Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 5, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–20241 Filed 10–15–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070809451–7452–01]

RIN 0648–AV79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The current regulations governing the Northeast (NE) multispecies fishery contain a number of inadvertent errors, omissions, and ambiguities, including some that may appear to be inconsistent with the measures adopted by the New England Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in recent actions taken under the NE Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40-A, FW 41, and FW 42. The intent of this action is to correct these errors and omissions and to clarify specific regulations to ensure consistency with, and accurately reflect the intent of, previous actions under this FMP.

DATES: Written comments must be received on or before October 31, 2007.

ADDRESSES: You may submit comments, identified by 0648-AV79, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule to Correct/Modify NE Multispecies Regulations."
- Fax: (978) 281-9135.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the environmental assessments (EAs) prepared for FW 42, FW 41, FW 40-A, and FW 38; and the

supplemental environmental impact statements (SEIS) prepared for Amendments 5 and 13 may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The most recent management action in the NE multispecies fishery, FW 42, was implemented by a final rule that published in the **Federal Register** on October 23, 2006 (71 FR 62156) and became effective on November 22, 2006. FW 42 superseded measures implemented by an emergency final rule that published on April 13, 2006 (71 FR 19348) that was implemented because of a delay in the development of FW 42. However, upon further review of regulations implemented by the FW 42 final rule, NMFS found that the current regulations contained several inadvertent errors, omissions, and ambiguities that appear to be inconsistent with the measures adopted by the Council and approved by the Secretary. Some of the errors were due to failure of the current regulations to adapt or reinstate measures that were included or modified by the April 13, 2006, emergency final rule. Other errors were the result of incorrect references or a failure to adequately address administrative issues associated with specific measures. Further review of the current regulations revealed that there were other errors related to previous management actions under the FMP, including Amendments 5 and 13, FW 40-A, FW 41, and FW 38, as specified below. Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), this action proposes to correct these errors, revise specific measures to facilitate administration of such measures, and clarify or modify the current regulations to maintain consistency with FW 42 and other previous actions. The following proposed corrections are listed in the

order in which they appear in the regulations.

Proposed Measures

1. Definitions for Lessor, Lessee, Transferor, and Transferee

The April 27, 2004, final rule implementing measures approved under Amendment 13 (69 FR 22906) created two programs designed to allow vessels to obtain additional NE multispecies days-at-sea (DAS) in order to offset the economic impacts of effort reductions under that action. These programs, the DAS Leasing and DAS Transfer Programs, include provisions that specifically apply to either the vessel giving or receiving DAS. While the regulations refer to these vessels as the "lessor/transferor" and "lessee/transferee" for both of these programs, respectively, the Amendment 13 final rule never explicitly defined these terms. As a result, this rule would define each of these terms at 50 CFR 648.2 to clarify the applicability of specific provisions for each of these programs.

2. Vessel Monitoring System (VMS) Notification Requirements

Currently, vessels issued limited access permits in several fisheries are either required to use VMS, or may elect to use VMS in lieu of using the DAS call-in system. The final rule implementing FW 42 required all NE multispecies vessels fishing under a NE multispecies DAS to use VMS and indicated that such vessels would be sent letters detailing the procedures pertaining to VMS purchase, installation, and use. However, the current regulations do not specifically address what procedures other vessels using VMS should follow.

Because the NMFS VMS and DAS systems use the VMS activity code declared by the vessel operator to enforce existing area-based regulations and accurately charge DAS based upon where the vessel fishes, what gear the vessel uses, the DAS type used, and the management program in which the vessel is participating, it is critical that the VMS activity code declared on each trip accurately reflects the vessel's intended operations. If the VMS activity code is incorrect, for example, DAS could be inaccurately charged and a vessel may be subject to enforcement action, increasing the burden on both vessel operators and NMFS for inaccurate VMS declarations. Although the current regulations do not specifically detail how and when a vessel should declare its intended fishing activity via VMS for all fisheries,

NMFS believes it is essential that all vessels using VMS must declare their intended activity through VMS prior to each trip to ensure that the VMS activity code declared accurately represents the vessel's intended activity for that trip. NMFS has recently sent letters to all affected permit holders instructing vessel operators on the proper use of VMS, including a letter on March 7, 2007, that required vessel operators to declare a VMS activity code prior to each trip.

The FW 42 final rule modified the regulations at § 648.10(b)(2) to state that NMFS shall send letters to all limited access NE multispecies DAS permit holders providing detailed information on the procedures pertaining to VMS usage. Because the current regulations do not specifically describe the procedures pertaining to VMS usage in other fisheries, this action would modify the VMS notification requirements at § 648.10(b)(2) to specify that NMFS would send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders. Thus, this action would clarify that vessels required, or electing to use VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letters. In addition, this action would specify at § 648.10(b)(5) that vessels using VMS must declare the vessel's intended fishing activity via VMS prior to leaving port before each fishing trip.

3. Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery Prohibitions

The GOM Grate Raised Footrope Trawl Exempted Whiting Fishery was implemented through a July 9, 2003, final rule (68 FR 40808). However, this final rule did not update the prohibitions at § 648.14(a)(35) and (43) to include this new exempted fishery. The prohibition at § 648.14(a)(35) prohibits the use of small mesh outside of listed exempted fisheries, while the prohibition at § 648.14(a)(43) indicates that it is unlawful for anyone to violate the provisions of listed exempted fisheries. This action would add a reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery at § 648.80(a)(16) to these prohibitions.

4. In-season Action Prohibition

Starting with the implementation of Amendment 13 in 2004, the FMP has developed several Special Management Programs that provide the Regional Administrator with the authority to implement in-season adjustments to

management measures, including revising trip limits, access to specific areas, and gear requirements. In-season actions are implemented through a temporary rule, with requirements outlined in letters sent to affected permit holders. Despite the authority to implement such in-season actions, there is no specific prohibition regarding the provisions of an in-season action. Therefore, this action would implement a provision at § 648.14(a)(78) prohibiting vessels from violating the requirements of an in-season action.

5. Georges Bank (GB) Seasonal Closure Area Applicability

The GB Seasonal Closure Area was first implemented by the final rule implementing measures approved under FW 33 to the FMP (April 24, 2000; 65 FR 21658). This closure applies to any vessel fishing with gear capable of catching groundfish and is effective from May 1 through May 31 of each fishing year. On November 19, 2004, the final rule implementing FW 40–A (69 FR 67780) established the Eastern U.S./Canada Haddock Special Access Program (SAP). This SAP allows vessels to target haddock using Category B DAS from May 1 through December 31 of each fishing year. The SAP area includes portions of the GB Seasonal Closure Area during the period of the closure. When the Council developed this SAP, it intended to exempt these SAP participants from the GB Seasonal Closure Area. However, the regulations implementing FW 40–A did not exempt such participating vessels from this closure. As a result, a final rule corrected this oversight and exempted vessels participating in the Eastern U.S./Canada Area Haddock SAP from the GB Seasonal Closure Area (December 27, 2005; 70 FR 76422). Both the April 13, 2006, emergency rule and the FW 42 final rule adjusted the start date of the Eastern U.S./Canada Haddock SAP from May 1 to August 1 of each fishing year. As a result, an exemption from the GB Seasonal Closure Area is no longer necessary for vessels participating in that SAP. Therefore, this action would remove the exemption at § 648.81(g)(2)(iv).

6. DAS Leasing Program Application Requirements

The final rule implementing Amendment 13 established the DAS Leasing Program. This program allows vessels to temporarily exchange Category A DAS on a yearly basis, provided participating vessels submit an application to lease DAS and the Regional Administrator approves the lease request. The FW 42 final rule

revised the introductory text of the DAS Leasing Program regulations at § 648.82(k)(3). However, through an oversight in the regulatory text for that rule, the regulations at § 648.82(k)(3)(i) through (iii) were inadvertently removed. These regulations include the DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications. These provisions are necessary to effectively administer the DAS Leasing Program. Therefore, this action would reinsert the provisions at § 648.82(k)(3)(i) through (iii) that were inadvertently removed.

7. VMS Positional Polling Rates for U.S./Canada Management Area

For vessels required to use VMS, the current regulations specify the minimum VMS positional polling rate. Vessels are responsible for paying for such VMS positional polls. When the Council adopted measures to include in Amendment 13, the Council did not specify a particular VMS positional polling rate that vessels would be responsible for paying for while fishing in the U.S./Canada Management Area. However, the Amendment 13 final rule indicated that a vessel participating in the U.S./Canada Management Area would be subject to a minimum VMS position polling rate of two polls per hour at the vessel's expense. NMFS, under the authority provided in section 305(d) of the Magnuson-Stevens Act, included this increased polling rate with the intent to facilitate and enhance the enforcement of area-specific management provisions. While NMFS can request a vendor to temporarily increase the VMS positional polling rate on individual vessels in any fishery at the Agency's expense to facilitate enforcement operations, to date, NMFS has not imposed the higher VMS positional polling rate on individual NE multispecies trips into the U.S./Canada Management Area, which would be at a participating vessel's expense, due to technical limitations.

Since implementing this requirement for vessels to pay for an increased polling frequency, NMFS has determined that such a measure should originate with the Council, similar to the way the Council adopted the requirement for vessels to pay for a polling rate of two VMS positional polls per hour for vessels participating in the Atlantic sea scallop fishery. The VMS positional polling rate for which all other vessels using VMS are required to pay for is one positional poll per hour. Because the Council did not specifically recommend that NE multispecies

vessels must pay for a higher VMS polling rate while fishing in the U.S./ Canada Management Area, NMFS has decided to remove the increased VMS positional polling rate applicable to NE multispecies vessels. Therefore, this action would remove references to an increased VMS positional polling rate for vessels participating in the U.S./ Canada Management Area from the regulations at §§ 648.9(c)(1)(ii), 648.10(b)(2)(iii), and 648.85(a)(3)(i).

8. Haddock Total Allowable Catch (TAC) in the Closed Area (CA) I Hook Gear Haddock SAP

The CA I Hook Gear Haddock SAP was first implemented by the FW 40–A final rule, but was later modified by the rule implementing measures approved under FW 41 to the FMP (September 14, 2005; 70 FR 54302). The FW 41 final rule split the SAP into two seasons (one season for vessels participating in an approved Sector and another season for non-Sector vessels), with the haddock TAC distributed accordingly. The FW 42 final rule further modified the manner in which the haddock TAC for this SAP is calculated, but did not revise the season or the distribution of the haddock TAC. The regulations implemented by the FW 42 final rule included revisions to the manner in which the haddock TAC is calculated, but inadvertently omitted the provisions that distributed the haddock TAC among the two seasons, including the authority of the Regional Administrator to adjust the quota to each season to account for under- or over-harvest of the haddock TAC during the first season of the SAP. Accordingly, the current regulations do not accurately reflect the provisions adopted by the Council and implemented under the FW 41 final rule. These provisions are necessary to administer this SAP effectively. Therefore, this action would revise the regulations at § 648.85(b)(7)(iv)(F) to reinsert the FW 41 provisions that were inadvertently removed.

9. White Hake Trip Limits

Early in the development of FW 42, the Council considered adopting a 500–lb (226.8–kg) per DAS, up to 5,000–lb (2,268–kg) per trip, limit for white hake. In order to implement the trip limits as soon as possible while FW 42 was still being developed, NMFS implemented an emergency rule establishing these trip limits. Subsequently, the Council adopted a white hake trip limit of 1,000 lb (453.6 kg) per DAS, up to 10,000 lb (4,536 kg) per trip in FW 42. The emergency rule was modified on April 28, 2006 (71 FR 25094) to reflect the white hake trip limit adopted by the

Council in FW 42. However, both the FW 42 proposed and final rules inadvertently included the lower white hake trip limit included in the original emergency final rule. Therefore, this action would correct the white hake trip limit found at § 648.86(e) to accurately reflect the white hake trip limit adopted by the Council in FW 42.

10. Approval of Sector Applications

The procedure to review and approve sector allocations was first established through the Amendment 13 final rule. Although the SEIS prepared to support Amendment 13 did not specifically direct NMFS to publish a proposed rule when reviewing sector applications and operations plans, the Amendment 13 final rule included language that required NMFS to seek public comment on proposed sector operations plans through the publication of a proposed rule in the **Federal Register**. The Administrative Procedure Act (APA) allows agencies to waive the requirement to publish a proposed rule and to provide for public comment in limited circumstances. However, because the current regulations require NMFS to develop a proposed rule for each sector, NMFS must publish a proposed rule for sectors and does not have the ability to take advantage of the provision in the APA that allows the Assistant Administrator to waive proposed rulemaking should circumstances allow. Based upon the existing procedures and associated time lines, the requirement to develop a proposed rule may be too inflexible and can unnecessarily delay the start of proposed sector operations beyond the start of the fishing year on May 1. This can create unnecessary adverse economic and social impacts for sector participants, especially if the sector operations plans do not change between fishing years. Therefore, this action would revise the existing sector approval regulations at § 648.87(c)(1) and (2) by removing the requirement to develop a proposed rule, but indicating that sectors would be approved consistent with applicable law.

11. Recreational Fish Size Restrictions

Although minimum fish size restrictions have been implemented since the initial development of the FMP, the final rule implementing measures approved under Amendment 5 (March 1, 1994; 59 FR 9872) specified that the minimum fish sizes also apply to any fish or part of a fish, including fillets. The Amendment 5 SEIS indicates that fish or fish parts must have the skin on for the purposes of identification to facilitate enforcement of the minimum

size provisions. The SEIS only provides one exception to this requirement, allowing commercial vessels to retain up to 25 lb (11.3 kg) of fillets of legal-sized fish for personal consumption. While not explicitly indicated, the intent of the skin-on provision applies to groundfish caught by any vessel—commercial, charter/party, or private recreational vessel.

The regulations implemented by the Amendment 5 final rule clearly outline the minimum fish size provisions for commercial vessels at § 648.83, including the skin-on provision in paragraph (a)(2) of that section. However, the recreational minimum fish size requirements at § 648.89 do not specifically include the skin-on provision. Because the charter/party regulations at § 648.89 do not specifically indicate that the skin-on provisions applies to such vessels, this action would add the skin-on provision outlined at § 648.83(a)(2) at § 648.89(b)(4).

12. Additional Corrections

In addition to the changes specified above, the following changes to the regulations as amended by the final rule implementing FW 42 are proposed to correct inaccurate references and to further clarify the intent of FW 42 and previous actions. The changes listed below are in the order in which they appear in the regulations.

In § 648.4(c)(2)(iii)(A), the reference to the annual designation as either a Day or Trip gillnet vessel at “§ 648.82(k)” would be corrected to read “§ 648.82(j).”

In § 648.14, the reference to “§ 648.81(d)” in paragraph (a)(38) would be corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.81(b)(2)(i)” in paragraph (a)(39) would be corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.51(a)(2)(ii) and (e)(2)” in paragraph (a)(53) would be corrected to reference the gear stowage provisions at § 648.23(b); the reference to “§ 648.85(b)(6)” in paragraph (a)(153) would be corrected to read “§ 648.85(b)(4);” the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” in paragraph (b)(3) would be revised to read “§ 648.86(g)(1),” as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule (71 FR 19348) was superseded by the FW 42 final rule; the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” and “§ 648.81(g)(1)(ii) and (g)(2)(ii)” in paragraph (b)(4) would be corrected to read “§ 648.86(g)(1),” as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule was superseded by the FW 42 final rule; the

reference to “§ 648.86(b)(1)(i)” in paragraph (c)(24) would be corrected to read “§ 648.86(b)(1);” and the reference to “§ 648.86(b)(2)(ii) or (iii)” in paragraph (c)(26) would be corrected to read “§ 648.86(b)(2).”

In § 648.80(b)(2)(vi), the reference to “(a)(11)(i)(A) and (B)” in the introductory text would be corrected to read “(b)(11)(i)(A) and (B).”

In § 648.82(e)(1), the reference to “§ 648.10(c)(5)” would be corrected to read “§ 648.10.”

In § 648.85, the reference to “§ 648.94(b)(7)” in paragraph (b)(6)(iv)(D) would be revised to read “§ 648.94(b)(3),” as § 648.94(b)(7) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule; and the references to “§ 648.85(b)(7)(iv)(G)” in paragraph (b)(7)(iii), (b)(7)(v)(D), and (b)(7)(vi)(D) would be corrected to read “§ 648.85(b)(7)(iv)(F),” as § 648.85(b)(7)(iv)(G) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule. In addition, reference to specific stock areas at § 648.85(b)(6)(v) would be added to § 648.85(b)(6)(iv)(D) to clarify that the landing limits specified in this paragraph apply to particular stock areas. Further, reference to § 648.10 would be inserted at § 648.85(b)(7)(iv)(A) to clarify how DAS would be counted in the Closed Area I Hook Gear Haddock SAP. Finally, § 648.85(b)(7)(vi)(G) through (I) would be removed, as these paragraphs were included in the April 13, 2006, emergency rule and expired when that rule was superceded by the FW 42 final rule.

In § 648.86(i), the references to “§ 648.85(a)(3)(iv)” and “§ 648.85(a)(6)(iv)(D)” would be corrected to read “§ 648.85.”

In § 648.92, paragraph (b)(2)(iii) would be deleted, as this repeats the regulations at § 648.92(b)(2)(ii) and is not necessary.

Classification

Pursuant to sections 304 (b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for fisheries, NOAA, 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 proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The proposed allocation would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the New England Fishery Management Council and approved by the Secretary of Commerce. This action would ensure that the economic impacts analyzed in previous actions would be realized, but would not impose any additional economic impacts on affected entities. The proposed action would not significantly reduce profit for affected vessels, as the proposed measures are either administrative in nature and would not affect vessel operations, or would have no economic impact beyond that previously analyzed. For example, FW 42 indicated that declarations of a vessel's intended activity via VMS prior to each trip would cost groundfish vessels approximately \$0.50 per declaration, or about \$15,000 per year. In addition, Amendment 13 indicated that the U.S./Canada Management Area gear requirements would cost participating vessels \$7,500 for a modified flounder net, or \$747 to comply with the haddock separator trawl requirement. This action would simply clarify or reinstate such requirements, respectively, but would not increase costs associated with these measures. Other measures corrected or clarified by this action would ensure that unnecessary costs, such as the costs for higher VMS positional polling rates, are eliminated or that vessels would be able to fully realize the economic benefits of special management programs by correctly distributing the available haddock resources in the Closed Area I Hook Gear Haddock SAP.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB as follows:

1. VMS purchase and installation, OMB # 0648–0202, (1 hr/response);
2. VMS proof of installation, OMB # 0648–0202, (1 hr/response);
3. Automated VMS polling of vessel position, OMB # 0648–0202, (5 sec/response);
4. Area and DAS declarations via VMS, OMB # 0648–0549 (5 min/response);
5. Standardized catch reporting requirements, OMB # 0648–0212 (15 min/response);
6. Sector manager daily reports for CA I Hook Gear Haddock SAP, OMB # 0648–0212, (2 hr/response);
7. DAS Leasing Program application, OMB # 0648–0202, (5 min/response);
8. Annual declaration to participate in the CA I Hook Gear Haddock SAP, OMB # 0648–0202, (2 min/response);

9. Sector allocation proposal, OMB # 0648–0202, (50 hr/response); and
10. Sector operations plan submission, OMB # 0648–0202, (50 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This action would not create new information collections or modify the response time associated with any of the information collection referenced above. Instead, this action would revise the regulations underlying these information collections to correct inadvertent errors, omissions, and ambiguities in the current regulations, as described in the preamble. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting.

Dated: October 11, 2007.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, definitions for “lessee,” “lessor,” “transferee,” and “transferor” are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Lessee means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

Lessor means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS

Leasing Program specified at § 648.82(k).

* * * * *

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

* * * * *

3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

§ 648.9 [Amended]

4. In § 648.9, remove and reserve paragraph (c)(1)(ii).

5. In § 648.10, the introductory text of paragraph (b)(2), and paragraph (b)(2)(iii) are revised; and paragraph (b)(5) is added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies

permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

* * * * *

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

* * * * *

(5) VMS notification requirements for other fisheries. Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the

owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

* * * * *

6. In § 648.14, paragraphs (a)(35), (a)(38), (a)(39), (a)(43), (a)(53), (a)(153), (b)(3), (b)(4), (c)(24), and (c)(26) are revised and paragraph (a)(78) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the

Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

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

* * * * *

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

* * * * *

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

* * * * *

(b) * * *

(3) While fishing in the areas specified in § 648.86(g)(1), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies

Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) * * *

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

* * * * *

7. In § 648.80, paragraph (b)(2)(vi) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

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

* * * * *

§ 648.81 [Amended]

8. In § 648.81, remove paragraph (g)(2)(iv).

9. In § 648.82, paragraph (e)(1) is revised and paragraphs (k)(3)(i) through (iii) are added to read as follows:

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

* * * * *

(e) * * *

(1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

* * * * *

(k) * * *

(3) * * *

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by

the Regional Administrator is the final agency decision.

* * * * *

10. In § 648.85, paragraphs (b)(7)(vi)(G) through (I) are removed, and paragraphs (a)(3)(i), (b)(6)(iv)(D), (b)(7)(iii), (b)(7)(iv)(A) and (F), (b)(7)(v)(D), and (b)(7)(vi)(D) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

* * * * *

(7) * * *

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which

is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) * * *

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

* * * * *

(F) *Haddock TAC—(1) Allocation and distribution.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $\text{Biomass}_{\text{YEAR } X} = (1,130 \text{ mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{\text{YEAR } X} / \text{WGB Haddock Exploitable Biomass}_{2004})$. The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(2) *Adjustments to the haddock TAC.* The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or over-harvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required

under paragraph (b)(7)(iv)(F) of this section.

* * * * *

11. In § 648.86, paragraphs (e) and (i) are revised to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* Vessels that have ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possess on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload these species prior to leaving port on a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested, but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS demarcation line to begin a subsequent trip.

* * * * *

12. In § 648.87, paragraphs (b)(1)(ix), (b)(1)(xv) and (xvi), (b)(2)(x), and (c) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization

issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

* * * * *

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

* * * * *

(2) * * *

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

* * * * *

13. In § 648.89, paragraph (b)(4) is added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

* * * * *

§ 648.92 [Amended]

14. In § 648.92, remove paragraph (b)(2)(iii).

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