• Facsimile (fax): 301–713–4060, Attn: David Cottingham;

• Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD, 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. NMFS may elect not to post comments that contain obscene or threatening content. 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. The proposed rule and supporting documents, including the biological report, economic report, IRFA analysis, and 4(b)(2) report, are also available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm#documents*.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, NMFS, Office of Protected Resources, 301–713–2322; Elizabeth Petras, NMFS Southwest Region, 562–980–3238; Steve Stone, NMFS Northwest Region, 503–231–2317.

SUPPLEMENTARY INFORMATION: The dates, times and locations of the hearings are as follows:

1. Wednesday, February 17, 2010, 3:00 p.m. to 5:00 p.m., Carlsbad, CA: U.S. Fish and Wildlife Service Carlsbad Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; Conference Room 1.

2. Thursday, February 18, 2010, 3:00 p.m. to 5:00 p.m., San Jose, CA: San Jose Marriott, 301 South Market Street, San Jose, CA 95113; Blossom Hill Salons I and II.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sara McNulty, NMFS, Office of Protected Resources, 301–713–2322, at least five business days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 26, 2010.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–2004 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0034–01]

RIN 0648–AY29

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 44

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 44 (FW 44) to the Northeast Multispecies Fishery Management Plan (FMP), and specifications for the FMP for fishing years (FY) 2010–2012. FW 44 measures and specifications, if approved, would be implemented in conjunction with approved measures in Amendment 16 to the FMP, as well as with approved sector operations plans authorized under the FMP. Specifically, FW 44 would modify the Gulf of Maine (GOM) cod and pollock trip limits proposed in Amendment 16; provide the Regional Administrator (RA) authority to implement inseason trip limits and/or differential day-at-sea (DAS) counting for any groundfish stock in order to prevent catch from exceeding the Annual Catch Limit (ACL); and specify Overfishing Levels (OFLs), Acceptable Biological Catch levels (ABCs), and ACLs for all 20 groundfish stocks in the FMP for fishing years 2010 through 2012, as well as the Total Allowable Catches (TACs) for transboundary Georges Bank (GB) stocks. NMFS also proposes in this rule, pursuant to current Regional Administratory authority under the FMP, to allocate zero trips to the Closed Area II Yellowtail Flounder Special Access Program (SAP); limit the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; delay the opening of the Eastern U.S./Canada Management Area for trawl vessels; and implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). Finally, this rule would make technical corrections to proposed Amendment 16 regulations.

DATES: Comments must be received by March 1, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY29, 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, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: "Comments on FW 44 Proposed Rule."

• *Fax:* (978) 281–9135, Attn: Tom Warren

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are 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 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.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), which is contained in the Classification section of this proposed rule. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following internet address: *http://www.nero.noaa.gov/nero/regs/frdoc/10/10MultiFW44EA.pdf*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Pursuant to the biennial adjustment process of the FMP, the New England Fishery Management Council (Council) developed Amendment 16 to implement a wide range of revisions to management measures based on the results of the most recent stock assessment (Groundfish Assessment Review Meeting; GARM III; August 2008). A notice of availability for Amendment 16, including the Final Environmental Impact Statement, as submitted by the Council for review by

the Secretary of Commerce (Secretary), was published in the **Federal Register** on October 23, 2009 (74 FR 54773). A proposed rule for Amendment 16 was published on December 31, 2009 (74 FR 69382). Based on GARM III estimates of fishing mortality and stock size (biomass) in 2007, and subsequent estimates of fishing mortality, Amendment 16 proposes a suite of management measures to continue the rebuilding of groundfish stocks; an expanded sector management program; and a process for biennial specification of OFLs, ABCs, and ACLs. The analysis accompanying Amendment 16 indicates that the proposed management measures would achieve these objectives.

However, notwithstanding the Amendment 16 analysis, NMFS, based upon industry concerns regarding the effectiveness of Amendment 16 common pool measures, requested that the Council reconsider these measures at its September 2009 meeting. Specifically, industry expressed concern that assumptions inherent in Amendment 16 may be invalid, and therefore the Amendment 16 proposed measures may not be restrictive enough to prevent the ACLs from being exceeded (particularly for GOM cod and pollock). In particular, industry members noted that fishery participants may modify their effort behavior, for example by dropping out of sectors prior to the start of the fishing year and deciding to fish instead in the common pool, if there is the perception that common pool measures provide better fishing opportunities than sectors. Industry members also raised the possibility that Amendment 16 trip limit levels may result in over-harvest of ACLs for these stocks. For example, based on preliminary information, a relatively large number of DAS may be allocated to the common pool (3,601 DAS), compared to the relatively low proposed GOM cod ACL for the common pool (337 mt; 742,937 lb). Moreover, the Amendment 16 trip limits for GOM cod are relatively high, at 2,000 lb (907.2 kg)/DAS, up to 12,000 lb (5,443.2 kg)/trip for GOM cod. As a result of these allocations, it may be possible for GOM cod ACL to be exceeded by the common pool participants. Based upon this concern, and because it is not possible to determine with certainty in advance whether the analytical assumptions in Amendment 16 will be determined to be valid, the Council developed more restrictive management measures in FW 44 at its November 2009 meeting.

The measures in and authority for FW 44 are based in large part on Amendment 16 being implemented. In addition, FW 44 would modify proposed Amendment 16 measures. For that reason, if it is approved, FW 44 cannot be implemented until Amendment 16 (if approved) becomes effective. Moreover, FW 44 measures also affect fishing activities of the many new sector operations being proposed in concurrent actions. If approved, FW 44 will become effective at the same time and in conjunction with Amendment 16, and therefore would be in place when new sector fishing operations begin on May 1, 2010. FW 44 proposes the following management measures and specifications:

Management Measures

1. Regional Administrator Authority

Under FW 44, the NMFS RA, Northeast Region, would be given the authority to modify landing limits for any Northeast (NE) multispecies stock and/or DAS counting rates at any time during the FY to reduce the likelihood that ACLs of allocated NE multispecies stocks would be exceeded, or to facilitate the harvesting of ACLs. For example, if, based on available information regarding catch of a particular stock, NMFS projects that the ACL will be exceeded prior to the end of the fishing year, the RA may implement a more restrictive landing limit for that stock that would be effective for the remainder of the fishing year, unless further modified. Alternatively, for the same stock, the RA could instead decide to implement a more restrictive DAS counting rate in the geographic area that pertains to the stock (or implement a change to both a possession limit and DAS counting rate). A modification to the DAS counting rate, under this example, would apply to one or more of the differential DAS counting areas proposed in Amendment 16 that correspond to the pertinent stock(s) (*e.g.,* Inshore GOM Differential DAS Area; Offshore GOM Differential DAS Area; Inshore GB Differential DAS Area; Offshore GB Differential DAS Area; and Southern New England/Mid-Atlantic (SNE/MA) Differential DAS Area). This inseason adjustment could be implemented by the RA even on the first day of the fishing year. Thus, beginning in FY 2011, the RA could adjust the inseason DAS counting rate, in addition to the adjustment to the DAS counting rate that would be triggered under Amendment 16 as an accountability measure (AM), in response to exceeding an ACL during the previous FY.

Although NMFS is not proposing the RA use this new authority at the beginning of FY 2010, NMFS is nonetheless concerned that the ACLs for certain stocks may be exceeded in FY 2010, which would trigger accountability measures in FY 2011. To address the concern for stocks such as GOM winter flounder and GB cod (stocks for which the proposed ACLs are substantially less than recent catch levels), NMFS will monitor catch rates closely and be prepared to implement effort restrictions early in FY 2010, if necessary.

2. Modification to Amendment 16 Proposed Possession Limits

FW 44 would modify the proposed Amendment 16 GOM cod trip limit and replace it with the current, status quo trip limit for GOM cod. Specifically, for limited access DAS vessels, FW 44 would replace the proposed Amendment 16 GOM cod limit of 2,000 lb (907.2 kg) up to 12,000 lb (5,443.2 kg)/trip, with the status quo GOM cod trip limit of 800 lb (362.9 kg)/DAS, up to 4,000 lb (1,818.4 kg)/trip. For vessels with a limited access Handgear A or open access Handgear B permit, FW 44 would also replace the proposed Amendment 16 cod limits of 750 lb (340.2 kg) and 200 lb (90.7 kg), respectively, with the status quo trip limits of 300 lb (136.1 kg) and 75 lb (34 kg) per trip. In addition, FW 44 would implement a new trip limit for pollock of 1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,536.0 kg)/trip. Currently there is no trip limit for pollock, nor is there one proposed in Amendment 16. The proposed FW 44 trip limits are intended to reduce the likelihood of exceeding the GOM cod and pollock ACLs.

3. Requirement for Limited Access Scallop Vessels To Land Yellowtail Flounder

In conjunction with the allocations of yellowtail flounder to the scallop fishery (described below under "specifications"), vessels with a Federal limited access scallop permit are required to land all legal-sized yellowtail flounder to reduce discarding. This provision may also provide an incentive for scallop vessels to minimize the catch of yellowtail flounder, if landing yellowtail flounder is not cost-effective.

Specifications

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1361–1423h, requires ACLs to be implemented in FY 2010 for stocks determined to be subject to overfishing, and in FY 2011 for all other stocks. Amendment 16 proposes a biennial

process for specification of ACLs (and OFLs and ABCs) for all stocks as of FY 2010. Pursuant to the Amendment 16 proposed process, for FY 2010–2012 FW 44 would specify OFLs, ABCs, and ACLs, as well as incidental catch TACs for all stocks covered by the Northeast Multispecies FMP. In addition, pursuant to current FMP requirements, the Council, in this rule, recommends annual specifications of U.S./Canada Management Area TACs. Therefore, as described in further detail below, FW 44 proposes to specify U.S./Canada TACs; delay the opening of the Eastern U.S./Canada Management Area for trawl vessels for FY 2010; allocate zero trips for the CA II Yellowtail Flounder SAP, limit the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels, and implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The Regional Administrator has authority to modify management measures for the U.S./Canada Management Area, as well as modify certain SAP regulations.

FW 44 proposes the following specifications:

1. OFLs and ABCs

Table 1 contains FW 44 proposed OFLs and ABCs for FY 2010–2012, based on GARM III stock assessments (2008), for all stocks with the exception of GB yellowtail flounder, for which the ABC is based on the Transboundary Resource Assessment Committee stock assessment of 2009. It is anticipated that the FY 2011 and 2012 values of the GB yellowtail flounder ABC will be revised during 2010 and 2011, respectively, based on new transboundary stock assessments. The OFLs and ABCs for FY 2012 will likely be revised during the next biennial adjustment process (during 2011), but are being specified at this time in the event that the next biennial adjustment process does not result in the timely implementation of revised 2012 catch specifications.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with Fmsy, i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield (MSY). The ABCs are those recommended by the Council's Scientific and Statistical Committee (SSC), and are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year, and for all stocks, with the exception of SNE/MA winter flounder, represents the amount of catch associated with 75 percent of Fmsy, or the F rate required to rebuild the stock within the defined rebuilding time period (Frebuild), whichever is lower. For SNE/MA winter flounder, the ABC was calculated using the F expected to result from management measures designed to achieve an F as close to zero as practicable. This ABC is consistent with the SSC recommendation that for stocks that cannot rebuild to Bmsy in the specified rebuilding period, even with no fishing, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (*i.e.,* the proportion of the stock caught as bycatch).

According to FW 44, for all stocks, with the exception of those with index-based stock assessments (where no information was provided), the probability that the ABC catch would result in overfishing (F>Fmsy) is less than 20 percent. The highest probability of overfishing is associated with GB winter flounder (0.184, 0.191, and 0.199 for 2010, 2011, and 2012, respectively). The ABC values for GB cod and GB haddock for FY 2011 and 2012 are maximum values, because no Canadian catch has been deducted from the overall ABC, and therefore will likely be specified again in conjunction with the 2011 and 2012 U.S./Canada TACs. The FY 2011 and 2012 U.S. ABCs for GB cod and GB haddock will therefore be lower than the values in Table 1 in order to take into account Canadian catch. For example, for FY 2010, the amount of reduction to the overall ABC for GB cod and GB haddock was 1,012 mt and 17,612 mt, respectively, which represent the Canadian portion of the shared TACs (Table 7).

TABLE 1—OVERFISHING LEVELS AND ACCEPTABLE BIOLOGICAL CATCHES FOR 2010–2012

** Stock	OFL			U.S. ABC		
	2010	2011	2012	2010	2011	2012
GB cod	6,272	7,311	8,090	3,800	*5,616	*6,214
GOM cod	11,089	11,715	11,742	8,530	9,012	9,018
GB hadk	80,007	59,948	51,150	44,903	*46,784	*39,846
GOM hadk	1,617	1,536	1,296	1,265	1,206	1,013
GB ytail	5,148	6,083	7,094	1,200	1,081	1,226
SNE ytail	1,553	2,174	3,166	493	687	1,003
CC ytail	1,124	1,355	1,508	863	1,041	1,159
Plaice	4,110	4,483	4,727	3,156	3,444	3,632
Witch	1,239	1,792	2,141	994	1,369	1,639
GB winter	2,660	2,886	3,297	2,052	2,224	2,543
GOM winter	441	570	685	238	238	238
SNE winter	1,568	2,117	2,830	644	897	1,198
Redfish	9,899	10,903	12,036	7,586	8,356	9,224
White hake	4,130	4,805	5,306	2,832	3,295	3,638
Pollock	5,085	5,085	5,085	3,293	3,293	3,293
N. window	225	225	225	169	169	169
S. window	317	317	317	237	237	237
Ocean pout	361	361	361	271	271	271
Halibut	119	130	143	71	78	85
Wolffish	92	92	92	83	83	83

** GB = Georges Bank; GOM = Gulf of Maine; hadk = haddock; ytail = yellowtail flounder; SNE = Southern New England/Mid-Atlantic; CC = Cape Cod/GOM; plaice = American plaice; witch = witch flounder; winter = winter flounder; N = north; S = south; window = windowpane flounder.

* Preliminary.

2. ACLs

Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular year, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, state-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account.

For FW 44 the ABC was sub-divided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); state waters (portion of ABC expected to be caught from state waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors as of September 1, 2009, and the cumulative Potential Sector Contributions (PSCs) associated with those sectors, as explained in Amendment 16 and the proposed rule for sector operations in FY 2010.

As indicated in the proposed rule for sector operations for FY 2010 (74 FR 68015, December 22, 2009), sector rosters will not be finalized until May 1, 2010, because sectors have until April 30, 2010, to drop out of a sector and fish in the common pool. Therefore, it is likely that the FY 2010 sector sub-ACL, which is comprised of the cumulative PSCs of all enrolled sector members, will be reduced and the common pool sub-ACL will increase after publication of the final rule specifying ACLs.

Despite such changes, the groundfish sub-ACL (common pool sub-ACL plus the sector sub-ACL) would not change. Based on the final rosters, NMFS intends to publish a rule in early May 2010 to modify these sub-ACLs, and notify the public if these numbers change. It is almost certain that all of the FY 2011 and 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2011 and 2012 due to likely annual changes to the sector rosters. Furthermore, due to the need to re-specify the U.S. ABCs for GB cod and GB haddock as described above, all sub-components of the ABCs for GB cod and GB haddock will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available.

The numbers in this proposed rule are based on the sector rosters submitted to NMFS as of September 1, 2009, as indicated in the EA. In contrast, the proposed Annual Catch Entitlements (ACE) for sectors are based on rosters as of November 30, 2009. The average difference in the common pool sub-ACLs between this proposed rule and the sector proposed rule is 36 percent. The common pool sub-ACLs in the sector proposed rule are lower than in this proposed rule due to an increase in sector members between September 1 and November 30, 2009.

The concept of management uncertainty for the purpose of developing ACLs in Amendment 16, was characterized as the likelihood that management measures will result in a level of catch that is greater than the catch objective. In FW 44, management uncertainty was evaluated for each stock, considering the following elements of the fishery and the FMP: enforceability; monitoring adequacy; precision of management tools; latent effort; and catch of groundfish in non-groundfish fisheries. For most stocks and components of the fishery (ABC components), the default adjustment (reduction) to the catch level for a fishery component was 5 percent. For stocks with less management uncertainty, the adjustment was 3 percent, and for those stocks or components with more management uncertainty, the adjustment was 7 percent.

For example, the 2010 pollock ABC set by the SSC was 3,813 mt. Excluding the estimated Canadian pollock catch of 520 mt, the U.S. ABC in 2010 for pollock amounts to 3,293 mt (Table 1). Approximately 6 percent of the U.S. ABC is used to account for anticipated state-waters catch (200 mt), 6 percent accounts for anticipated pollock catch by non-groundfish fisheries (other sub-components), and the remaining 2,893 mt is allocated to the groundfish fishery (3,293 − 200 − 200 = 2,893 mt). To account for management uncertainty, this amount was reduced by 5 percent (144 mt) from 2,893 mt,, resulting in a groundfish sub-ACL of 2,748 mt (2,893 − 144 = 2,748 mt) (Table 3).

Several components of the FW 44 ABCs are notable, because they are atypical. For example, an allocation of yellowtail flounder to the scallop fishery is proposed in recognition of the importance of yellowtail flounder to the prosecution of the scallop fishery. For FY 2010, the scallop fishery would be allocated 100 percent of the estimated yellowtail flounder (for GB and CC/GOM stocks) that is associated with the projected scallop catch in FY 2010, although this allocation is not a "hard" TAC. For FY 2011 and 2012, NMFS proposes in FW 44 to allocate to the scallop fishery 90 percent of the yellowtail flounder the scallop fishery is projected to catch (Table 2). Allocating to the scallop fishery only 90 percent of the yellowtail flounder that the fishery is expected to catch is intended to incentivize the scallop fishermen to reduce its bycatch of yellowtail flounder.

At the January 27, 2010 Council meeting, the Council is expected to review and possibly reconsider Framework Adjustment 21 (FW 21) to the Atlantic Sea Scallop FMP (FW 21), which includes measures that determine the amount of scallops that would be caught during FY 2010. Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the amount of projected scallop harvest, a modification to FW 21 could affect the proposed FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The outcome of the Council's January 2010, review of FW 21 is unknown at the time this document was going to publication. However, even if the yellowtail flounder allocations are not changed in FW 44, a modification of the scallop management program could change the impacts of the yellowtail flounder allocations, such that they are different than analyzed in the FW 44 EA.

The FW 44 EA contains a brief discussion of the potential effects on the environment, including the human environment, of modifying the scallop management program. If necessary, the FW 44 EA will be revised by including supplemental analyses, and the FW 44 final rule would reflect the revised specifications. For FY 2010, a change in the Scallop FMP that would allow additional scallop effort, and a recommendation for a larger allocation of yellowtail flounder, would result in increased revenue to the scallop fishery

due to the additional yellowtail landed by scallop vessels. Conversely, with respect to the groundfish fishery, allocating additional yellowtail flounder to the scallop fleet would result in lost revenue for the NE multispecies fishery. Based on FW 21 information, the total amount of GB and SNE/MA yellowtail flounder allocated to the scallop fishery could be up to 146 mt and 135 mt, respectively. These amounts would increase, by 36 mt and 24 mt for GB and SNE/MA yellowtail, respectively the currently proposed allocations to the scallop fishery. The EA estimates that the value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from a low of $3,296 to a high of $41,176. Further, the specified allocations of yellowtail flounder for the scallop fishery may be revised for FY 2011 or 2012, based on updated scallop and yellowtail flounder stock information, or on future scallop fishery access area measures.

No specific allocation of CC/GOM yellowtail flounder would be made to the scallop fishery because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock will be considered part of the "other sub-component" of the ACL.

The FY 2010 yellowtail flounder allocations to the scallop fishery are characterized as ACL sub-components (no short-term associated AMs), and the FY 2011 and 2012 allocations are characterized as sub-ACLs. Under the current Atlantic Sea Scallop FMP, if the scallop fishery harvests in excess of the yellowtail flounder sub-components specified for the fishery for FY 2010 (110 mt and 111 mt for GB and SNE/MA, respectively), no scallop management measures will be triggered. The Council has decided to develop AMs for the Atlantic Sea Scallop FMP that would be responsive to yellowtail flounder catches in excess of the sub-ACL, beginning in FY 2011. The precise mechanism and scope of future scallop AMs, is unknown. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas from the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the proposed ACL components, "total TAC" means "total ACL", i.e., 10 percent of 1,169 mt (117 mt) and 468 mt (47 mt) for FY 2010 for GB and SNE/MA yellowtail flounder, respectively (see Table 3).

Under this action, the mid-water trawl fishery would be allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 2 are slightly less than 0.2 percent, due to the 7 percent reduction of these allocations to account for management uncertainty for this stock. To determine the mid-water trawl fishery's allocation of GB haddock, therefore, the ABC of 44,903 mt was multiplied by 0.002, and then reduced by 6.3 mt (44,903 mt X .002 = 89.8 mt; 89.8 mt − 6.3 mt = 83.5 mt). For GOM haddock, the ABC of 1,265 mt was multiplied by 0.002, and then reduced by 0.18 (1,265 mt X .002 = 2.53 mt; 2.53 mt − 0.18 mt = 2.4 mt). All the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs (associated with AMs, as explained below). A percentage of the U.S. ABC for GOM haddock and GOM cod would be allocated to the recreational fishery, based on a split of ABC among commercial and recreational components of the fishery (72.5 percent and 27.5 percent for haddock; 66.3 percent and 33.7 percent for cod, respectively)(Table 2). All the recreational allocations to the groundfish fishery are characterized as sub-ACLs.

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)

	FY 2010	FY 2011	FY 2012
Scallop Fishery			
Yellowtail flounder stock:			
GB	110	197	308
SNE/MA	111	80	126
Mid-Water Trawl Fishery			
Haddock stock:			
GB	84	87	74
GOM	2	2	2
Recreational Groundfish Fishery			
GOM stock:			
GOM cod	2,673	2,824	2,826
GOM haddock	324	308	259

For most stocks the percentage of the ABC deducted for anticipated catch from state waters is between 1 and 10 percent, with the exception of Atlantic halibut and GOM winter flounder, for which 50 percent and 35 percent, respectively, are deducted from the ABC.

Amendment 16 would implement a system in which a sub-ACL has an AM that would be triggered if the catch exceeds the specified amount. In contrast, an ACL-subcomponent does not have an automatic short-term AM that is triggered if the catch exceeds the specified amount, although there would be accountability through the evaluation of the catch of all sub-components during the next biennial adjustment to determine if the size of the ACL-subcomponents needs to be adjusted for subsequent fishing years. However, if the total catch exceeds the total ACL, AMs would be triggered, as explained in detail in the Amendment 16 proposed rule. Tables 3, 4, and 5 contain the total ACLs, sub-ACLs, and ACL-subcomponents for FY 2010, 2011, and 2012, respectively (with the exception of the scallop and mid-water trawl components in Table 2). The sector sub-ACLs for five stocks are zero, because no

possession of these stocks is allowed for either common-pool or sector vessels.

TABLE 3—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2010 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	3,620	3,430	174	3,256	38	152
GOM cod	8,088	7,240	337	4,230	566	283
GB hadk	42,768	40,440	1,127	39,313	449	1,796
GOM hadk	1,197	1,149	39	786	9	37
GB ytail	1,169	999	65	934	0	60
SNE ytail	468	322	91	241	5	20
CC ytail	822	779	52	727	9	35
Plaice	3,006	2,848	184	2,665	32	126
Witch	899	852	42	810	9	38
GB winter	1,955	1,852	55	1,797	0	103
GOM winter	230	158	26	132	60	12
SNE winter	605	520	520	0	53	32
Redfish	7,226	6,848	234	6,613	76	303
White hake	2,697	2,566	121	2,435	28	113
Pollock	3,148	2,748	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	69	30	30	0	36	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,349	5,068	257	4,812	56	225
GOM cod	8,545	7,649	356	4,469	597	299
GB hadk	44,560	42,134	1,174	40,959	468	1,871
GOM hadk	1,141	1,095	37	749	9	35
GB ytail	1,050	799	52	747	0	54
SNE ytail	641	527	144	383	7	27
CC ytail	992	940	63	867	10	42
Plaice	3,280	3,108	200	2,908	34	138
Witch	1,304	1,236	61	1,174	14	55
GB winter	2,118	2,007	60	1,948	0	111
GOM winter	230	158	26	132	60	12
SNE winter	842	726	726	0	72	45
Redfish	7,959	7,541	257	7,284	84	334
White hake	3,138	2,566	141	2,833	33	132
Pollock	3,148	2,974	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	76	33	33	0	39	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl and recreational fisheries.

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,919	5,608	284	5,324	62	249
GOM cod	8,551	7,654	356	4,472	598	299
GB hadk	37,952	35,885	1,000	34,885	398	1,594
GOM hadk	959	920	31	630	7	29
GB ytail	1,191	822	53	769	0	61
SNE ytail	936	760	208	552	10	40
CC ytail	1,104	1,046	70	976	12	46
Plaice	3,459	3,278	211	3,067	36	145
Witch	1,561	1,479	73	1,406	16	66
GB winter	2,422	2,295	68	2,227	0	127

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) *—Continued

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GOM winter	230	158	26	132	60	12
SNE winter	1,125	969	969	0	96	60
Redfish	8,786	8,325	284	8,041	92	369
White hake	3,465	3,283	156	3,128	36	146
Pollock	3,148	2,748	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	83	36	36	0	43	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

3. Revisions to Incidental Catch TACs and Allocations to Special Management Programs

This proposed rule specifies incidental catch TACs applicable to the NE multispecies Special Management Programs for FY 2010–2012, based on the proposed ACLs and the FMP. Incidental catch TACs are specified for certain stocks of concern for common pool vessels fishing in the Special Management Programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. A stock of concern is defined as a stock that is in an overfished condition or subject to overfishing. The Incidental Catch TACs proposed below are consistent with the proposed Amendment 16 changes to the allocation of incidental catch TACs among Special Management Programs. Pursuant to Amendment 16, new incidental catch TACs are required for GOM winter flounder and pollock, because they are now considered stocks of concern. Although American plaice is technically no longer a stock of concern, Amendment 16 retains the incidental catch TAC for this stock because the stock is far from rebuilt. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs. Due to the need to re-specify the U.S. ABC for GB cod, as described above, the incidental catch TAC for GB cod will be re-specified for FY 2011 and 2012, when information on the Canadian TACs are available. The incidental catch TACs by stock based on the common pool sub-ACL are shown in Table 6 below.

TABLE 6—INCIDENTAL CATCH TACS BY STOCK FOR FY 2010–2012 (MT)

Stock	Percentage of sub-ACL	2010 incidental catch TAC	2011 incidental catch TAC	2012 incidental catch TAC
GB cod	2	3.5	5.1	5.7
GOM cod	1	3.4	3.6	3.6
GB yellowtail	2	1.3	1.0	1.1
CC/GOM yellowtail	1	0.5	0.6	0.7
SNE/MA yellowtail	1	0.9	1.4	2.1
Plaice	5	9.2	10.0	10.6
Witch flounder	5	2.1	3.1	3.7
SNE/MA winter flounder	1	5.2	7.3	9.7
GB winter	2	1.1	1.2	1.4
White hake	2	2.4	2.8	3.1
Pollock	2	2.4	2.4	2.4

TABLE 7—ALLOCATION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

Stock	Regular B DAS program %	Closed area I hook gear haddock SAP %	Eastern U.S./ Canada had-dock SAP %
GB cod	50	16	34
GOM cod	100	na	na
GB yellowtail	50	na	50
CC/GOM yellowtail	100	na	na
SNE/MA yellowtail	100	na	na
Plaice	100	na	na
Witch flounder	100	na	na
SNE/MA winter flounder	100	na	na
GB winter	50	na	50
White hake	100	na	na
Pollock	50	16	34

TABLE 8—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2010–2012 (MT)

Stock	Regular B DAS program			Closed area I hook gear haddock SAP			Eastern U.S./Canada haddock SAP		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
GB cod	1.7	2.6	2.8	0.6	0.8	0.9	1.2	1.7	1.9
GOM cod	3.4	3.6	3.6	.....	.....	.....	.....	.....	.....
GB yellowtail	0.6	0.5	0.5	.....	.....	.....	0.6	0.5	0.5
CC/GOM yellowtail	0.5	0.6	0.7	.....	.....	.....	.....	.....	.....
SNE/MA yellowtail	0.9	1.4	2.1	.....	.....	.....	.....	.....	.....
Plaice	9.2	10.0	10.6	.....	.....	.....	.....	.....	.....
Witch flounder	2.1	3.1	3.7	.....	.....	.....	.....	.....	.....
SNE/MA winter flounder	1.1	1.2	1.4	.....	.....	.....	.....	.....	.....
GB winter	1.2	1.4	1.6	.....	.....	.....	1.2	1.4	1.6
White hake	5.2	7.3	9.7	.....	.....	.....	.....	.....	.....
Pollock	1.2	1.2	1.2	0.4	0.4	0.4	0.8	0.8	0.8

6. Annual Specifications for U.S./Canada Management Area

The FMP specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area. The regulations governing the annual development of TACs were authorized by Amendment 13 to the FMP in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada (DFO) that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee. In September 2009, the TMGC approved the 2009 Guidance Document for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. Although the TMGC also approved the Guidance Document for GB yellowtail flounder, the TMGC was not able to agree on a shared TAC for GB yellowtail flounder.

The U.S. delegation proposed 1,500 mt for the shared GB yellowtail flounder TAC, based on the SSC recommendation. The Canadians supported a larger shared TAC of 2,700 m. Due to the Magnuson-Stevens Act and FMP rebuilding plan for GB yellowtail flounder, the United States was constrained to the lower level it proposed, and the TMGC was unable to reach a consensus on an appropriate shared catch for GB yellowtail, and acknowledged this lack of consensus.

The recommended FY 2010 TACs were based on the most recent stock assessments (TRAC Status Reports for 2009), and the fishing mortality strategy shared by NMFS, the Department of Fisheries and DFO. The shared strategy has two parts: (1) To maintain a low to neutral (less than 50-percent) risk of exceeding the F limit reference (Fref = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively); and (2) when stock conditions are poor, F should be further reduced to promote rebuilding.

The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod for FY 2010 is 1,350 mt. A 2010 TAC of 1,350 mt corresponds to the average of the pertinent two models for a neutral (50-percent) risk of biomass decline. This corresponds to a low risk (less than 25-percent) or neutral risk (50-percent) of exceeding the Fref of 0.18 (i.e., Fmsy) in FY 2010. The annual allocation shares between countries for FY 2010 are based on a combination of historical catches (10 percent weighting) and resource distribution based on trawl surveys (90 percent weighting). Combining these factors entitles the United States to 25 percent of the shared TAC and Canada to 75-percent, resulting in a quota of 338 mt for the United States and 1,012 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2010 is 29,600 mt. While this technically corresponds to the risk-neutral level (of exceeding F ref of 0.26), which assumes the entire TAC will be caught in FY 2009, realistically, it represents a low to neutral risk level, because the anticipated catch in FY 2009 will likely be less than the TAC. The annual allocation share recommendations between countries for FY 2010 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Combining these factors results in recommended allocations of 40.5 percent of the shared TAC to the United States, and 59.5 percent to Canada, or a quota of 11,988 mt for the U.S. and 17,612 mt for Canada.

On September 23, 2009, the Council approved, consistent with the 2009 Guidance Document, the following U.S. TACs recommended by the TMGC: 338 mt of Eastern GB cod and 11,988 mt of Eastern GB haddock. The Council recommended a U.S. TAC of 1,200 mt for GB yellowtail, based upon the SSC recommendation of 1,500 mt, minus the anticipated Canadian catch, estimated at 300 mt. The 300 mt is approximately the 3-year average of Canadian catch (2008, 2007, 2006; 151 mt, 132 mt, 590 mt, respectively), based upon TMGC information. The FY 2010 TACs for the U.S./Canada Management Area represent substantial decreases for cod (36 percent) and yellowtail flounder (43 percent), and an increase for haddock, compared to the FY 2009 TACs for those species. The final GB yellowtail flounder sub-ACL proposed for the groundfish fishery (999 mt; Table 3) is lower than the 1,200-mt U.S. TAC, as discussed above, due to the allocation to the scallop fishery and consideration of management uncertainty.

TABLE 9—2010 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES

[In parentheses]

	Eastern GB Cod	Eastern GB Haddock	*GB Yellowtail Flounder
Total Shared TAC	1,350	29,600	1,500
U.S. TAC	338 (25%)	11,988 (40.5%)	1,200
Canada TAC	1,012 (75%)	17,612 (59.5%)	na

*Developed unilaterally by the Council.

The regulations related to the Understanding, promulgated by the final rule implementing Amendment 13, state that "any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, if an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2009, the pertinent components of the ACL would be adjusted downward in order to be consistent with the FMP and Understanding (including the scallop ACL-subcomponent for GB yellowtail flounder). Although it is very unlikely, it is possible that a very large over-harvest could result in an adjusted TAC of zero. If an adjustment to one of the FY 2010 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act and the fishing industry will also be notified.

7. U.S./Canada Management Area Initial Measures for FY 2010.

NMFS also proposes to implement, in conjunction with FW 44, and using existing authority granted to the Regional Administrator under the FMP, measures to optimize the harvest of the transboundary stocks managed under the Understanding . The regulations in 50 CFR 648.85(a)(3)(iv)(D) provide the RA the authority to implement inseason adjustments to various measures in order to prevent over-harvesting, or to facilitate achieving the TAC.

Although this measure is not included in FW 44, pursuant to the authority cited above, the Council in November 2009 voted to direct the RA to postpone the opening of the Eastern U.S./Canada Area for both sector and non-sector vessels fishing with trawl gear in FY 2010 from May 1, 2010 to August 1, 2010. Therefore, this action proposes such a delay. The objective of this measure is to prevent trawl fishing in the Eastern U.S./Canada Area during the time period when cod bycatch is likely to be very high, and to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder. To further constrain fishing mortality on GB cod, NMFS proposes that, in a manner similar to FYs 2008 and 2009, common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2010, be limited to a cod catch of 5 percent of the Eastern GB cod TAC, or 16.9 mt of cod. This measure was successful in FYs 2008 and 2009 in slowing the annual catch rate of cod during the early part of the year.

Second, NMFS is proposing to implement, in conjunction with FW 44, a possession limit of 2,500 lb (1,125 kg) per trip for GB yellowtail flounder for common pool vessels to prevent the common pool sub-ACL from being exceeded. Although the proposed Amendment 16 regulations would not implement any default initial possession limit for GB yellowtail flounder (*i.e.,* unlimited at the start of the fishing year), NMFS is proposing this initial possession limit under its existing authority, in order to moderate catch to ensure fishing limits are not exceeding allow harvesting of the sub-ACL by the common pool, and decrease the likelihood that further restrictions during the FY would be needed to slow the catch. This possession limit is based on a recommendation of the Council's Groundfish Plan Development Team for a low GB yellowtail flounder trip limit, as well as a projected catch analysis for FY 2010, using current information on vessels that will fish in the common pool in FY 2010. If necessary, NMFS may modify this proposed trip limit based upon new information regarding the vessel composition of the common pool, or revised analytical assumptions.

8. Special Management Program Status for FY 2010

The Regional Administrator has existing authority to allocate trips into the Closed Area (CA) II Yellowtail Flounder SAP and, for other special management programs (Regular B DAS Program; CA I Hook Gear Haddock SAP; and Eastern U.S./Canada Haddock SAP), has authority to close the program if the program would undermine achieving the objectives of the FMP or the SAP.

Therefore, in conjunction with FW 44, NMFS proposes that for FY 2010, zero trips be allocated to the CA II Yellowtail Flounder Special Access Program, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II SAP. The Regional Administrator has the authority to determine the allocation of the total number of trips into the CA II SAP based on several criteria, including the GB yellowtail flounder TAC level and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by Framework Adjustment 40B (FW 40B) (70 FR 31323, June 1, 2005), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb/trip = 2,250,000 lb (1,021 mt) needed). This calculation takes into account the projected catch from the area outside of the SAP. Based on the proposed groundfish sub-ACL, of 2,202,355 lb (999 mt), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (i.e., 2,202,355 lb (999 mt) available < 2,250,000 (1,021 mt) needed).

NMFS also proposes, in conjunction with FW 44, to disallow the use of Category B DAS in the Eastern U.S./Canada Haddock SAP for common pool vessels in FY 2010, based on the Regional Administrator's existing authority to close the SAP if the program would undermine the achievement of the objectives of the SAP or the FMP. All of the FY 2010 incidental catch TACs proposed for the SAP are very small (GB cod: 2,646 lb (1.2 mt); GB yellowtail flounder: 1,323 lb (0.6 mt); pollock: 1,724 lb (0.8 mt); and GB winter flounder: 2,646 lb (1.2 mt)), and would therefore be difficult to monitor. Concurrent trips by several vessels into the SAP, or even a single trip, could result in the incidental

TAC(s) being exceeded quickly. Based on historical information of the amount of GB cod caught (5,276 lb (2.4 mt)) on SAP trips that ended on a Category B DAS, the SAP would provide little opportunity to target haddock, with a high likelihood of the SAP closing upon reaching the incidental catch TAC for cod. Furthermore, past participation in this SAP was extremely low (*e.g.,* eight trips in FY 2008). For these reasons, the use of Category B DAS in the SAP would be inconsistent with the objective of the SAP to allow access to haddock while avoiding or minimizing impacts on stocks of concern. Under proposed Amendment 16 rules, sector vessels would not be restricted by the incidental catch TAC, and could fish in the SAP, provided they have adequate ACE for Eastern GB haddock (and other stocks).

9. Haddock TAC for CA I Hook Gear Haddock SAP

FW 44 proposes specification of a haddock TAC for the CA I Hook Gear Haddock SAP based on the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is based on the TAC that was specified for the SAP in 2004 (1,130 mt), and scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (27,313 mt). The size of the western component of the GB haddock stock is estimated as 35 percent of the size of the total GB haddock stock. Therefore, if the 2010 exploitable biomass of haddock is projected to be 291,682 mt, the formula and resultant TAC is as follows: $(.35)(291{,}682)/27{,}313) \times 1{,}130 = 4{,}223.7$ mt. Table 10 contains the proposed CA I Hook Gear Haddock SAP TACs and pertinent information for FY 2010–2012.

TABLE 10—CA I HOOK GEAR HADDOCK SAP TACS FY 2010–2012.

Year	GB Haddock exploitable biomass (mt)	Western GB Haddock exploitable biomass	Biomass (yr)/ biomass 2004	TAC (mt, live weight)
2004	78,037	27,313	.....	.....
2010	291,682	102,089	3.738	4,223.7
2011	218,054	76,319	2.794	3,157.5
2012	177,978	62,292	2.281	2,577.2

10. Revised Stock Areas for GB Yellowtail Flounder and GB Winter Flounder

In 2004, Framework Adjustment 40A (FW 40A) (69 FR 67780, November 19, 2004) established the Regular B DAS Program to provide opportunities for vessels to use Category B Regular DAS to selectively harvest healthy stocks of haddock, while avoiding stocks of concern (i.e., stocks that were overfished and subject to overfishing). That action specified stock areas that would be closed if quarterly incidental TACs for stocks of concern were caught. The proposed rule to implement measures in Amendment 16 (74 FR 69382, December 31, 2009) revised these areas to specify that they would also be used to identify the stock areas in which possession limits are applied, and to specify areas in which sector allocations of ACE would apply.

The Northeast Fisheries Science Center (Center) recently compared the stock areas used in stock assessments with those to be used to monitor the catch of ACLs in the NE multispecies fishery beginning in FY 2010. The stock areas identified by the Center differed slightly from the stock areas previously specified for the Regular B DAS Program under FW 40A, and the stock areas proposed in Amendment 16 for trip limits and sector ACEs. In particular, the stock areas identified by the Center for GB yellowtail flounder and GB winter flounder included statistical areas 522, 525, 542, 543, 561, and 562, while the stock areas for GB yellowtail flounder and GB winter flounder originally implemented under FW 40A and revised by the Amendment 16 were limited to statistical areas 522, 525, 561, and 562 (i.e., only the U.S./Canada Management Area), and did not include 542 and 543. To ensure that the areas used to attribute catch to stock areas for the purposes of monitoring ACLs correspond to the stock areas used in assessments, this proposed rule modifies the GB yellowtail flounder and GB winter flounder stock areas listed at 50 CFR 648.85(b)(6)(v)(H) and (I) in the Amendment 16 proposed rule to include statistical areas 542 and 543.

Classification

At this time, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the FMP, MSA and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

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

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

An IRFA was prepared, which is expanded upon and incorporated herein, as required by section 603 of the Regulatory Flexibility Act (RFA). Below is a summary of the IRFA, which describes the economic impact this proposed rule, if adopted, would have on small entities. A detailed 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 the Executive Summary and Section 3.2 of the EA prepared for this action.

The preferred alternative would modify the Gulf of Maine (GOM) cod and pollock trip limits proposed in Amendment 16 by: (1) Reducing the GOM cod limit proposed in Amendment 16 (2,000 lb (907.2 kg)/DAS up to 12,000 lb (5,443.2 kg/trip) to the status quo level (800 lb (362.9 kg)/DAS up to 4,000 lb (1,814.4 kg)/trip); (2) reducing the GOM cod trip limit for vessels fishing under a Handgear A or Handgear B permit to 300 lb (136.1 kg)/trip and 75 (34.0 kg)lb/trip, respectively; and (3) imposing a trip limit for pollock to of 1,000 lb (453.6 kg)/DAS up to 10,000 lb (4,536 kg)/trip (Amendment 16 has no proposed possession limit for pollock). This alternative would also: (1) Grant the RA the authority to implement inseason trip limits and/or differential DAS counting for any groundfish stock in order to prevent catch from exceeding the ACL; (2) specify OFLs, ABCs, and ACLs for all 20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the TACs for transboundary Georges Bank (GB) stocks, and allocations of yellowtail flounder to the scallop fleet; (3) allocate zero trips to the CA II Yellowtail Flounder SAP; (4) limit the Eastern U.S./Canada Haddock SAP to

the use of Category A DAS for common pool vessels; (5) delay the opening of the Eastern U.S./Canada Management Area for trawl vessels; and (6) implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). These measures would affect regulated entities engaged in commercial fishing for groundfish and scallops. Sub-ACLs would also be set for the recreational catches of GOM cod and GOM haddock, and would affect regulated entities engaged in the party/charter industry.

Under the Small Business Act (SBA), any commercial fishing vessel that generates $4 million in sales, or any party/charter operation with $7 million in annual sales, is considered a small business. Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis each permitted vessel is treated as a single small entity. During FY 2008 (the most recent complete FY), 2,732 vessels were issued a scallop and/or a NE multispecies permit. Of these vessels, 1,867 were issued only a NE multispecies permit, 500 were only issued a scallop permit, and 365 were issued both a scallop and a NE multispecies permit. The latter include vessels that have a limited access scallop and a limited access Category E (combination vessel) groundfish permit, as well as vessels that hold some combination of a party/charter permit and a limited access scallop permit or a general category permit. Among NE multispecies permit holders, 1,472 held limited access permits, and 760 held open access party/charter permits.

Based on FY 2008 activity, 1,267 of the 2,732 vessels with either a commercial scallop or NE multispecies permit participated in the scallop or NE multispecies fishery. Median gross sales for these vessels were $186 thousand, and no one entity had sales exceeding $4 million. Based on FY 2008 logbook data, 143 of the 760 permitted party/charter vessels participated in the GOM recreational groundfish fishery where either GOM haddock or GOM cod were retained. The total number of passengers carried by a single of these regulated party/charter operators did not exceed 11,000. At an average passenger fee of approximately $65 per passenger, none of the participating party/charter businesses would exceed $7 million in sales. Therefore, NMFS has determined that all 1,410 of the participating commercial and recreational for-hire vessels are considered small entities under the RFA.

Economic Impacts of the Proposed Action

A more detailed treatment of economic impacts may be found in Section 7.4 of the EA. As noted in Section 7.4, the economic impacts of the ACLs set for the commercial groundfish fishery are uncertain for any given vessel, because the economic impacts depend on whether the vessel owner chooses to enroll in a sector or remains in the common pool. Sectors offer relief from certain regulations while being limited to a quota on catch. Sectors provide opportunities to improve economic efficiency while placing a premium on managing available quota for multiple species to maximize the value of landings. Fishing in the context of a sector will likely require changes in fishing practices including where, when, and how fishing operations are conducted.

Groundfish revenues during both FY 2007 and 2008 were approximately $85 million. Given the proposed 2010 ACLs, at 2008 prices, the available potential revenue would be approximately $190 million, assuming the available ACL for all stocks can be harvested and no discarding occurs. Realizing revenues of this magnitude is unlikely because some level of discarding is likely, and available ACL for some species will constrain the ability to harvest the full ACL of others. If there are no changes in recent discarding rates or gear selectivity, groundfish revenues may be expected to decline to $63 million in FY 2010. However, improvements in selectivity, particularly while fishing for GB haddock, which comprises nearly half of the aggregate groundfish ACL, could lead to substantially higher revenues. If, for example, selectivity could be improved by 50 percent over FYF 2007–2008 averages, groundfish revenues would be an estimated $87 million in FY 2010.

Even if fishing revenues do not improve, vessel owners that enroll in sectors may still find themselves in a more favorable financial position because sectors offer the opportunity for pooling of quota across fishing platforms. For individuals that own multiple vessels, operating in a sector allows them to shed redundant capital, thereby reducing fixed costs. Operating costs may also be reduced because sectors participants are granted certain regulatory exemptions that decrease overall costs, and because fishing will likely be moved to an owner's most efficient vessel.

Economic impacts on vessels that do not enroll in a sector are also uncertain. The common pool measures (trip limits for GOM cod and pollock) were designed to ensure that the catch does not exceed the sub-ACL allocated to the common pool as a whole. The economic impact of these measures was estimated by applying the common pool measures adopted under Amendment 16, as modified by this proposed action, to FY 2007 activity. As of September 1, 2009, 723 permits had enrolled in a sector, and 757 had not. The latter figure includes a large number of vessels that have not been active in the groundfish fishery. In fact, only 279 of the common pool vessels had any Category A DAS that would enable them to participate in the groundfish fishery. Of these 279, only 113 were found to have actually participated in the groundfish fishery. These vessels had aggregate gross sales of $24.8 million (an average of $219,500 per vessel), of which nearly 30 percent was derived from sales on trips where groundfish were landed. The estimated combined effect of the Amendment 16/FW 44 measures on the common pool is to reduce total sales by $5.1 million, an average of $45,100 per vessel, or 20.1 percent. This represents a $3 million reduction in groundfish revenue from 2008 levels. These economic impacts represent an upper bound of the adverse impacts, because they do not reflect the ability of vessels to modify fishing behavior or to lease DAS to mitigate potential impacts. However, the ability to offset such impact by DAS leasing may be limited. Converting 2007 activity into 24-hr increments, as proposed in Amendment 16, the total DAS needed to fish at 2007 levels (3,769 DAS) exceeds that of the total DAS that will be allocated to the common pool (3,600) in FY 2010. Furthermore, the ability to find trading partners may also be limited by the restrictions on trading among vessels within specified baseline length and horsepower characteristics.

The allocation of yellowtail flounder to the scallop fishery in FY 2010 would have no economic impact on the scallop fishery, because the allocation would not constrain scallop catch. The economic impact of this action on the NE multispecies fishery in FY 2010 would be a reduction in multispecies revenue of between one and fifteen percent. The value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from a low of $3,296 to a high of $41,176, depending on whether the estimate includes only the value of yellowtail flounder, or also includes potential revenue losses from other groundfish stocks that may result from loss of access to a yellowtail stock area.

In contrast, as of 2011, it is anticipated that there will be short-term

AMs that will impact the scallop fishery if the sub-ACL is exceeded. The economic impact of the yellowtail flounder sub-ACL for the scallop fishery for FY 2011 is uncertain. This sub-ACL for the scallop fishery would have a potential impact on both groundfish and scallop vessels. However, as was the case for the setting of NE multispecies ACLs, the impact on any given vessel is indeterminate. The AM for the scallop fleet has yet to be determined, and setting an ACL may cause changes in fishing strategies to avoid forgone revenues that may be associated with exceeding the ACL. Assuming an inseason AM is selected, and there is no change in fishing patterns by either groundfish or scallop vessels, an upper-bound estimate is a total revenue loss of $35 million and $2.6 million for scallop and groundfish, respectively, during 2011, and losses of $36 million and $4 million during 2012. These values represent about 6 percent of the likely scallop ACLs that will be set for 2011 and 2012, and about 5 percent or less of groundfish revenue, depending on factors noted above affecting realized groundfish revenue.

Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the projected scallop harvest, a modification to FW 21 to the Atlantic Sea Scallop FMP could affect the proposed FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The outcome of the Council's January 2010, review of FW 21 was unknown at the time this document was drafted for publication. However, even if the yellowtail flounder allocations are not changed in FW 44, a modification of the scallop management program could change the impacts of the yellowtail flounder allocations, such that they are different than analyzed in the FW 44 EA. If necessary, the final FW 44 EA will be revised to analyze the impacts of the yellowtail flounder allocation, and the final rule will include a summary of the pertinent economic impacts.

For FY 2010, the estimated revenue loss for the groundfish fishery resulting from the combined impacts of the proposed common pool measures and ACL is between $3 million and $27 million (from the baseline FY 2008 revenue of $85 million), depending on the proportion of available fish that is caught. The larger revenue reductions would result from a continuation of recent TAC utilization and discard rates (which are only a small fraction of available haddock that are caught), whereas the lower revenue reduction estimate would require a 50-percent reduction in the amount of under-harvesting.

For FY 2011, the revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is estimated at between $26.9 million and $53.8 million. The FY 2011 revenue loss for the scallop fleet is estimated at $35 million. The FY 2011 impact on groundfish revenue ranges from a loss of $15.8 million to a gain of $11.1 million. For FY 2012, the estimated revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is between $27.6 million and $54.8 million. The FY 2012 loss to the scallop fleet is estimated at $36 million. The FY 2012 impact on groundfish revenue ranges from a loss of $14.8 million to a gain of $12.4 million.

The proposed action would not modify the recreational measures proposed in Amendment 16. Those measures would add 2 weeks to the GOM cod closed season and reduce the size limit on GOM haddock from 19 to 18 inches (47.5 to 45 cm). Thus, passenger demand may be expected to respond to these regulatory changes, and may not be expected to be affected by the setting of any particular recreational sub-ACL. However, because exceeding a recreational sub-ACL would trigger an AM, the economic impacts on recreational party/charter vessels would be associated with the likelihood that harvest levels would trigger an AM. According to GARM III estimates of landings, GOM cod harvest by all recreation modes ranged between 1,960 mt and 953 mt from FY 2004 to 2007. The GOM cod recreational sub-ACL would be 2,673 mt, 2,824 mt, and 2,826 mt during FY 2010, 2011, and 2012, respectively. Because harvest levels of GOM cod by the recreational sector, including party/charter operators, has been below the recreational sub-ACL for GOM cod, an AM would not be expected to be triggered by these limits. For this reason, the GOM cod sub-ACL would not be expected to have an adverse economic impact on party/charter vessels.

By contrast, during FY 2004–2007, the recreational harvest of GOM haddock ranged between 430 mt and 717 mt, and under this proposed rule the recreational sub-ACL for GOM haddock would decline from 324 mt in FY 2010, to 259 mt in 2012. This means that the recreational GOM haddock ACL will be about 57 percent of the FY 2004–2007 average harvest. In the absence of avoidance behavior by party/charter vessels, the GOM haddock sub-ACL may be expected to be exceeded, triggering an AM. The impact of triggering a GOM haddock AM on party/charter vessels is uncertain. Available data suggest substitutability between cod and haddock on party/charter trips, so if the GOM cod recreational sub-ACL is not constraining, some switching between haddock and cod on GOM party/charter trips may be anticipated. The economic impact on party/charter operators will depend on the selected AM and the relative strength of angler preference between cod and haddock. If the AM is a seasonal closure, then the economic impact would be a loss in trips that could be taken during the closure. These trips may not be recovered, given the seasonal nature of recreational passenger demand. If the GOM haddock AM is a change in the bag or size limit, and cod may easily be substituted for haddock, then passenger demand may be expected to be largely unchanged and the economic impact on party/charter vessels would likely be relatively low.

The economic impacts to the groundfish fishery of specification of the U.S./Canada TACs are difficult to predict due to the many factors that may affect the level of catch; however, it is likely that, due to the substantially reduced FY 2010 TACs for Eastern GB cod and GB yellowtail flounder (compared to FY 2009), the proposed action would result in reduced overall revenue from the U.S./Canada Management Area. The amount of fish landed and sold would not be equal to the sum of the TACs, but would be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from fishing derby behavior and potential impact on markets. The revenue from the sale of the three transboundary stocks may be up to 22 percent less than such revenue in FY 2008. It is possible that total revenue may be reduced by up to 30 percent from FY 2009 revenues. The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for trawl vessels would likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species. Similarly, the specification of a trip limit for GB yellowtail flounder would prolong the opening of the Eastern U.S./Canada

Area and result in greater overall revenue.

The allocation of zero trips for the CA II Yellowtail Flounder SAP would preclude additional revenue from CA II, but would not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock. The prohibition on the use of Category B DAS in the Eastern U.S./Canada Haddock SAP would result in only a slight decrease in revenue because participation in the SAP has been extremely low.

The proposed action would also provide the Regional Administrator authority to implement trip limits or differential DAS counting inseason in order to prevent ACLs from being exceeded, or to facilitate the harvesting of ACLs. Because it is unclear if this authority will result in decreased or increased fishing effort, the effect of this action may be short-term increases or decreases in revenue. The RA authority would contribute to long-term increases in revenue by optimizing catch levels to align with catch targets and facilitate stock rebuilding.

Economic Impact of Alternatives to the Proposed Action

Under the No Action Alternative, although ACLs would be specified, there would be no allocation made to the scallop fishery, and no U.S./Canada TACs would be specified. Under the No Action Alternative, the common pool management measures would be the same as those proposed by Amendment 16, and the Regional Administrator would not have additional authority to implement inseason trip limits or differential DAS requirements in order to prevent ACLs from being exceeded.

Because under the no action alternative the ACL is higher than that set by the proposed action, potential groundfish fishery revenues would be higher. As a result of not making a yellowtail flounder allocation to the scallop fishery, there would be no difference in scallop revenues in FY 2010 between the no action and the proposed action alternatives, because the scallop ACL sub-component would not constrain the scallop fishery in FY 2010. No allocation of yellowtail to the scallop fishery in FY 2010 would, however, result in additional revenue for the groundfish fishery (the revenue associated with 110 mt and 111 mt of GB and SNE/MA yellowtail flounder, respectively). Under the no action alternative, no specification of the U.S./Canada TACs would result in increased revenue from the U.S./Canada Management Area in the short-term, but would undermine rebuilding of GB cod and yellowtail flounder, and would likely result in long-term reductions in revenue.

Additionally, under the no action alternative, as a result of not making a yellowtail flounder allocation to scallop vessels in FY 2011 and 2012, scallop and groundfish fishing revenues would likely be higher than anticipated under the proposed action. If an allocation is not made, then the scallop catches would not be constrained by the level of incidental catch of yellowtail flounder in the fishery. In FY 2011 and 2012, the overall limit on yellowtail flounder catch may reduce scallop fishery revenues by $35 million and $36 million, respectively. With respect to groundfish revenue, the upper bounds for the difference between the no action alternative and the proposed action for FYs 2011 and 2012 are $2.6 million and $4 million, respectively. Not specifying the U.S./Canada TACs could result in increased revenues for groundfish fishermen; however, not specifying TACs is likely to increase the risk of overfishing the transboundary stocks, and of long-term declines in landings and revenues.

The no action alternative would neither implement more restrictive trip limits for GOM cod and pollock, nor provide the Regional Administrator the authority to implement inseason effort controls (trip limits or differential DAS counting). As such, the economic impacts of the no action alternative would not differ from those described in Amendment 16 analysis. There is the possibility that, under the no action alternative, there would be a lower likelihood of derby fisheries occurring, and that vessels owners would have an increased ability to plan their year than under the proposed alternative. These potential outcomes from the No Action Alternative might, therefore, lead to greater economic stability, because inseason changes to the regulations would not occur (except in the U.S./Canada Management Area).

The Council considered a third alternative for effort control measures. As stated in this rule, this alternative proposes to create a 2:1 differential DAS counting in the inshore GOM. Based on the September 1, 2009, sector roster composition for FY 2010, the 2:1 differential DAS counting alternative would impact very few common pool vessels because, for the most part, the common pool is comprised of vessels that primarily engage in fisheries other than groundfish. Of the vessels affected (approximately nine), the estimated reduction in total revenue ranges from 10 percent to 70 percent. This economic impact represents an upper bound of the adverse impacts, because it does not reflect the ability of vessels to modify fishing behavior or the potential to lease DAS to mitigate potential impacts.

Under the no action alternative, trawl vessels would be able to fish in the Eastern U.S./Canada Area (Eastern Area) as of May 1, 2010, and would not be delayed access until August 1, 2010. Further, the Regional Administrator would not implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The result of this scenario would likely be a higher catch rate of both GB cod and GB yellowtail flounder early in the FY, but also accelerated catch of the TAC limits and early closure of the Eastern Area. In this event, the no action alternative would result in reduced revenue for groundfish vessels, because prolonged access to the Eastern U.S./Canada Area by vessels would result in greater harvest of other stocks in addition to cod and yellowtail flounder. Additionally, under the no action alternative, common pool vessels would be allowed to utilize Category B DAS in the Eastern U.S./Canada Area Haddock SAP. Although under the no action alternative the use of Category B DAS in this SAP would generate some revenue, the difference in revenue between the proposed action and the no action alternative would be minor because, under the no action alternative, the SAP would likely close after a very few trips due to the small incidental catch TACs.

This rule contains no proposed reporting or recordkeeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: January 27, 2010.

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. Further amend § 648.10, as proposed to be amended at 74 FR 69419, December 31, 2009 by revising paragraph (k)(3)(iv) to read as follows:

§ 648.10 NE multispecies broad stock areas.

(k) * * *

(3) * * *

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. Latitude	W. Longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNE4	39°50′	68°50′
SNE3	39°50′	69°00′
SNE5	39°00′	69°00′
SNE6	39°00′	(2)

1 South-facing shoreline of Cape Cod, MA.
2 The U.S.-Canada maritime boundary as it intersects with the EEZ.

3. In § 648.14, add paragraph (i)(2)(iii)(D) and revise paragraphs (k)(13)(ii)(A) and (B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(iii) * * *

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), (p), (r), and (s); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (n), (p), (r), and (s), § 648.81(n), § 648.82(b)(5) and (6), § 648.85, or § 648.88 if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

4. In § 648.60, revise paragraph (a)(5)(ii) introductory text and paragraph (a)(5)(ii)(C) to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(5) * * *

(ii) *NE multispecies possession limits and yellowtail flounder TACs.* A limited access scallop vessel that is declared into a trip and fishing within the Sea Scallop Access Areas described in § 648.59(b) through (d), and issued a valid NE multispecies permit as specified in § 648.4(a)(1), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1) and (2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section. Such vessel is subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4).

* * * * *

(C) *Yellowtail flounder.* Such vessel must retain all yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

(*1*) *Scallop Access Area TAC Availability.* After declaring a trip into and fishing within the Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas described in § 648.59(b), (c), and (d), respectively a scallop vessel that has a valid NE multispecies permit as specified in § 648.4(a)(1) may possess and land yellowtail flounder, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the respective Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas have been harvested. The Regional Administrator shall publish notification in the **Federal Register,** in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing in, and declaring and initiating a trip to the Access Area(s), where the TAC applies, for the remainder of the fishing year, unless the yellowtail flounder TAC is increased, as specified in paragraph (a)(5)(ii)(C)(*3*) of this section.

(*2*) *U.S./Canada Area TAC availability.* After declaring a trip into and fishing in the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess, and land yellowtail flounder, provided that the Regional Administrator has not issued a notice that the U.S./Canada yellowtail flounder TAC specified in § 648.85(a)(2) has been harvested. If the yellowtail flounder TAC established for the U.S./Canada Management Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from possessing or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(*3*) *Modification to yellowtail flounder TACs.* The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

* * * * *

5. Further amend § 648.82, as proposed to be amended at 74 FR 69429, December 31, 2009 by revising the introductory text to paragraph (b)(6), revising paragraphs (e)(1)(i) and (n)(1)(ii), and adding paragraph (o) to read as follows:

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

* * * * *

(b) * * *

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout as specified under § 648.86. The cod trip limit shall be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example, if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(e) * * *

(1) * * *

(i) *Common pool vessels.* For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for

25 hr would be charged 48 hr of Category A instead of 25 hr.

* * * * *

(n) * * *

(1) * * *

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

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

* * * * *

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels.* (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, if available, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in state waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph (n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented inseason, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2 × 1.3 × 24-hr DAS charge.

6. In § 648.85, revise paragraphs (b)(6)(v)(B), (D), (F); and further amend § 648.85, as proposed to be amended at, 74 FR 69438, December 31, 2009 by revising paragraph (b)(6)(v)(H) and (I) to read as follows:

§ 648.85 Special management programs.

(b) * * *

(6) * * *

(v) * * *

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. latitude	W. longitude
GB1	(1)	70°00′

GB COD STOCK AREA—Continued

Point	N. latitude	W. longitude
GB2	42°20′	70°00′
GB3	42°20′	(2)
GB4	35°00′	(2)
GB5	35°00′	(3)

1 Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
2 U.S./Canada maritime boundary.
3 Intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. latitude	W. longitude
AMP1	(1)	67°00′
AMP2	(2)	67°00′
AMP3	43°50′	(2)
AMP4	43°50′	67°40′
AMP5	(3)	67°40′
AMP6	(4)	67°40′
AMP7	42°30′	67°40′
AMP8	42°30′	(2)
AMP9	35°00′	(2)
AMP10	35°00′	(5)

1 Intersection of south-facing ME coastline and 67°00′ W. long.
2 U.S./Canada maritime boundary.
3 U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
4 U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
5 Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNEW1	(1)	70°00′
SNEW2	42°20′	70°00′
SNEW3	42°20′	68°50′
SNEW4	39°50′	68°50′
SNEW5	39°50′	71°40′
SNEW6	39°00′	71°40′
SNEW7	39°00′	(2)
SNEW8	35°00′	(2)

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA—Continued

Point	N. latitude	W. longitude
SNEW9	35°00′	(3)

1 Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00′ W. long.
2 U.S./Canada maritime boundary.
3 The intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the east by the U.S./Canadian maritime boundary, and bound on the north, west, and south by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
USCA16	42°20′	(1)
USCA1	42°20′	68°50′
USCA2	39°50′	68°50′
USCA17	39°50′	69°00′
USCA18	39°00′	69°00′
USCA5	39°00′	(1)

1 U.S./Canada maritime boundary.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
USCA16	42°20′	(1)
USCA1	42°20′	68°50′
USCA2	39°50′	68°50′
USCA17	39°50′	69°00′
USCA18	39°00′	69°00′
USCA5	39°00′	(1)

1 U.S./Canada maritime boundary.

* * * * *

7. In § 648.86, revise paragraphs (a)(1) and (b)(1), and add paragraphs (r) and (s) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

* * * * *

(b) * * *

(1) *GOM cod landing limit.* Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(r) *Pollock.* 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 not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(s) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

8. Further amend § 648.87, as proposed to be amended at 74 FR 69450,

December 31, 2009 by revising paragraph (b)(1)(ii)(B) to read as follows:

§ 648.87 Sector allocation.

(b) * * *

(1) * * *

(ii) * * *

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

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNE1	35°00′	(1)
SNE2	35°00′	(2)
SNE3	39°00′	(2)
SNE4	39°00′	70°00′
SNE5	39°50′	70°00′
SNE7	39°50′	68°50′
SNE8	41°00′	68°50′
SNE9	41°00′	69°30′
SNE10	41°10′	69°30′
SNE11	41°10′	69°50′
SNE12	41°20′	69°50′
SNE13	41°20′	(3)
SNE14	(4)	70°00′
SNE15	(5)	70°00′

[1] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

[2] U.S./Canada maritime boundary.

[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.

[4] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.

[5] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.

9. In § 648.88, revise paragraphs (a)(1) and (c) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 75 lb (33.8 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. Should the GOM cod trip limit specified in § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas in § 648.59(b) through (d), which are subject to the possession limits in § 648.60(a)(5)(ii), a vessel that has been issued a valid NE multispecies possession limit permit is subject to the following possession restrictions:

(1) The vessel shall retain all yellowtail flounder that meet the minimum size restrictions in § 648.83(a)(1) and (2).

(2) The vessel may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies, excluding yellowtail flounder, when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified in paragraph (a)(2)(i) of this section, and provided that the amount of regulated NE multispecies onboard the vessel does not exceed any of the pertinent trip limits in § 648.86, except yellowtail flounder, and provided the vessel has at least one standard tote on board.

* * * * *

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