

23. In § 177.848, revise paragraph (c) to read as follows:

**§ 177.848 Segregation of hazardous materials.**

\* \* \* \* \*

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

\* \* \* \* \*

**PART 179—SPECIFICATIONS FOR TANK CARS**

24. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

25. Revise § 179.13 to read as follows:

**§ 179.13 Tank car capacity and gross weight limitation.**

Except as provided in this section, tank cars, built after November 30, 1970, or any existing tank cars that are converted, may not exceed 34,500 gallons (130,597 L) capacity or 263,000 pounds (119,295 kg) gross weight on rail.

(a) For other than tank cars containing poisonous-by-inhalation material, a tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). Tank cars must conform to the conditions of the approval and must be operated only under controlled interchange conditions agreed to by participating railroads.

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars exceeding 263,000 pounds and up to 286,000 pounds gross weight on rail must meet the requirements of AAR Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (IBR; see § 171.7 of this subchapter). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

Issued in Washington, DC, on December 7, 2009 under authority delegated in 49 CFR part 1.

**Magdy El-Sibaie,**

*Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0912081429–91430–01]

**RIN 0648–XS55**

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2010 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:** Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) established a process for the formation of sectors and for annual NMFS Northeast Regional Administrator approval of proposed sector operations. Proposed Amendment 16, currently under NMFS review, with an expected implementation date of May 1, 2010, if approved, would significantly revise sector allocation management measures and expand sector management by authorizing up to 19 sectors for fishing year (FY) 2010.

Representatives from 17 sectors have submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010 at this time, in order to be timely considered for approval on a parallel track with the review of Amendment 16. NMFS received sector operations plans and contracts from the Northeast Fishery Sectors II through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, the Georges Bank (GB) Cod Fixed Gear Sector, and the Port Clyde Community Groundfish Sector. The intention of this action is to provide interested parties an opportunity to comment on the proposed 17 sector agreements for FY

2010 prior to final approval or disapproval of the operations plans. Because the approval and operation of these sector proposals are conditional on approval of proposed Amendment 16 measures, final action regarding the approval of these proposals will not be made unless and until a final decision on Amendment 16 has been made.

**DATES:** Written comments must be received on or before January 21, 2010.

**ADDRESSES:** You may submit comments, identified by 0648–XS55, by any one of the following methods:

• **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

• **Fax:** (978) 281–9135, Attn: William Whitmore.

• **Mail:** Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on 2010 Sector Operations Plans and Contracts.”

**Instructions:** All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the sector operations plans and contracts and supplemental environmental assessments (EA) are available from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EAs, and the preamble and the Classification sections of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Sector Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that 17 sector operations plans and

contracts, which were initially submitted to NMFS on September 1, 2009, are consistent with the goals of the FMP, as described in proposed Amendment 16 and other applicable laws, and are in compliance with the proposed measures that would govern the development and operation of a sector as specified in Section 4.2.3 of the Amendment 16 Final Environmental Impact Statement (FEIS).

**Background**

The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, sector operations plans and contracts must contain certain elements, including a contract signed by all sector participants and an operations plan containing rules that sector members agree to abide by to avoid exceeding their sector TAC. An environmental assessment (EA), or other appropriate analysis, must be prepared for each sector that analyzes the individual and cumulative impacts of all proposed sector operations. Additionally, the public must be provided an opportunity to comment on each proposed sector operations plan, sector contract, and EA. The regulations require that, upon completion of the public comment period, the Regional Administrator must make a determination regarding approval of the sectors operations plans and contracts.

While Amendment 13 implemented the GB Cod Hook Sector in 2004, and Framework Adjustment (FW) 42 (71 FR 62156, October 23, 2006) implemented the GB Cod Fixed Gear Sector in 2006, Amendment 16, as proposed, would

revise and expand the rules for these two existing sectors and authorize an additional 17 new sectors, including the Northeast Fishery Sectors II through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, and the Port Clyde Community Groundfish Sector. Because the approval and operation of these sector proposals are conditional on approval of measures proposed in Amendment 16, final action regarding the approval of these proposals will not be made unless and until a final decision on Amendment 16 has been made.

Representatives from 17 of the 19 sectors proposed in Amendment 16 have submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010. As currently proposed, one of these 17 sectors, Northeast Fishery Sector IV, would operate as a lease-only sector. Neither the GB Cod Hook Sector nor Northeast Fishery Sector I chose to submit an operations plan and sector contract at this time. FY 2010 would be the first year of operation for 16 of the 17 sectors, if approved. Permit owners that have indicated their intent to participate in one of the proposed 17 sectors account for 784 of the 1,480 eligible NE multispecies permit holders, representing approximately 95 percent of the historical commercial NE multispecies catch. Table 1 (below) includes permit owners who joined a sector as of September 1, 2009. The 784 permits specified above include additional permit owners who enrolled in a sector up through November 20, 2009. These permit owners have until April 30, 2010, to withdraw from a sector and fish in the common pool for FY 2010. Further, additional permit owners who wish to join a sector may

be included in the final sector rule, provided that no significantly new analysis is needed and the general conclusions of the draft environmental documents remain unchanged. This proposed rule summarizes sector requirements as proposed in Amendment 16, details regulation exemptions requested by sectors, and summarizes the applicable environmental analyses. Comments on general sector provisions should be addressed to the Amendment 16 proposed rulemaking; comments on sector operations plans and EAs should be submitted for this rulemaking (see ADDRESSES).

Amendment 16 defines a sector as “[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.” A sector’s TAC is also referred to as an annual catch entitlement (ACE). Regional Administrator approval is required in order for the sectors to be authorized to fish and to be allocated an ACE for most stocks of regulated NE multispecies and ocean pout during each FY. Each individual sector’s ACE for a particular stock would represent a share of that stock’s annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contributions (PSC) of permits participating in that sector. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, MEMBERS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE PROPOSED FY 2010 SECTORS \*

Sector	Permits enrolled	Number of members	Number of active vessels	Gear type fished	Regulated mesh areas
Northeast Fishery Sector II .....	75	22	20–25	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Northeast Fishery Sector III .....	74	30	25–30	5% trawl, 90% gillnet, 5% longline.	GOM, GB, and southern NE.
Northeast Fishery Sector IV .....	47	12	10–15	Lease-only sector .....	GOM, GB, and southern NE.
Northeast Fishery Sector V .....	39	12	10–15	90% trawl, 10% gillnet .....	Southern NE, GB.
Northeast Fishery Sector VI .....	21	12	10–15	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Northeast Fishery Sector VII .....	25	12	10–15	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Northeast Fishery Sector VIII .....	22	22	20–25	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Northeast Fishery Sector IX .....	44	22	20–25	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Northeast Fishery Sector X .....	33	22	20–25	90% trawl, 5% gillnet, 5% longline.	GOM, GB, and southern NE.
Northeast Fishery Sector XI .....	47	22	20–25	10% trawl, 85% gillnet, 5% longline.	Primarily GOM.
Northeast Fishery Sector XII .....	10	22	20–25	90% trawl, 10% gillnet .....	Primarily GOM.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, MEMBERS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE PROPOSED FY 2010 SECTORS\*—Continued

Sector	Permits enrolled	Number of members	Number of active vessels	Gear type fished	Regulated mesh areas
Northeast Fishery Sector XIII ....	31	10	15–22	90% trawl, 10% gillnet .....	GOM, GB, and southern NE.
Fixed Gear Sector .....	88	54	35	75% gillnet, 20% longline, 5% hook gear.	GOM, GB, and southern NE.
Sustainable Harvest Sector .....	93	31	44	Trawl, gillnet, hook and line, longlines**.	GOM, GB, and southern NE.
Port Clyde Sector .....	39	29	26	50% trawl, 50% gillnet .....	GOM.
Tri-State Sector .....	16	13	14	90% trawl, 10% gillnet/rawl/longline.	GOM, GB, and southern NE.
Northeast Coastal Community Sector.	19	19	17	1 otter trawl, all others hook gear.	GOM, GB, and southern NE.

\* The data in this table is from the sector operations plans and EAs submitted September 1, 2009, and is subject to change based on final sector rosters.

\*\* No gear mix ratio was described in this sector's EA.

### Sector ACEs

Sectors can determine the percentage of each stock's ACL they will be allocated based on the PSC of each member's permit. As of November 20, 2009, 784 of the 1,480 eligible NE multispecies permits, which would account for approximately 95 percent of

the historical commercial NE multispecies landings during the qualifying period selected by the New England Fishery Management Council (Council) in Amendment 16, have enrolled in a sector. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2010, to withdraw from a sector and fish in

the common pool for FY 2010. Table 2 details the ACE percentages each sector would receive according to their memberships as of November 20, 2009. Tables 3a and 3b detail the ACEs (in metric tons and tons) each sector would be allocated based on their November 20, 2009 sector rosters for FY 2010.

TABLE 2—PERCENTAGE (%) OF THE PROPOSED ACE EACH SECTOR WOULD RECEIVE BY STOCK FOR FY 2010\*\*

Sector	GOM cod	GB cod**	GOM haddock	GB had-dock**	Cape cod/ GOM yellowtail flounder	GB yellowtail flounder	Southern New England/ Mid-Atlantic yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Witch flounder
Northeast Fishery Sector II	18.94	5.47	17.67	11.63	19.32	1.70	1.64	12.26	16.54	6.10	8.36	19.88	1.67	13.27
Northeast Fishery Sector III	15.95	1.18	11.43	0.17	9.01	0.05	0.40	6.82	1.14	4.51	4.30	10.89	0.03	2.96
Northeast Fishery Sector IV	8.65	4.71	6.72	5.42	7.20	2.16	2.68	5.65	6.46	7.97	9.24	7.63	0.71	9.28
Northeast Fishery Sector V	0.25	3.14	0.68	5.66	1.70	9.71	26.26	0.55	0.60	0.52	2.65	0.71	2.66	2.97
Northeast Fishery Sector VI	2.13	2.73	3.56	2.95	2.26	2.10	5.04	3.78	5.61	4.37	4.12	3.39	2.70	4.71
Northeast Fishery Sector VII	0.58	6.29	0.64	5.17	5.26	16.90	4.99	0.77	0.54	0.77	4.23	3.23	17.55	4.11
Northeast Fishery Sector VIII	0.47	7.36	0.20	6.61	7.29	15.93	5.96	0.64	0.44	0.51	2.44	3.36	20.63	3.13
Northeast Fishery Sector IX	1.66	12.14	4.77	10.13	9.19	17.68	6.78	3.81	5.79	4.09	7.30	2.55	32.56	7.53
Northeast Fishery Sector X	4.39	0.83	2.12	0.68	9.71	1.34	1.24	1.41	0.56	0.91	1.29	12.19	0.68	1.93
Northeast Fishery Sector XI	13.68	0.40	3.23	0.04	2.21	0.00	0.01	9.28	1.88	4.85	1.87	2.13	0.00	1.86
Northeast Fishery Sector XII	1.55	0.05	0.51	0.00	0.59	0.00	0.04	0.14	0.07	0.11	0.45	0.45	0.02	0.34
Northeast Fishery Sector XIII	0.76	7.40	0.60	13.61	3.17	14.15	10.52	2.22	4.54	1.81	3.40	1.59	10.16	4.50
Fixed Gear Sector	1.90	28.08	1.29	6.41	1.83	0.18	0.18	7.81	2.89	5.92	0.55	2.24	0.03	0.80
Sustainable Harvest Sector	16.55	15.28	36.15	28.40	10.37	7.42	10.70	35.73	47.47	43.44	35.70	6.75	6.56	31.50
Port Clyde Sector	4.77	0.21	2.32	0.05	1.07	0.00	0.65	4.35	2.56	4.63	6.42	2.06	0.01	4.43
Tri-State Sector	2.23	1.11	5.60	1.84	4.79	5.41	0.55	1.29	1.05	5.66	3.64	7.49	1.64	3.34
Northeast Coastal Community Sector	0.51	0.16	0.25	0.12	0.46	0.84	0.53	0.46	0.48	0.90	0.24	0.47	0.07	0.27
All Sectors	94.95	96.53	97.75	98.90	95.43	95.40	77.68	96.98	98.61	97.07	96.19	87.01	97.67	96.91
Common Pool	5.05	3.47	2.25	1.10	4.57	4.60	22.32	3.02	1.39	2.93	3.81	12.99	2.33	3.09

\*\* The data in this table is based on signed roster contracts as of November 30, 2009.

\*\* Eastern US/Canada cod and haddock percentages equal the PSC % of GB cod and GB haddock.

\* Percentages have been rounded to the nearest hundredth of a percent in this table, but thousandths of a percent are used in calculating ACEs in metric tons and tons. In some cases, this table shows a sector allocated 0% of an ACE, but that sector is allocated a small amount of that stock.

TABLE 3A—PROPOSED ACE (IN METRIC TONS) EACH SECTOR WOULD RECEIVE BY STOCK FOR FY 2010 \*

Sector	GOM cod	East-em GB cod	Other GB cod	GOM had-dock	East-em GB had-dock	Other GB had-dock	CC/GOM yellowtail flounder	GB yellowtail flounder	SNE/MA yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Witch flounder
Northeast Fishery Sector II	865	19	169	146	1394	3308	150	17	5	337	1132	156	238	31	31	113
Northeast Fishery Sector III	728	4	36	94	20	48	70	0	1	187	78	115	122	17	17	25
Northeast Fishery Sector IV	395	16	146	55	650	1543	56	22	9	155	442	204	263	12	13	79
Northeast Fishery Sector V	11	11	97	6	678	1610	13	97	87	15	41	13	75	1	49	25
Northeast Fishery Sector VI	97	9	84	29	354	840	18	21	17	104	384	112	117	5	50	40
Northeast Fishery Sector VII	26	21	194	5	620	1472	41	169	15	21	37	20	120	5	325	35
Northeast Fishery Sector VIII	21	25	228	2	792	1881	57	159	20	18	30	13	69	5	382	27
Northeast Fishery Sector IX	76	41	375	39	1215	2883	72	177	23	105	396	105	208	4	603	64
Northeast Fishery Sector X	200	3	26	18	82	195	4	13	0	39	38	23	37	19	13	16
Northeast Fishery Sector XI	625	0	12	27	4	11	17	0	0	255	128	124	53	3	0	16
Northeast Fishery Sector XII	71	0	1	4	1	1	0	0	0	4	5	3	13	1	0	3
Northeast Fishery Sector XIII	35	25	229	5	1632	3872	25	141	35	61	311	46	97	3	188	38
Fixed Gear Sector	87	95	868	11	768	1823	14	0	1	215	198	151	16	4	0	7
Sustainable Harvest Sector	756	52	472	298	3405	8081	81	74	36	982	3250	1110	1017	11	121	268
Port Clyde Sector	218	1	6	19	6	14	8	0	2	120	175	118	183	3	0	38
Tri-State Sector	102	4	34	46	220	522	37	54	2	35	72	145	104	12	30	28
Northeast Coastal Community Sector	23	1	5	2	15	34	2	8	2	13	33	23	7	1	1	2
All Sectors	4336	326	2984	807	11856	28138	743	953	258	2665	6751	2481	2740	137	1809	826
Common Pool	230	12	108	19	132	314	36	46	74	83	95	75	109	20	43	26

\* The data in this table is based on signed roster contracts as of November 30, 2009. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.

TABLE 3b—POUNDRAGE OF ACE (IN TONS) BY STOCK PROPOSED FOR EACH SECTOR FOR FY 2010 \*

Sector	GOM cod	East-ern GB cod	Other GB cod	GOM had-dock	East-ern GB had-dock	Other GB had-dock	CC/GOM yellowtail flounder	GB yellowtail flounder	SNE/MA yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Which flounder
Northeast Fishery Sector II	954	20	187	161	1537	3647	166	19	6	371	1248	172	263	35	34	125
Northeast Fishery Sector III	803	4	40	104	22	53	77	1	1	207	86	127	135	19	1	28
Northeast Fishery Sector IV	436	18	161	61	717	1701	62	24	10	171	487	225	290	13	15	87
Northeast Fishery Sector V	13	12	107	6	748	1774	15	107	96	17	46	15	83	1	54	28
Northeast Fishery Sector VI	107	10	93	32	390	926	19	23	18	115	423	123	129	6	55	44
Northeast Fishery Sector VII	29	23	214	6	684	1622	45	186	16	23	22	133	77	6	358	39
Northeast Fishery Sector VIII	23	27	251	2	873	2073	63	175	22	19	33	14	77	6	421	29
Northeast Fishery Sector IX	84	45	414	43	1339	3178	79	195	25	116	437	115	229	4	665	71
Northeast Fishery Sector X	221	3	28	19	90	215	83	15	5	43	42	26	41	21	14	18
Northeast Fishery Sector XI	689	1	13	29	5	12	19	0	0	281	142	137	59	4	0	17
Northeast Fishery Sector XII	78	0	2	5	1	1	5	0	0	4	6	3	14	1	0	3
Northeast Fishery Sector XIII	38	28	252	5	1798	4268	27	156	39	67	343	51	107	3	207	42
Fixed Gear Sector	96	105	957	12	847	2009	16	0	1	237	218	167	17	4	1	7
Sustainable Harvest Sector	833	57	521	329	3753	8908	89	82	39	1083	3582	1224	1121	12	134	296
Port Clyde Sector	240	1	7	21	6	15	9	0	2	132	193	130	201	4	0	42
Tri-State Sector	112	4	38	51	243	576	41	60	2	39	79	159	114	13	33	31
Northeast Coastal Community Sector	25	1	5	2	16	38	4	9	2	14	36	25	8	1	1	3
All Sectors	4780	360	3289	889	13069	31016	819	1051	285	2938	7442	2735	3020	151	1994	910
Common Pool	254	13	119	20	146	346	39	51	82	91	105	82	120	23	48	29

\*The data in this table is based on signed roster contracts as of November 30, 2009. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.

### Sector Operations Plans and Contracts

All sectors must, on an annual basis, submit an operations plan, sector contract, and EA to NMFS for the following FY. On September 1, 2009, 17 sectors submitted an operations plan and contract for FY 2010 to NMFS. Each sector operations plan contains the rules under which each sector would fish. The sector contract provides the legal contract that binds members to a sector and its operations plan.

While each sector conducts fishing activities according to its approved operations plan, Section 4.2.3 of the Amendment 16 FEIS contains numerous provisions that, if approved, would apply to all sector operations plans and sector members. All permit holders with a valid limited access NE multispecies days-at-sea (DAS) permit as of May 1, 2008, are eligible to participate in a sector, including those permits currently held in confirmation of permit history. While membership in each sector is voluntary, each member (and their permits associated with the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies DAS program outside of the sector (*i.e.*, in the common pool) during the FY. Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator, as part of the approval of a sector's operations plan, as described further below. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change does not require a modification to the Amendment 16 regulations. These changes would be included in updated LOAs issued to sector members.

As proposed in Amendment 16, sectors would be allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, ocean pout, windowpane flounder, Atlantic wolffish, and Southern New England/Mid-Atlantic winter flounder. Sector vessels would be required to retain all legal-sized allocated groundfish. Catch of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish catch in exempted fisheries, or catch of yellowtail flounder in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear) and spiny dogfish (outside an exempted fishery) would have their groundfish catch (including discards) on

those trips debited against the sector's ACE, unless the vessel is fishing for such species under the provisions of a NE multispecies exempted fishery. Discard rates applied to sectors would be determined by NMFS through at-sea monitoring.

Amendment 16 proposes that ACE could be transferred between sectors, although ACE transfers to or from common pool vessels would be prohibited. Each sector would be required to ensure that its ACE is not exceeded during the FY. Sectors would be required to develop independent third-party dockside monitoring programs. During FY 2010, 50 percent of trips by each sector would be randomly selected for dockside monitoring to verify at the time it is weighed by the dealer and to certify the landings weights are accurate as reported by the dealer. Sectors would be required to monitor their landings and available ACE and submit weekly catch reports to NMFS. In addition, the sector manager would be required to provide NMFS with aggregate sector reports on a daily basis when either 80 percent of any one of the sector's groundfish ACEs are reached, or when, for two consecutive weekly reporting periods, 20 percent or more of the remaining portion of any ACE is harvested, whichever occurs first. Once a sector's ACE for a particular stock is caught, a sector would be required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. Each sector would be required to submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector.

Sector contracts provide procedures to enforce the sector operations plan, explain sector monitoring and reporting requirements, present a schedule of penalties, and provide authority to sector managers to issue stop fishing orders to sector members. Sector members could be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector contract submitted for FY 2010 states that the sector would withhold an initial reserve from each member's individual allocation to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2010, each sector has proposed that each sector member could harvest an

amount of fish equal to the proportion of PSC that each individual member's permit contributed to the sector's ACE.

Amendment 16 proposes several "universal" exemptions that are applicable to all sectors. These universal exemptions include exemptions from trip limits on allocated stocks, the GB Seasonal Closed Area, NE multispecies DAS restrictions, the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB, and portions of the Gulf of Maine (GOM) Rolling Closure Areas. Sectors may request additional exemptions from Amendment 16 regulations in their sector operations plan. However, sector vessels would not be allowed exemptions from several NE multispecies management measures, including year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements).

### Proposed Exemptions

In addition to the universal exemptions proposed in Amendment 16, sectors have requested several additional exemptions from the NE multispecies regulations in their sector operations plans. The requests include exemptions from the: (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) limitation on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. NMFS is soliciting public comment on these exemptions and is especially interested in receiving comments on the exemption requests from the Day gillnet 120-day block out requirement, the 20-day spawning block out requirement, and the limitation on the number of gillnets imposed on Day gillnet vessels, because of particular concerns regarding the impacts of these exemptions.

#### *1. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels*

This measure was implemented in 1996 under Amendment 7 (61 FR 27709, May 31, 1996) to help ensure that Day gillnet management measures were comparable to effort controls placed on other fishing gear types. Regulations at 50 CFR § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category

declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. Six sectors requested an exemption from this Day gillnet requirement, arguing that this measure was designed to control fishing effort and, therefore, is no longer necessary because sectors are restricted to a hard TAC (*i.e.*, ACE) for each groundfish stock, which limits overall fishing mortality. Exemption from the Day gillnet 120-day block requirement is being requested by Northeast Fishery Sectors III and XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, the Tri-State Sector, and the Port Clyde Community Groundfish Sector. The Tri-State Sector initially requested this exemption in the first draft of its sector operations plan, and later removed the request from their operations plan after no gillnet vessels committed to the sector. After sector rosters were re-opened on October 30, 2009, additional gillnet vessels joined the Tri-State Sector. Therefore, while there is an exemption request in the sector's most final operations plan, an analysis for this exemption is not in the sector's EA. The Tri-State Sector's EA would contain the necessary analysis for this exemption request in their final EA, which would be available to the public on publication of the sector final rule. Similar analysis for this exemption can be found in the EAs prepared for the other sectors requesting an exemption from the Day gillnet 120-day block requirement.

Depending on the selectivity and catch rates of the vessels requesting this exemption, sector vessels that are no longer subject to the 120-day block requirement could increase their catch per unit effort (CPUE) and reduce the number of days that fixed gear is in the water. However, NMFS is concerned about this exemption because, if some vessels are not selective and/or if they catch less fish, CPUE could decrease and more fixed gear could be deployed. Similarly, protected species (such as harbor porpoise and humpback whales) could benefit from less fishing effort and fewer gear days, but, conversely, could be negatively impacted by an increase in gear days and more fishing effort. Impacts to protected species also depend on spatial and temporal changes in fixed gear location and how these changes interact with protected species. Additionally, it is possible that this fixed gear exemption could allow sector vessels to "hold" additional bottom ground, disadvantaging common pool

vessels. Moreover, gillnet gear that is not tended regularly could increase ghost fishing (*i.e.*, gear that could continue to catch fish or entangle protected resources if loose or lost).

## 2. 20-Day Spawning Block

The Northeast Coastal Communities Sector, the Sustainable Harvest Sector, and the Tri-State Sector are requesting exemption from the 20-day spawning block requirement out of the fishery. Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. The sectors argue that an exemption from the 20-day spawning block requirement would allow for greater fishing flexibility and could increase efficiency and reduce overall gear time in the water. Sectors requesting an exemption from the 20-day spawning block requirement state that this measure, while designed to control fishing effort on spawning fish stocks, is ineffective and no longer necessary because each sector would utilize an ACE to restrict its fishing effort. The sectors claim that the ability for a vessel owner to select any 20-day period (between March 1 and May 31) out of the fishery, as allowed under the current regulations, makes the measure ineffective for protecting spawning stocks.

This regulation was developed to protect spawning groundfish stocks and, therefore, NMFS is seeking public comment about potential biological impacts this exemption could bring to spawning stocks, including the disruption of spawning aggregations.

## 3. Limitation on the Number of Gillnets for Day Gillnet Vessels

Current gear restrictions in the groundfish regulated mesh areas (RMA) restrict Day gillnet vessels from fishing more than: 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 RMA (§ 648.80(b)(2)(iv)). These restrictions were implemented in 1996 under Amendment 7 and revised in Amendment 13 to prevent an uncontrolled increase in the number of nets being fished, and thus, undermining the applicable effort controls. The Sustainable Harvest Sector is requesting that their vessels be allowed to fish up to 150 nets (any combination of flatfish or roundfish nets) in each of the RMAs. The current regulations require either one or two tags per net depending on the type of

gillnet and RMA fished. Because vessels under this exemption would no longer be restricted by the number of roundfish or flatfish nets in each area (up to 150 nets), the Sustainable Harvest Sector is also requesting that the two tag per net requirement be replaced with one tag per net. This exemption would increase the number of gillnets that could be fished per permit in the Sustainable Harvest Sector by 50 percent in the GOM RMA, by 200 percent in the GB RMA, and by 100 percent in the SNE RMA. The Sustainable Harvest Sector rationalizes that, because this measure was designed to control fishing effort, it is no longer necessary, since the sector is restricted to an ACE for each stock that caps overall fishing effort.

The concern raised by NMFS regarding potential increased gear under item number 1 (an exemption from the 120-day block out requirement) are applicable for this exemption request as well.

## 4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Northeast Fishery Sectors III and XI are requesting exemption from current regulations that prohibit one vessel from hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84). The sectors requesting this exemption believe that the regulations pertaining to gear marking controls and setting and hauling responsibilities are no longer necessary, because the sector would be confined to an ACE for each stock and that "community" fixed gear would allow fishermen greater flexibility. In addition, the sectors argue that shared fixed-gear fishing effort could potentially reduce the amount of gillnet gear in the water and minimize the use of gear to "hold" additional bottom ground. Pursuant to a request by NMFS, the sectors requesting this exemption have proposed that all vessels participating in community fixed gear be jointly liable for any violations associated with that gear.

## 5. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

The GB Cod Fixed Gear Sector requests an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv), which prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB, were implemented as a groundfish mortality control under Amendment 13. The GB Cod Fixed Gear

Sector proposes that this exemption would increase efficiency of its gillnet vessels by allowing them to haul additional nets per trip—nets which are already permitted in the water under the Monkfish FMP. The sector argues that this would allow additional opportunities to tend gear and would likely reduce gear soak time. This exemption does not permit the use of additional nets; it would only allow nets deployed under existing net limits, according to the Monkfish FMP, to be hauled more efficiently by vessels dually permitted under both FMPs.

#### 6. *Limitation on the Number of Hooks That May Be Fished*

The GB Cod Fixed Gear Sector requests an exemption from the number of hooks that a vessel may fish on a given fishing trip, claiming that this measure, which was initially implemented through an interim action (67 FR 50292, August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort and, therefore, is no longer necessary because the sector is restricted to an ACE for each stock, which caps mortality from fishing. Current regulations (§ 648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or 4,500 rigged hooks in the MA RMA.

Again, the concerns raised by NMFS regarding potential increased gear under items number 1 and number 3, which also could potentially allow additional fixed gear to be fished, are applicable for this exemption request as well. However, the potential problems associated with longline/hook gear would likely result in lesser impacts than those associated with gillnets. For example, the potential for gear interaction between protected resources and longline/hook gear is much lower than the interaction potential from gillnet gear. Also, while it is possible for lost longline/hook gear to ghost fish, the resulting impacts would likely be less than impacts from a gillnet ghost fishing.

#### 7. *Length and Horsepower Restrictions on DAS Leasing*

While Amendment 16 would exempt sector vessels from the requirement to use NE multispecies DAS to harvest groundfish, some sector vessels would still need to use NE multispecies DAS under specific circumstances, e.g., the Monkfish FMP includes a requirement that limited access monkfish Category C and D vessels harvesting more than the

incidental monkfish catch must fish under both a monkfish and a groundfish DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

The Sustainable Harvest Sector and Tri-State Sector have requested an exemption from the DAS Leasing Program length and horsepower restrictions in their operations plans, within their individual sectors as well with other sectors. The sectors requesting an exemption for the DAS leasing specifications state that sector ACEs eliminate the need to use vessel characteristics to control fishing effort and that removal of this restriction would allow sector vessels more flexibility. It is important to note that, because this exemption was only requested by the Sustainable Harvest Sector and Tri-State Sector, if approved, only these two sectors would be exempt from the DAS Leasing Program length and horsepower restrictions. Thus, this exemption would not apply to the other approved sectors and therefore, leasing under this exemption could only occur between the Sustainable Harvest Sector and the Tri-State Sector.

Details of the justifications for the proposed exemptions and analyses of the potential impacts of the operations plans are contained in the sector EAs.

#### *Requested Exemptions for Which There Are Serious Concerns*

After completing an initial review of 17 sector operations plans and contracts submitted September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption. Some of the sectors chose to remove these exemption requests from their operations plans, while other sectors did not. After reconsideration, NMFS has decided to include all of these exemption requests of serious concern in the proposed rule, and moreover, is soliciting public comment on these requests. If public comment on these exemptions of serious concern provides additional support that convinces NMFS to change its earlier stance on such requests, the sector operations plans and EAs would be revised accordingly. If necessary, NMFS would submit a supplemental EA.

Of central concern to NMFS are exemption requests from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas, the 72-hr observer notification requirement for NMFS-funded at-sea monitoring coverage, the Atlantic halibut one-fish trip limit

during the Maine seasonal halibut fishery, the vessel monitoring system (VMS) reporting requirements, the use of electronic vessel trip reports (VTRs) in replace of paper VTRs, the minimum 6-inch (16.51-cm) spacing requirement for de-hookers, and the minimum fish size requirements, as discussed further below.

#### 1. *GOM Rolling Closure Areas*

Amendment 16 proposes universal sector exemptions from portions of the current GOM Rolling Closure Areas. Six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from these rolling closures, specifically from statistical blocks 124, 125, 132, and 133 in April; and block 138 in May. At its November meeting, the Council endorsed the sector's request for an exemption to the rolling closure for block 138. In Amendment 16, the Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions of these areas that the Council believed should remain closed to protect spawning aggregations. The Council tasked the Groundfish Plan Development Team (PDT) with reviewing and analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans.

The sectors requesting this exemption make the argument that, because they are restricted to an ACE for each groundfish stock that caps overall fishing mortality, exemptions to the rolling area closures should be granted because they are mortality closures. The Sustainable Harvest sector contends that statistical block 138, from which they are requesting an exemption during the month of May, does not overlap with any areas regulated by the Atlantic Large Whale Take Reduction Plan (ALWTRP) and that trawl gear, which would be the primary fishing gear utilized by the sector, is not regulated by the Harbor Porpoise Take Reduction Plan (HPTRP). The six Northeast Fishery Sectors requesting exemption from statistical blocks 124, 125, 132, and 133 in April contend that their members have a vast amount of experience and knowledge identifying spawning aggregations of fish and that eliminating access to these additional rolling closure areas requested in this exemption would prematurely end commercial access to the haddock stocks, which are fully rebuilt, in those areas. The Northeast Fishery Sectors further commented that they have



designed a strategy to minimize the impacts to spawning fish while promoting benefits to sector members. Under this strategy, Northeast Fishery Sector vessels would fish on rotating schedules to limit daily effort, would utilize a sentinel vessel to survey the area for the presence of spawning fish, and would utilize a bycatch/spawning fish notification system through an onboard computer system to reduce the potential for sector vessels to overharvest spawning stocks of fish. Northeast Fishery Sectors requesting this exemption would restrict the harvesting of GOM cod in these areas by capping the percentage of the sector's available ACE that could be taken during the requested exemption period. Trawling vessels would minimize their gear impacts by reducing the time that they tow their nets along the bottom. In addition to abiding by all Federal fishing regulations, sector vessels would adhere to all applicable Massachusetts Department of Marine Fisheries cod conservation measures. Finally, the Northeast Fishery Sectors contend that vessels fishing in the requested exemption areas would provide additional data, which could improve scientific knowledge for the purpose of protecting spawning cod.

NMFS is seeking public comment about these additional exemption requests from the GOM Rolling Closure Areas due to the ancillary benefits the GOM RCAs provide to spawning fish in the GOM, as well as the protection these areas afford harbor porpoise and other marine mammals.

## 2. 72-Hour Observer Notification Requirement

Vessels are currently required to call into the Northeast Fisheries Observer Program 72 hours prior to leaving for a trip into a special management program (§ 648.85). Eight of the 12 Northeast Fishery Sectors and the GB Cod Fixed Gear Sector are requesting exemption from this requirement, arguing that, if they can hire an at-sea monitor through a private contract arrangement with a NMFS-approved observer company that can respond in less time, they should be able to do so. NMFS is proposing to reduce this requirement from 72 hr to 48 hr in the proposed rule for Amendment 16.

This notification requirement is necessary because of the additional logistical demands imposed on the NMFS Observer Program resulting from the increased NMFS funded at-sea monitoring program for all groundfish vessels. An exemption from the observer notification requirement is of significant concern due to the difficulties this

would pose for the NMFS Observer Program to maintain a random selection of observer coverage. Lastly, an observer from the NMFS Observer Program is required to gather more data than an at-sea monitor, thus this exemption would reduce the amount of fisheries data available to managers.

## 3. Halibut One-Fish Trip Limit

The Northeast Coastal Communities Sector has requested an exemption from the NE multispecies FMP one-fish per trip Atlantic halibut possession limit in order to allow member vessels to participate in the State of Maine's halibut fishery, which has a 50-fish seasonal limit. The sector rationalizes that because halibut mortality would be controlled by existing state regulations, including area restrictions, seasonal restrictions, a minimum size limit, a minimum trip limit, a minimum hook size, and tagging requirements, mortality would remain consistent with previous fishing practices.

The Atlantic halibut stock is currently overfished and experiencing overfishing. The NE multispecies FMP includes a rebuilding program for Atlantic halibut that permits a one-fish per trip possession limit to prevent a targeted fishery while minimizing discards. Allowing an exemption from the one-fish halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

## 4. VMS Requirements

All 12 of the Northeast Fishery Sectors request a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. Currently, catch data are sent directly from the vessel to NMFS through VMS. The sector anticipates that, in order to facilitate electronic data transmission from its vessels to a sector-operated data collection and distribution Web portal, an administrative exemption may be necessary to allow the server to relay catch reports and logbook data on behalf of sector member vessels. Thus, under this exemption, catch data would go from the vessel to a central server maintained by the sector, and the sector's server would then relay the data to NMFS.

NMFS' Office of Law Enforcement has raised serious concerns about this exemption request, given that the chain of custody of catch information would be interrupted and, therefore, open to tampering. Until such time that NMFS can ensure that the flow of information under such an exemption is tamper-

proof, this type of reporting exemption would be difficult to approve.

## 5. Electronic VTRs (eVTRs)

All of the Northeast Fishery Sectors, as well as the Sustainable Harvest and Tri-State Sectors, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. A pilot study is currently being developed that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Should the pilot study, which will include both sector and common pool vessels, determine that eVTRs can fulfill all necessary requirements, this option could be considered at a later date. However, NMFS considers it premature to allow eVTRs without first determining the viability of this electronic report.

## 6. Fairlead Roller Spacing on De-Hookers

The GB Cod Fixed Gear Sector requested an exemption from the prohibition on the use of de-hookers (crucifers) with less than 6-inch (15.24-cm) spacing between the fairlead rollers. The sector argues that a prohibition on de-hookers requires a modification to longline gear haulers that is inefficient and unnecessary. De-hookers with a spacing of less than 6 inches (15.24-cm) were originally prohibited in the 2002 interim rule, and then included in Amendment 13, to discourage de-hooking strategies that may reduce survival rates of discarded fish.

NMFS believes that this exemption request is not warranted because the current prohibition minimizes the mortality of discarded fish.

## 7. Minimum Fish Size Requirements

The GB Cod Fixed Gear Sector and the Tri-State Sector requested an exemption from the minimum groundfish fish size requirements. Current regulations specify minimum size (total length) for nine groundfish species: Cod, haddock, pollock, witch flounder, yellowtail flounder, American plaice, Atlantic halibut, winter flounder, and Acadian redfish. The GB Cod Fixed Gear sector argues that allowing full retention of all catch would eliminate discards and increase profitability without additional mortality. Further, the sector contends that, because 100-percent discard mortality is presently assumed by NMFS, and because the sector's ACE, which would cap the sector's catch, would be debited for all discards, the sectors should be allowed to land fish less than the current minimum fish size. The Tri-State Sector, which requests an exemption from the

Federal minimum fish size requirements for American plaice and witch flounder, states that many of these fish that their member vessels catch are less than one inch (2.54-cm) smaller than the current minimum fish size requirements and are already dead when discarded, thus making the requirement of discarding sub-legal fish wasteful.

NMFS has a serious concern about exempting vessels from the minimum fish size, as this would present significant enforcement issues by allowing two different fish sizes in the marketplace. NMFS is also concerned that this exemption could potentially increase the targeting of juvenile fish.

#### **Requested Exemptions Previously Prohibited or Included in Amendment 16**

Exemptions requested by several sectors for increased access to Special Access Programs (SAPs), inter-sector DAS leasing, and a decrease in the minimum mesh size requirements for gillnets, are either specifically prohibited in Amendment 16 or are already included in the Amendment 16 proposed rule. Accordingly, these exemptions are not proposed in this rule.

As previously stated, Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements). The Closed Area II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP are both programs that provide seasonal access to year-round closed areas. Exemptions that would expand access to these year-round closures would be prohibited under Amendment 16.

Exemption requests to authorize inter-sector DAS leasing, year-round access to the Eastern U.S./Canada Area, and a decrease in the minimum mesh size requirements for gillnets in the GOM from January to April are all proposed in Amendment 16. In addition, an exemption from regulations pertaining to the possession of additional nets while using either a haddock separator trawl or a Ruhle trawl is being proposed in the Amendment 16 regulations as a correction, since this omission in the current regulations is the result of an administrative oversight in a previous rulemaking.

Northeast Fishery Sector IV, which would operate as a lease-only sector, originally requested a suite of exemptions similar to those requested by other Northeast Fishery Sectors. However, because the permitted vessels

within Northeast Fishery Sector IV (the transferor) would undertake no actual fishing operations, the exemption requests would not be applicable and are, therefore, moot and not proposed in this rule.

#### **Sector EAs**

In order to comply with the National Environmental Policy Act, an EA was prepared for each operations plan. All sector EAs are tiered from the Environmental Impact Statement (EIS) for Amendment 16 to the NE Multispecies FMP. The EA for each sector 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 a particular sector and the other proposed sectors. The summary findings of each EA conclude that each sector would produce similar effects that have non-significant impacts. An analysis of aggregate sector impacts was also conducted. Visit <http://www.regulations.gov> to view the EAs prepared for each of the 17 sectors that this rule would implement.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (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.

Because this proposed rule contains no implementing regulations, it is exempt from review under Executive Order (E.O.) 12866.

An initial regulatory flexibility analysis (IRFA) was prepared as required by § 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that the proposed rule, if adopted, would have on small entities. The IRFA consists of this section and the preamble of this proposed rule, and the EAs 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 EAs prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

#### **Economic Impacts on Regulated Small Entities Enrolled in a Sector**

This proposed action would affect regulated entities engaged in commercial fishing for groundfish that have elected to join any one of the 17 proposed sectors that have submitted operations plans for FY 2010. Any limited access Federal permit under the NE Multispecies FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is \$4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million annually. Since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of November 20, 2009, a total of 784 of 1,480 eligible permits elected to join a sector. Table 4 presents a summary of the number and percent of individual and active permits currently enrolled in a sector for FY 2010. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2010, the number of permits participating in sectors on May 1, 2010, and the resulting sector ACE allocations, may change.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be based upon which option—joining a sector or fishing under effort controls in the common pool—offers the greater economic advantage. Since sectors would be granted certain universal exemptions, and may request and be granted additional exemptions from regulatory measures that will apply to common pool vessels, sector vessels would be afforded greater flexibility. Sector members would no longer have groundfish catch limited by DAS allocations and would, instead, be 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. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, dockside monitoring, and

at-sea monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from \$60,000 to \$150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from \$13,500 to \$17,800 per vessel. These estimates serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. The majority of these administrative costs would be subsidized by NMFS in FY 2010. Whether these subsidies, which include providing financial support for preparation of sector EAs, dockside monitoring, and at-sea monitoring, will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2010.

The substantial changes affecting vessels that choose to join a sector make it difficult to assess the economic impact on these fishing businesses. The only sector that has submitted an

operations plan for FY 2010 that has been operating since a sector allocation was first authorized in 2004 is the GB Cod Hook Sector. The average revenue per sector member increased from \$61,000 in FY 2004 to \$112,000 in FY 2008. Comparative analysis of vessels using similar gear that did not join a sector suggests that vessels that joined the sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions, or due to a self-selection effect, is unknown. Nevertheless, available information suggests that economic performance among sector vessels may be expected to improve relative to common pool vessels that remain under effort controls.

Small entity impacts may differ depending on sector-specific operations plans. The number of permits that have enrolled in each sector, as well as the operating characteristics of the sector, may have an economic affect on sector

members (Table 1). Sector enrollment in each of the 17 sectors varies from 10 to 54 members and the number of permits enrolled in a sector ranges from 10 to 93. The allocation to any given sector is based on the combined sum of the PSC for each stock associated with all permits enrolled in a sector. All sector operations plans would convert the total ACE into an individual catch share proportional to the PSC that each member brings to the sector. This share would be allocated to the member to be fished by that member or traded to another sector member.

Sector operations plans include a number of harvesting rules designed to track catches, as required, but also contain provisions that would require advance notification of when the sector or sector member may be approaching a harvest share limit or the sector's ACE for a given stock. This system may provide the information needed to allow sector members to more fully utilize their harvest share.

TABLE 4—SUMMARY OF THE NUMBER AND PERCENT OF INDIVIDUAL AND ACTIVE PERMITS FOR CURRENTLY ENROLLED IN A SECTOR FOR FY 2010

Sector	Number of individual permits*	Percent of individual permits	Number of active permits*	Percent of active permits**
Northeast Fishery Sector II .....	75	5.1	44	7.3
Northeast Fishery Sector III .....	74	5.0	47	7.8
Northeast Fishery Sector IV .....	47	3.2	0	0.0
Northeast Fishery Sector V .....	39	2.6	34	5.7
Northeast Fishery Sector VI .....	21	1.4	9	1.5
Northeast Fishery Sector VII .....	25	1.7	19	3.2
Northeast Fishery Sector VIII .....	22	1.5	16	2.7
Northeast Fishery Sector IX .....	44	3.0	22	3.7
Northeast Fishery Sector X .....	33	2.2	27	4.5
Northeast Fishery Sector XI .....	47	3.2	37	6.2
Northeast Fishery Sector XII .....	10	0.7	6	1.0
Northeast Fishery Sector XIII .....	31	2.1	25	4.2
Fixed Gear Sector .....	88	5.9	39	6.5
Sustainable Harvest Sector .....	93	6.3	44	7.3
Port Clyde Sector .....	39	2.6	27	4.5
Tri-State Sector .....	16	1.1	14	2.3
Northeast Coastal Community Sector .....	19	1.3	17	2.8
All Sectors .....	723	48.9	427	71.0
Common Pool .....	757	51.1	174	29.0

\* Number of permits in each sector is from sector operation plans and EAs submitted September 1, 2009.

\*\* In 2007, 601 limited access multispecies vessels and 138 open access vessels landed groundfish.

### Economic Impacts of Exemptions Requested in the Proposed Action That Are Not Flagged as "Requested Exemptions for Which There Are Serious Concerns"

The EIS for Amendment 16 to the NE Multispecies FMP compares economic impacts of sector measures with common pool measures, and analyzes costs and benefits of the universal exemptions. This proposed rule

provides further discussion on the additional exemptions requested by sectors. Several additional exemptions requested by various sectors could provide economic incentives to enroll in a sector. All exemptions requested by the sectors are intended to provide positive social and economic effects to sector members and ports.

Exemption from the Day gillnet 120-day block requirement out of the fishery is requested by Northeast Fishery

Sectors III and XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, the Tri-State Sector, and the Port Clyde Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-

day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block would allow sector members to realize the cost savings associated with retiring the redundant vessel.

Northeast Fishery Sectors III and XI are requesting exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed gear exemption would allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision would reduce the total amount of gear that would have to be purchased and maintained by participating sector members resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished.

The GB Cod Fixed Gear Sector is requesting exemption from the number of hooks that may be fished, and exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. These exemptions would provide vessel owners with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption would also provide an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since 2004.

The Northeast Coastal Communities Sector, Sustainable Harvest Sector, and Tri-State Sector are requesting exemption from the required 20-day spawning block out of the fishery. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel.

The Sustainable Harvest Sector is requesting an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This would provide greater flexibility to deploy fishing gear by participating sector members

according to operational and market needs.

The Sustainable Harvest Sector and Tri-State Sector request exemptions from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions would allow greater flexibility to lease DAS between vessels of different sizes. The efficiency gains of doing so are uncertain and may be limited because the exemption would only apply to Tri-State Sector and Sustainable Harvest Sector members. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption would be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

#### **Economic Impacts of Requested Exemptions for which there are Serious Concerns**

There are several requested exemptions about which NMFS has serious concerns. NMFS has informed the sector managers of these concerns. These exemption requests are from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas, the 72-hr observer notification requirements for NMFS-funded at-sea monitoring, the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery, the VMS reporting requirements, the paper VTR requirement, the prohibition on de-hookers, and the minimum fish size requirements. The economic impacts of not approving these exemptions are provided below.

In addition to the universal rolling closure exemptions as described in Section 4.2.3.9 of Amendment 16, six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from GOM Rolling Closure Areas. These include statistical blocks 124, 125, 132, and 133 in April; and block 138 in May. The Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions that the Council believes should remain closed to protect cod spawning aggregations. Exempting sector vessels from additional rolling closures beyond the universal exemptions proposed by the Council in Amendment 16 would likely result in improved profitability, since higher catch rates would mean that the

same amount of groundfish could be caught at a lower cost. However, the additional rolling closure area blocks requested for exemption were specifically not exempted by the Council because these areas provide ancillary benefits to spawning fish and, in addition, provide protection for harbor porpoise and other marine mammals.

Eight of the Northeast Fishery Sectors and the GB Cod Fixed Gear Sector requested an exemption from the 72-hr observer notification requirements for NMFS-funded at-sea monitoring. The economic impacts of providing an exemption to the 72-hr observer notification requirement are uncertain, but this exemption could provide vessel owners with additional flexibility when planning and preparing for fishing trips. However, logistical constraints on the NMFS Northeast Observer Program would make granting this exemption very difficult. NMFS is proposing to reduce this requirement from 72 hr to 48 hr in Amendment 16.

The Northeast Coastal Communities Sector requested an exemption that would allow members to fish under Maine state regulations for halibut while fishing in state waters. The exemption would provide additional fishing opportunities to improve sector member profitability. The potential to realize any improved profitability would be limited by Maine state regulations that restrict the number of halibut that may be landed during a prescribed season to 50 fish per person. The halibut stock remains overfished; thus, allowing an exemption from the halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

All of the Northeast Fishery Sectors requested an exemption from the requirement that vessels transmit reports directly to NMFS via VMS. The economic impacts of providing an exemption from this requirement are uncertain. The exemption would likely provide the sector as a whole with some flexibility to more efficiently handle the flow of information between the sector and NMFS in meeting the reporting requirements. Nonetheless, allowing vessels to submit required reports and declarations to a third party, rather than to NMFS directly, creates significant enforcement problems with the chain of custody of information. Denial of this exemption would not preclude sector member vessels from transmitting hails through the sector server for the purpose of dockside monitoring program requirements.

All of the Northeast Fishery Sectors, as well as the Sustainable Harvest and Tri-State Sectors, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. While this exemption would likely reduce the administrative burden on sectors, NMFS believes it is still premature, as an eVTR system that would address all of the needs of NMFS has not yet been developed. A pilot study is currently being developed that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Should the pilot study determine that eVTRs can fulfill all necessary requirements, this option could be considered at a later date.

The GB Cod Fixed Gear Sector requested an exemption from the prohibition on the use of de-hookers with less than 6-inch (15.24-cm) spacing between the fairlead rollers. Not granting this exemption would require modification of long-line gear haulers that are already in use. Exemption from this requirement would provide affected vessel owners with greater flexibility to rig their vessels to maximize operational efficiency. However, the interim final rule implemented in 2002, and Amendment 13 in 2004, prohibited de-hookers with spacing less than 6 inches (15.24 cm) to discourage de-hooking strategies that may reduce survival of discarded fish. Additionally, National Standard 9 requires that NMFS

minimize the mortality of bycatch that cannot be avoided.

The GB Cod Fixed Gear Sector and the Tri-State Sector requested exemption from existing regulations that provide for minimum fish sizes for several different species. Any fish caught that is below the minimum size must be discarded. To the extent that some portion of these fish would otherwise be marketable, exemption from minimum fish sizes would improve economic efficiency of member vessel owners. Since all discarded fish are assumed dead and would count against the sector's ACE, opportunities to maximize retention of any marketable fish would increase the total value of the ACE. The magnitude of this potential benefit is uncertain, since the marketability of smaller size fish is unknown. Yet an exemption from the minimum fish size requirement presents significant enforcement issues by allowing two different fish sizes in the marketplace. Moreover, this exemption could potentially increase targeting of juvenile fish.

#### **Economic Impacts of the Alternative to the Proposed Action**

Under the No Action alternative, none of the FY 2010 sector operations plans would be approved, and no sector would be approved to operate in FY 2010. While the sectors could remain authorized under proposed Amendment 16, under the No Action alternative for this rule, no sector would receive a LOA

to fish or an allocation to fish. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations in the FMP. Because of effort control changes proposed in both Amendment 16 and Framework 44, it is likely that vessels enrolled in a sector for FY 2010 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

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

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Fishery Conservation and Management 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: December 16, 2009.

**Samuel D. Rauch III,**

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