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## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48; Final Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 120814336-3408-02]

**RIN 0648-BC27****Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** Through this interim final rule, NMFS announces that it partially approves Framework Adjustment 48 to the NE Multispecies Fishery Management Plan (FMP) and implements the approved measures in the regulations. Framework 48 is the first of two parallel and related actions developed by the New England Fishery Management Council (Council) to respond to updated stock status information and to adjust other management measures in the NE multispecies (groundfish) fishery beginning in fishing year (FY) 2013. This action implements new status determination criteria for Gulf of Maine (GOM) cod, Georges Bank (GB) cod, Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, and white hake based on new benchmark assessments completed for these stocks in 2012 and 2013. NMFS is approving and implementing updated status determination criteria for white hake through this interim final rule and accepting further comment on this measure since it was not available for comment in the Framework 48 proposed rule. NMFS will publish a subsequent final rule to respond to any comments received, if necessary. Through this action, NMFS has also approved and is implementing the following Framework 48 measures: Elimination of dockside monitoring requirements for the groundfish fishery; lower minimum fish sizes for several groundfish stocks; clarified goals and performance standard for groundfish monitoring programs; revisions to the allocation of GB yellowtail flounder to the scallop fishery; and establishment of sub-annual catch limits (ACLs) of GB yellowtail flounder and SNE/MA windowpane

flounder for the scallop and other non-groundfish fisheries. NMFS also approved revisions to recreational and commercial accountability measures (AMs), including amendments to existing AMs for windowpane flounder, ocean pout, and Atlantic halibut, and new “reactive” AMs for Atlantic wolffish and SNE/MA winter flounder, to address a remand by the U.S. District Court of Appeals. NMFS disapproved some measures in Framework 48: A provision for cost-sharing of monitoring costs between the industry and NMFS; a provision to delay industry-funded monitoring to FY 2014; finer scale discard rate strata for GB yellowtail flounder; and a provision to remove requirements for groundfish trawlers to stow their gear when transiting closed areas. Through this interim final rule, NMFS also withdraws a proposed correction to the regulations specific to monitoring of the Eastern U.S./Canada quotas, and will be accepting additional public comment on this issue. These measures are necessary to meet the requirements of the FMP and the Magnuson-Stevens Act, most notably preventing overfishing, ensuring that management measures are based on the best available science, and mitigating, to the extent practicable, potential negative economic impacts from reductions in catch limits anticipated for fishing year FY 2013.

**DATES:** Effective May 1, 2013, except for the amendment to § 648.84, which is effective July 1, 2013. Comments on the interim final status determination criteria for white hake or U.S./Canada quota monitoring methods must be received by June 3, 2013.

**ADDRESSES:** You may submit comments on the new status determination criteria for white hake or U.S./Canada quota monitoring, identified by NOAA-NMFS-2013-0050, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0050](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0050), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

- *Fax:* (978) 281-9135; Attn: Melissa Hooper.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be

considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Framework 48, its Regulatory Impact Review (RIR), the environmental assessment (EA) prepared for this action, and the Final Regulatory Flexibility Analysis (FRFA) prepared by the Council are available from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FRFA assessing the impacts of the measures on small entities and describing steps taken to minimize any significant economic impact on such entities consists of the Initial Regulatory Flexibility Analysis (IRFA), preamble, and the summary of impacts and alternatives contained in the Classification section of this final rule and Framework 48. The Framework 48 EA/RIR/IRFA are also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html> or <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hooper, Fishery Policy Analyst, phone: 978-281-9166, fax: 978-281-9135.

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

The FMP specifies management measures for 16 species of groundfish in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout; and large-mesh species (also referred to as “regulated species”) include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as “regulated species,” are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex of 20 stocks managed under the NE Multispecies FMP.

Amendment 16 to the FMP (Amendment 16) established a process for setting acceptable biological catches (ABCs) and ACLs for regulated species and ocean pout, as well as distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established AMs for these 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 44 to the FMP (Framework 44) set the ABCs and ACLs for FYs 2010–2012. In 2011, Framework 45 to the FMP (Framework 45) revised the ABCs and ACLs for five stocks for FYs 2011–2012. Framework 47 to the FMP (Framework 47) updated specifications for most stocks for FYs 2012–2014 and modified management measures in the fishery after more than 1 year under ACLs and AMs.

Framework 48 is one of two actions developed by the Council to respond to benchmark and assessment updates completed for all groundfish stocks in 2012 and 2013. Updated information in these assessments requires revisions to the status determination criteria for GOM cod, GB cod, SNE/MA yellowtail flounder, and white hake and implementation of updated ABCs and ACLs for most stocks for FYs 2013–2015. These measures are necessary to prevent overfishing and facilitate the rebuilding of groundfish stocks as required by the FMP. In Framework 48, the Council proposed administrative changes to the FMP to make way for Framework 50, which specifies ABCs and ACLs for all stocks for FY 2013–2015. The Council also included several measures in Framework 48 intended to mitigate negative economic impacts to the groundfish fishery anticipated from the substantial reductions in catch limits proposed in Framework 50 to end overfishing. Framework 48 also implements AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder in response to a Court Order and remand in *Oceana v. Locke et al.* 831 F.Supp.2d 95 (D.D.C. 2011) that held that so-called “reactive” AMs had not been developed for the 6 stocks not allocated to sectors (“non-allocated stocks”) in Amendment 16. Framework 48 recommended reactive AMs for 3 of these stocks, for which reactive AMs had not been established since Amendment 16. A more extensive discussion of the development of Frameworks 48 and 50 is available in the proposed rules for these two actions (78 FR 18188; March 25, 2013 and 78 FR 19368; March 29, 2013, respectively) and is not repeated here. NMFS also proposed several corrections to the NE

multiplespecies regulations through the Framework 48 proposed rule under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which allows the Secretary of Commerce to implement regulations necessary to ensure that fishery management plans or amendments are carried out consistent with the Magnuson-Stevens Act. These changes are not part of Framework 48, but are necessary to clarify existing regulations and achieve the objectives of the FMP.

Public comments were accepted on the Framework 48 proposed rule through April 9, 2013. After review of public comments, NMFS has partially approved Framework 48 as consistent with the goals and objectives of the NE Multispecies FMP, and the requirements of the Magnuson-Stevens Act and other applicable law.

#### **Disapproved Measures**

This section summarizes the Framework 48 measures NMFS has disapproved as not consistent with goals and objectives of the NE Multispecies FMP or the requirements of the Magnuson-Stevens Act and other applicable law. NMFS also withdraws a correction to the NE multispecies regulations that NMFS proposed in the Framework 48 proposed rule regarding accounting of catch against quotas established for the Eastern U.S./Canada Management Area, for reasons discussed below.

##### *1. Delay Industry At-Sea Monitoring Cost Responsibility*

Framework 48 proposed to delay sectors’ responsibility to implement and pay for their own at-sea monitoring programs to FY 2014. The Council included this measure in Framework 48 out of concern that the industry would not be able to support this cost burden in FY 2013 due to the substantial catch reductions proposed in Framework 50. Coverage levels would instead be set at the level that NMFS can fund. The Council proposed a similar measure in Framework 45, which NMFS disapproved due to concerns that there would not be Federal funds to ensure adequate monitoring of sector operations. A complete description of the development this measure was included in the Framework 48 proposed rule (Item 8) and is not repeated here.

NMFS is disapproving this measure as it did in Framework 45 because it is inconsistent with the requirements of the FMP and the Magnuson-Stevens Act. However, due to fishermen’s concerns about their ability to pay for

at-sea monitoring costs in FY 2013, NMFS intends to cover 100 percent of the costs of sector at-sea monitoring once again in FY 2013 using the NMFS At-sea Monitoring Program. But, relying on NMFS appropriations to determine an at-sea monitoring coverage rate does not ensure that coverage will be sufficient to monitor sector annual catch entitlements (ACEs) or to meet the purpose and goals for sector monitoring described in Amendment 16 and Framework 48. Because NMFS funding depends on Congressional appropriations, funding levels fluctuate, and NMFS cannot guarantee sufficient funding to meet the coverage levels required by the FMP to monitor ACLs and sector ACEs. If sector at-sea monitoring depended on NMFS funding alone and that funding fell short of required coverage levels, NMFS may not be able to reliably estimate total catch, undermining the effectiveness of ACLs and sector ACEs to prevent overfishing and facilitate the rebuilding of groundfish stocks as required by National Standard 1 and section 303(a)(1) of the Magnuson-Stevens Act. NMFS was able to locate funding to provide the NMFS At-sea Monitoring Program again in FY 2013, but such funding is not certain. Without additional appropriations to support sector monitoring specifically, relying solely on the Federal Government to provide sector at-sea monitoring coverage could also undermine other programs. Inadequate funding could potentially force NMFS to spread existing resources too thin, undermining the Standard Bycatch Reporting Methodology (SBRM) coverage requirements of section 303(a)(11) and information used to assess Northeast fish stocks. Thus, NMFS has disapproved this measure in Framework 48. Sectors will be responsible for any costs of at-sea monitoring that are not covered by Federal funding in FY 2013.

##### *2. At-Sea Monitoring Cost-Sharing*

To serve as a more long-term solution to the cost burden of at-sea monitoring to sectors, Framework 48 proposed a mechanism for sharing of at-sea monitoring costs between sectors and NMFS. Framework 48 proposed that the industry would only ever be responsible for paying the direct costs of at-sea monitoring, specifically the daily salary of the at-sea monitor. All other programmatic costs would be the responsibility of NMFS, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management and security; data quality assurance and

control; administrative costs; maintenance of monitoring equipment; at-sea monitor recruitment, benefits, insurance and taxes; logistical costs associated with deployment; and at-sea monitor travel and lodging. This measure was intended to reduce the cost burden of at-sea monitoring to sectors and thereby increase their profitability.

NMFS has disapproved this cost-sharing measure because it is not consistent with other applicable laws as developed. Specifically, the Anti-Deficiency Act and other appropriations law prohibits Federal agencies from obligating the Federal government except through appropriations and from sharing the payment of government obligations with private entities. Framework 48 proposed to require NMFS to pay for some portion of the costs of at-sea activities, such as logistical costs generated by deployment, which are outside its statutory obligations under the Magnuson-Stevens Act. As written, this measure would also have required NMFS and sectors to share payment of obligations defined as belonging to one or the other. For example, Framework 48 proposed to require NMFS to pay some costs related to at-sea activities, such as benefits and insurance for at-sea monitors, while sectors would pay other portions of at-sea costs, like the salary for at-sea monitors. Because such action would be prohibited under the law, NMFS has disapproved this measure in Framework 48.

Although this measure was not approvable as developed, NMFS shares the Council and industry's concern about the ability of sectors to bear the full costs of monitoring in future fishing years. NMFS believes this approach to cost sharing, which defines the items that NMFS versus sectors should be responsible for, could be viable if restructured and may be worth pursuing in a future action. NMFS is already working with the New England and Mid-Atlantic Councils' joint Herring-Mackerel Plan Development Team (PDT)/Fishery Management Action Team (FMAT) to pursue cost-sharing options such as this one for those fisheries for FY 2014. The Council could consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.

### *3. GB Yellowtail Flounder Management Measures*

Framework 48 proposed to change the stratification of discard estimates for sectors for GB yellowtail flounder, by splitting the GB yellowtail flounder trawl discard strata between statistical

area 522 and statistical areas 525/561/562. This measure was intended to revise sector discard rates to more closely reflect actual discards of yellowtail flounder in different areas of Georges Bank and potentially lengthen the fishing season for sector vessels in those areas. Based on public comment, NMFS has disapproved this measure in Framework 48, because it would complicate and increase the cost and burden of monitoring and potentially increase uncertainty of catch estimates without any measurable benefits for sectors. Accordingly, this measure is inconsistent with or may lead to inconsistency with National Standards 5 and 7 of the Magnuson Stevens Act. As more fully discussed below, because of the added complications of administering this measure, it may increase costs more than it provides benefits to the fishing industry or the efficient management and monitoring of catches. Although finer scale strata would allow discard rates to more closely reflect actual discard rates of yellowtail flounder in different parts of Georges Bank, NMFS does not believe this measure would have any real benefits for sectors that could not be achieved with existing discard rate strata. A separate discard rate in statistical area 522 could benefit an individual vessel with a lower GB yellowtail flounder discard rate that would not be influenced by higher discards by other vessels in its sector fishing elsewhere on Georges Bank.

However, the sector's fishing season on GB would still be limited by the total catch of GB yellowtail flounder by all its member vessels. A finer stratum would not eliminate the need for a sector to manage discards of yellowtail flounder by all its vessels on Georges Bank to prevent an early end to their fishing season.

In contrast, the proposed measure could have real effects on the administrative burden for both NMFS and sectors that NMFS believes are not justified in light of the lack of real benefits from this measure. Some sector representatives and members of sectors raised these concerns in public comments on the Framework 48 proposed rule. Both sectors and NMFS would have to modify and reprogram quota monitoring programs and reports to accommodate the new strata, increasing the administrative burden for sector managers and NMFS, without any corresponding benefits for sectors, which could reduce efficiency inconsistent with National Standards 5 and 7. Some sectors have developed software to calculate and manage catch

and compile sector weekly reports to NMFS. These sectors would have to retain programmers to reprogram this software to accommodate the new strata and method. The administrative burden to generate sector weekly reports could be even greater for sector managers that do not use software to compile their sector's reports, but rather calculate catch manually on a weekly basis. NMFS is also concerned about how this revised strata, combined with other changes to the discard rate method in FY 2013, will affect the variance of discard rates and thereby affect our ability to reliably estimate catch to ensure that overfishing is not occurring. Concerns that this measure could further complicate monitoring and increase uncertainty of catch estimates by creating an incentive to misreport catches of GB yellowtail flounder is also justified. There is a potential for this measure to create an incentive for sector vessels fishing inside and outside statistical area 522 without an observer to misreport GB yellowtail catch from outside area 522 as from inside area 522 in order to get a lower discard rate, thereby jeopardizing NMFS's ability to ensure that catches are consistent with preventing overfishing and rebuilding fish stocks. This could potentially inflate area 522 GB yellowtail discard estimates and negate any benefit of this measure. Thus, out of concern that this measure could increase the uncertainty of catch estimates and the costs of monitoring and administration of sectors without any corresponding benefits to sectors, NMFS has disapproved this measure in Framework 48.

### *4. Requirement to Stow Trawl Gear While Transiting*

The regulations currently specify that fishing gear must be stowed in a specific way, as described at 50 CFR 648.23(b), when transiting closed areas to facilitate the enforcement of closed areas at sea. Framework 48 proposed to remove this requirement for only trawl vessels on a groundfish trip because the Council believed that these measures are no longer necessary with the use of the vessel monitoring system (VMS) on all limited access multispecies vessels.

After consideration of public comments received on this measure, NMFS has disapproved this measure in Framework 48 and is maintaining the requirements for all vessels to stow their gear when transiting closed areas on the basis that it may lead to difficulties in detecting and prosecuting unlawful fishing in closed areas, which would undermine the effectiveness of these areas to achieve the objectives for which

they were established as conservation and management measures in the FMP, including the protection of spawning and juvenile fish, habitat, and protected species. To the extent that closed areas were established to comply with sections 303(a)(1) and (7), and National Standard 9 of the Magnuson-Stevens Act to rebuild or ensure the long-term sustainability of fish stocks and fisheries, to minimize the adverse effects of fishing on habitat, or minimize bycatch of certain stocks or protected species, undermining these measures would be inconsistent with these provisions. This measure also would have been inconsistent with National Standard 4 of the Magnuson-Stevens Act requiring measures to be fair and equitable because it does not extend the safety benefits to other fisheries without a clear reason for doing so. There is insufficient justification in Framework 48 explaining why these measures were no longer necessary to enforce the prohibition on fishing in closed areas or why VMS data is a sufficient alternative. As the U.S. Coast Guard (USCG) noted in its comments on this measure, VMS is an effective tool to enforce closed areas when transiting is prohibited, but is not sufficient to document possible fishing activity in a closed area when transiting is allowed. The gear stowage requirements are designed to increase the time required to set and recover gear and hide fishing activity. The combination of gear stowage and VMS requirements are useful for prosecution of closed area incursions. Thus, NMFS and the USCG are seriously concerned that eliminating trawl gear stowage requirements for only groundfish vessels would undermine enforcement of the prohibition on fishing in closed areas and thereby the conservation benefits of closed areas. By eliminating the gear stowage requirements for only groundfish vessels, this measure would complicate enforcement for the USCG and enforcement personnel, and compliance with these requirements for vessels fishing in multiple fisheries, thereby potentially further undermining enforcement efforts. Abuse of this exemption by groundfish vessels or vessels participating in other fisheries without effective enforcement would undermine the conservation objectives of closed areas, which would undermine the goals and objectives of the FMP and the requirements of the Magnuson-Stevens Act for effective conservation and management measures to rebuild overfished stocks and to minimize the adverse effects of fishing on habitat. Although this measure would have some safety benefits, the

proposed measure does not meet the criteria of a measure that reduces risk while meeting the needs of conservation and management, as required by National Standard 10. The Council also had available to it alternative modifications to the gear stowage requirements, recommended by its VMS/Enforcement Committee, that would have addressed safety issues for all vessels, while maintaining the integrity of gear stowage requirements for enforcement of the prohibition on fishing in closed areas. However, the Council chose to recommend these modifications only for other FMPs, and instead to eliminate the requirements entirely for groundfish trawlers, without addressing the continued need of these measures to satisfy requirements of the Magnuson-Stevens Act. For these reasons, NMFS has disapproved this measure in Framework 48.

Although NMFS must disapprove this measure in Framework 48, NMFS does remain concerned about the safety risks of the existing trawl gear stowage requirements and believes these issues should be addressed for all vessels. NMFS believes that the modifications put forward by the Council's VMS/Enforcement Committee would address these safety issues, while meeting the needs of conservation and management. NMFS is considering initiating a separate rulemaking, working with both the New England and Mid-Atlantic Councils, which would propose modifications to the gear stowage requirements to make them safer for all vessels in all FMPs. The regulations at § 648.23(b)(5) allow the Regional Administrator to specify a method of stowage in writing and in a **Federal Register** notice. NMFS believes that this approach would be the most expeditious method to address the safety issues as soon as possible, as opposed to a joint Council action.

#### *5. Correction to Eastern U.S./Canada Quota Monitoring*

In the Framework 48 proposed rule, NMFS proposed a correction to the regulations governing fishing activity in the Eastern U.S./Canada Area under 305(d) authority of the Magnuson-Stevens Act based on its determination that the correction was needed to bring the measure into compliance with the perceived Council intent in Amendment 16. The regulations at § 648.85(a)(3)(ii)(A) currently state that all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./Canada Area shall apply to the U.S./Canada total allowable catches (TACs) (in the case of cod and haddock,

the Eastern U.S./Canada TACs). This method for quota monitoring was implemented through Framework 42 as a precautionary way to estimate catch to ensure U.S./Canada TACs would not be exceeded, while allowing vessels the flexibility to fish both inside and outside the Eastern U.S./Canada Area on the same trip. Amendment 16 allocated each sector and the common pool a portion of the Eastern U.S./Canada TACs, but did not specifically address whether these allocations should still be monitored using the precautionary Framework 42 method. NMFS's perceived interpretation was that Amendment 16 intended statistical areas reported on VMS catch reports and vessel trip reports (VTRs) to be used to apportion catch to specific stock allocations. This is how NMFS has been monitoring sector and common pool catch of GB cod, haddock, and yellowtail since FY 2010. Despite being clear about NMFS's perceived interpretation in the Amendment 16 preamble, the original provision implemented by Framework 42 was inadvertently left in the regulations at § 648.85(a)(3)(ii)(A) by the Amendment 16 final rule. In deeming the regulations to be consistent with the Amendment, however, the Council did not object to the old language, presumably because it reflected its actual intent, as confirmed by the Council's comments on this action. Through the Framework 48 proposed rule, NMFS proposed to revise the regulations to remove the text that states all cod, haddock, and yellowtail flounder on multi-area trips must be applied to Eastern U.S./Canada allocations.

During the public comment period, NMFS received a letter from the Council opposing NMFS's proposed change to the regulations. The Council questioned NMFS's authority to make this change without explicit Council action, and asked NMFS to disapprove this change, particularly in light of continued concerns of misreporting of catches of Eastern GB stocks. At the request of the Council, NMFS is withdrawing this change to the regulations and will return to the Framework 42 method of quota monitoring because it reflects the Council's intent. Thus, for common pool vessels fishing both inside and outside the Eastern U.S./Canada Area, all catch of cod and haddock on that trip will be counted against the applicable Eastern U.S./Canada TAC. For sector vessels fishing both inside and outside the Eastern U.S./Canada Area, all catch of cod and haddock will be counted against its sector's allocations for Eastern GB cod and haddock. How GB

yellowtail flounder should be handled is less clear. Framework 42 and, subsequently, the regulations specify all yellowtail flounder caught on trips into the Eastern U.S./Canada area should be applied to the GB yellowtail flounder TAC. Based on a strict reading of Framework 42, yellowtail flounder caught on trips into the Western U.S./Canada Area and the Gulf of Maine or Southern New England would appear to be allocated according to the vessel's VTRs. At the time Framework 42 was developed trips limits were lower in the CC/GOM and SNE/MA yellowtail flounder stock areas and if a vessel fished in either area and the Georges Bank area the more restrictive trip limit applied. As a result, there was little incentive to fish in both the Western U.S./Canada Area and these other stock areas on the same trip. Although these incentives may have changed, this provision was not explicitly revised by Amendment 16, so NMFS believes it must only count all GB yellowtail flounder on trips into the Eastern U.S./Canada Area against the applicable U.S./Canada TAC, and yellowtail flounder on trips into the Western U.S./Canada Area would continue to be allocated according to the vessel's VTRs.

It is also not clear how discard rates should be applied in these situations. At the time Framework 42 was developed, there were no sector-stock-gear specific discard rates and so Framework 42 and its implementing regulations did not address how these rates should be applied on trips into the Eastern U.S./Canada Area. Amendment 16 also did not provide any explicit guidance on this matter. Since the Framework 42 measure was intended to address possible misreporting of vessel-reported data, NMFS believes it is appropriate to apply observed discards and kept catch from these trips in the computation of discard rates according to the area fished as recorded in observer data. However, NMFS is still exploring how discard rates should be applied on unobserved trips.

Amendment 16, and the regulations implementing Amendment 16 at

§ 648.87(b)(1)(iii), requires that NMFS use all available information, including the Interactive Voice Response system (IVR), VTR, VMS, at the end of the fishing year to determine whether a sector exceeded any of its ACEs. NMFS must reconcile this measure with the requirement in Framework 42 to count all catch on trips into the Eastern U.S./Canada Area against U.S./Canada TACs. In absence of any explicit language in Amendment 16 as to how to handle this, NMFS believes it would be consistent with both provisions to count all cod, haddock, and yellowtail on trips declared into the Eastern U.S./Canada Area on VMS against the U.S./Canada TACs inseason for the purposes of determining whether the Eastern U.S./Canada Area should be closed, or that a sector has reached its ACE and must stop fishing. For the purposes of year-end reconciliation of sector catches, NMFS will use VMS activity data to determine whether a vessel that declared into the Eastern U.S./Canada Area actually may have fished there and catch from a trip with no VMS activity indicative of fishing in the Eastern U.S./Canada Area would be reapportioned according to the vessel's VTRs. NMFS is still exploring what criteria should be used to define fishing activity from VMS data and is interested in public comment on this measure.

Because these details were not available for the public to comment on in the Framework 48 proposed rule, NMFS is publishing this measure as an interim final rule and will be collecting additional public comment on it.

#### Approved Measures

This section summarizes the Framework 48 measures NMFS has approved as consistent with goals and objectives of the NE Multispecies FMP, and the requirements of the Magnuson-Stevens Act and other applicable law. This section also contains corrections to inadvertent errors in the NE multispecies regulations, under the authority of section 305(d) of the Magnuson-Stevens Act, that are necessary to accurately and effectively

implement the requirements of the NE Multispecies FMP.

#### 6. Status Determination Criteria for GOM and GB Cod, and SNE/MA Yellowtail Flounder

An assessment for SNE/MA yellowtail flounder was completed in June 2012. New assessments were also completed for GOM and GB cod in December 2012. The results of both models accepted in the December 2012, GOM cod assessment indicated that overfishing is occurring and the stock is overfished. In addition, the assessment for GB cod indicated that overfishing is occurring and the stock is overfished. The status of SNE/MA yellowtail flounder was less clear from the June 2012 assessment. The assessment considered two recruitment scenarios that resulted in very different pictures about the stock's status, but favored the recent recruitment scenario, which indicated that the stock was not experiencing overfishing and was rebuilt. A more detailed discussion of the assessment for these three stocks can be found in Item 1 of the preamble of the proposed rule.

NMFS has approved the proposed status determination criteria for these three stocks, because the results of these assessments represent the best scientific information available for management. Incorporating this information into the FMP will allow the specification of appropriate ABCs and ACLs and other management measures beginning in FY 2013 to prevent overfishing, and continue rebuilding GOM and GB cod, as required by the Magnuson-Stevens Act. The final revised status determination criteria are presented in Table 1. Numerical estimates of these criteria are presented in Table 2. There are two sets of status determination criteria approved for GOM cod because two models were accepted at the benchmark assessment in December 2012, as described above. Although two assessment models were approved, there is only one numerical estimate for the maximum fishing mortality threshold for GOM cod.

TABLE 1—REVISED STATUS DETERMINATION CRITERIA FOR SNE/MA YELLOWTAIL FLOUNDER, GOM AND GB COD

Stock	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold
SNE/MA yellowtail flounder .....	SSB <sub>40%MSP</sub> .....	1/2 B <sub>target</sub> .....	F <sub>40%MSP</sub>
GOM cod .....	SSB <sub>40%MSP</sub> .....	1/2 B <sub>target</sub> .....	F <sub>40%MSP</sub>
GB cod .....	SSB <sub>40%MSP</sub> .....	1/2 B <sub>target</sub> .....	F <sub>40%MSP</sub>

SSB = spawning stock biomass; MSP = maximum spawning potential; B = biomass; F = fishing mortality rate; MSY = maximum sustainable yield.

**TABLE 2—NUMERICAL ESTIMATES OF THE REVISED STATUS DETERMINATION CRITERIA FOR SNE/MA YELLOWTAIL FLOUNDER, GOM AND GB COD**

Stock	Biomass target (mt)	Maximum fishing mortality threshold	MSY (mt)
SNE/MA yellowtail flounder .....	2,995	0.31	773
GOM cod (M=0.2 model) .....	54,743	0.18	9,399
GOM cod ( $M_{ramp}$ model) .....	80,200	.....	13,786
GB cod .....	186,535	0.18	30,622

#### 7. Status Determination Criteria for White Hake

As discussed in Item 1 in the preamble of the Framework 48 proposed rule, a benchmark assessment for white hake was scheduled to be completed in February 2013, but the results of the assessment were not yet available at the time of proposed rule publication. This meant that NMFS could not propose new status determination criteria for white hake, even though the Council had recommended and analyzed updated status determination criteria in Framework 48 in case the assessment results became available in time for rulemaking. Thus, NMFS did not propose or solicit public comment on revised status determination criteria for white hake in the Framework 48 proposed rule, but indicated that it may take action at a later date based on the results of the assessment when they became available.

The assessment summary report for Stock Assessment Review Committee (SARC) 56 was published on April 2, 2013 (<http://www.nefsc.noaa.gov/publications/crd/crd1304/>). The results indicate that the white hake stock is not overfished or subject to overfishing. The stock is estimated to have been at 83 percent of the rebuilding biomass target in 2011, the most recent year of data incorporated into the assessment. The stock remains under a formal rebuilding program with a rebuilding target date of

2014. Current stock projections from the SARC 56 assessment indicate that the stock is projected to rebuild in 2014. The new stock status for white hake is a change from the previous benchmark assessment, conducted in 2008 as part of the Groundfish Assessment Review Meeting (GARM) III. The GARM III assessment indicated the white hake stock was both overfished and subject to overfishing. The SARC 56 assessment determined that the change in stock biomass since 2007 is the result of low fishing mortality and near long-term average recruitment. More plainly stated, the changes are not the results of changes in the assessment model or methods, but reflective of the changes in the data that has been collected and integrated in the interim since the last benchmark assessment in 2008.

Additional information regarding the February assessment data, peer review proceedings, and results can be found

on the Northeast Fishery Science Center's (NEFSC) Web site: <http://www.nefsc.noaa.gov/saw/>.

The results of SARC 56 represent the best scientific information available and a change from the results of the previous assessment available (GARM III). Because the Council included an alternative in Framework 48 to implement the results of SARC 56 for white hake in FY 2013, NMFS is approving and implementing the revised status determination criteria for

white hake through this final rule. Although NMFS did not propose these revisions in the proposed rule because they were not yet available, the Council specifically considered and analyzed possible scenarios resulting from the assessment and recommended updating the white hake status determination criteria for FY 2013. Although the public did not have prior opportunity to comment on these measures in the Framework 48 proposed rule, the Council's analysis was available for public comment throughout the Council process. In addition, the SAW/SARC is an open and public process, allowing the public and managers to participate and, frequently, to have an indication of the results before the assessment report is final. Nevertheless, to ensure there is opportunity for public comment on this new status determination criteria, NMFS is implementing this measure as an interim final rule and collecting public comment on it. NMFS will publish another final rule, if necessary, after considering additional public comment to finalize these criteria and respond to any public comments. Implementing revised status determination criteria through this final rule is necessary in order to incorporate the best scientific information available into the FMP to allow NMFS to implement an appropriate ABC and ACL for white hake in FY 2013.

**TABLE 3—UPDATED STATUS DETERMINATION CRITERIA AND NUMERICAL ESTIMATES OF THE STATUS DETERMINATION CRITERIA FOR WHITE HAKE**

Criteria:	Minimum Biomass Threshold .....	Maximum Fishing Mortality Threshold .....	
Biomass Target .....	$\frac{1}{2} B_{target}$ .....	$F_{40\%MSP}$	
SSB <sub>40%MSP</sub> .....			
Values:	Minimum Biomass Threshold (mt) .....	Maximum Fishing Mortality Threshold .....	MSY (mt)
Biomass Target (mt) .....	16,200 .....	0.20 .....	5,630
32,400 .....			

SSB = spawning stock biomass; MSP = maximum spawning potential; B = biomass; F = fishing mortality rate; MSY = maximum sustainable yield.

**8. SNE/MA Windowpane Flounder sub-ACLs**

**Scallop Fishery Sub-ACL**

NMFS has approved the allocation of a sub-ACL of SNE/MA windowpane flounder to the scallop fishery to better ensure that the ACL is not exceeded. The sub-ACL of SNE/MA windowpane flounder allocated to the scallop fishery would be 36 percent of the ABC. This allocation is based on the 90th percentile of scallop fishery catches (as a percent of the total catch) for calendar years 2001 through 2010. The scallop fishery's sub-ACL would be calculated by reducing the portion of the ABC allocated to the scallop fishery (sub-ABC) to account for management uncertainty. The management uncertainty buffer is determined each time the groundfish specifications are set. It is anticipated that AMs would be developed in a future management action during 2013 through the Atlantic Sea Scallop FMP in time to be effective by the start of scallop FY 2014 (i.e., March 1, 2014), and would retroactively apply to account for any overage in FY 2013. If the scallop fishery exceeds its sub-ACL for SNE/MA windowpane in FY 2013, the AMs adopted in a future management action would be triggered. Also, similar to the measure adopted in Framework 47 for the scallop fishery's SNE/MA and GB yellowtail flounder sub-ACLs, the scallop fishery AM for SNE/MA windowpane flounder would only be triggered if the total ACL is exceeded and the scallop fishery's sub-ACL is also exceeded, or if the scallop fishery exceeds its sub-ACL by 50 percent or more.

The total ACL for SNE/MA windowpane was exceeded by more than 100 percent in FY 2010 and FY 2011, resulting in the ABC and overfishing level (OFL) being exceeded. In both years, total catch by sector and common pool vessels was below the common pool sub-ACL for this stock and arguably did not contribute to the overage of the total ACL. However, because the common pool fishery was the only fishery with a sub-ACL and an AM for this stock, the overage of the total ACL triggered an AM only for the common pool. On the other hand, catch by the "other subcomponent" fisheries alone, including the scallop and other fisheries, exceeded the ABC in FY 2010 and the OFL in FY 2011. The large overages in FY 2010 and FY 2011 demonstrate that an AM for the groundfish fishery alone is not sufficient to ensure that the ACL for this stock is not exceeded, because it is not responsible for the majority of catches. Creating a sub-ACL and, subsequently,

an AM, for the scallop fishery, which accounted for more than 25 percent of the total catch in FY 2011 and almost 50 percent of the catch in FY 2010, would create accountability for those fisheries responsible for the greatest share of the catch and most likely to cause an overage. Thus, a sub-ACL for the scallop fishery would help prevent overfishing on SNE/MA windowpane flounder as required by the National Standard 1 and Section 303(a)(1) of the Magnuson-Stevens Act and create an incentive to minimize bycatch of this stock, consistent with National Standard 9.

NMFS received comments on the proposed rule expressing concern that this measure does not maximize the overall net benefit to the nation or minimize adverse impacts to communities because it would substantially constrain scallop revenue. As further detailed in NMFS's responses to these comments later in this final rule, NMFS believes that this allocation to the scallop fishery balances the multiple factors taken into consideration in achieving optimum yield (OY), while complying with the other requirements of the Magnuson-Stevens Act and the goals and objectives of the FMP, including preventing overfishing, minimizing bycatch, and preserving a directed groundfish fishery. Economic, social and ecological factors contributed to the Council's allocation decisions for this sub-ACL. In addition to creating a greater incentive to minimize bycatch of SNE/MA windowpane flounder while maximizing the catch of scallops, as a fixed percentage of the ABC this measure ensures that allowable scallop catches of this stock adjust to increases or declines in the ABC and the relative health of the stock. This allocation is also consistent with historic catches and maintains historic participation in the SNE/MA windowpane flounder fishery, is fair and equitable, and prevents excessive accumulation of shares of this ABC by the scallop fishery as required by National Standard 4 and the goals of the FMP, because it is based on recent catch history as a proportion of the ABC. Although this allocation may constrain scallop catches in future years, depending upon the ABC, to favor the scallop industry by maximizing overall benefits to the nation would be inconsistent with National Standard 8 which requires that management measures must take into account importance of fishery resources to fishing communities in order to provide sustained participation of such communities in fishing and, to the extent practicable, minimize adverse

impacts on such communities. For these reasons, NMFS has approved this measure through this final rule.

**Other Sub-Components Sub-ACL**

NMFS has approved the allocation of a SNE/MA windowpane sub-ACL to the other sub-component fisheries. In addition to large catches of SNE/MA windowpane flounder by the scallop fishery in recent years, other non-groundfish fisheries have accounted for approximately half of the total SNE/MA windowpane flounder catch in FY 2010 and FY 2011. Up until now, any overages of the total ACL caused by this component of the fishery have been applied only to the commercial groundfish fishery, the only fishery with a sub-ACL and AM for this stock. As a result, there have been no measures in place to constrain catches of SNE/MA windowpane flounder by other non-groundfish vessels, which has undermined the effectiveness of the ACL and AM for this stock. By adopting a sub-ACL and, subsequently, an AM for these other fisheries, those fisheries responsible for the majority of catches in recent years would be held accountable for any overages they cause of the ACL for this stock. This measure creates accountability for those fisheries most likely to cause an overage, and thereby reduces the risk of overfishing. The specific amount of this sub-ACL for FY 2013–2015 was proposed in Framework 50 and will be published in the final rule for that action. The amount of this allocation would be specified each time catch limits are set. This administrative measure makes it possible to adopt an AM that applies to those non-groundfish fisheries that fish with gear responsible for most of the catch of this stock by the "other" sub-component. The AM for SNE/MA windowpane flounder that would apply to commercial vessels is described in Item 12 of this preamble.

**9. Scallop Fishery Sub-ACL for GB Yellowtail Flounder**

NMFS has approved the revised sub-ACL of GB yellowtail flounder for the scallop fishery proposed in Framework 48. In preparation for a transition to FY 2014, 40 percent of the U.S. ABC for GB yellowtail flounder would be allocated to the scallop fishery in FY 2013 only. In FY 2014 and each year after, 16 percent of the U.S. ABC for this stock would be allocated to the scallop fishery to better reflect its historical portion of total catch of GB yellowtail flounder and to provide more predictability. The scallop fishery sub-ACL would be calculated by reducing the scallop fishery's portion of the ABC (sub-ABC)

to account for management uncertainty. The scallop fishery sub-ACL for FY 2013 based on the U.S. ABC for GB yellowtail flounder was proposed in the Framework 50 proposed rule and the final sub-ACL will be published in the final rule for that action. NMFS would still re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If the scallop fishery is projected to catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop allocation. Overages will be calculated based on the revised sub-ACLs for the commercial groundfish fishery and the scallop fishery, and any applicable AMs would be triggered. Framework 48 also clarified that the overage payback for any overage of the U.S. TAC, as required by the Transboundary Resource Sharing Understanding, would be deducted from the sub-ACL for the fishery component that caused the overage.

This measure simplifies the specification of the scallop fishery's GB yellowtail flounder allocation each year by basing it formulaically on a fixed percentage of the ABC. This would provide stability for both the scallop and groundfish fisheries by creating a more predictable allocation scheme. NMFS received comments on the proposed rule expressing concern that this measure does not maximize the overall net benefit to the nation or minimize adverse impacts to communities because it would substantially constrain scallop revenue. As discussed in NMFS's response to these comments later in this final rule, NMFS believes that this allocation to the scallop fishery balances the multiple factors taken into consideration in achieving OY, while complying with the other requirements of the Magnuson-Stevens Act and the goals and objectives of the FMP, including preventing overfishing, minimizing bycatch, and preserving a directed groundfish fishery. Economic, social and ecological factors concerning the FMP's goals of preserving fishing opportunities for groundfish vessels, minimizing negative impacts on fishing communities, and reducing bycatch of groundfish stocks, contributed to the Council's allocation decisions for this sub-ACL and the SNE/MA windowpane flounder sub-ACLs. Allocating a fixed percentage of the ABC to the scallop fishery would create a greater incentive to avoid yellowtail

flounder while maximizing the catch of scallops, than an allocation based on projected catch. A fixed percentage of the ABC also ensures that allowable scallop catches of GB yellowtail flounder adjust to increases or declines in the ABC and the relative health of the stock, compared to a method based on projected catch. This allocation is also consistent with historic catches and maintains historic participation in the yellowtail flounder fishery, is fair and equitable, and prevents excessive accumulation of shares of this ABC by the scallop fishery as required by National Standard 4 and the goals of the FMP, because it is based on recent catch history as a proportion of the ABC. Although this allocation may constrain scallop catches in future years, depending upon the ABC, to favor the scallop industry by maximizing overall benefits to the nation would be inconsistent with National Standard 8 which requires that management measures must take into account importance of fishery resources to fishing communities in order to provide sustained participation of such communities in fishing and, to the extent practicable, minimize adverse impacts on such communities. For these reasons, NMFS has approved this measure through this final rule.

#### *10. Small-Mesh Fisheries sub-ACL for GB Yellowtail Flounder*

NMFS has approved a sub-ACL of GB yellowtail flounder for small-mesh fisheries. Small-mesh bottom trawl fisheries are defined as vessels fishing with bottom otter trawl gear with a codend mesh size of less than 5 inches (12.7 cm). These vessels fishing on Georges Bank typically target whiting and squid. Small-mesh fisheries would be allocated 2 percent of the U.S. ABC for GB yellowtail flounder each year, after a reduction for management uncertainty. Each time the groundfish specifications are set, the management uncertainty buffer necessary for these small-mesh fisheries would be determined. If the small-mesh fisheries catch of GB yellowtail flounder exceeds the sub-ACL, the pertinent AMs would be triggered. There was not sufficient time to develop specific AMs in this action and allow for collaboration with the respective FMPs and the Mid-Atlantic Council (e.g., Atlantic Mackerel, Squid, and Butterfish; Small-Mesh Multispecies). Although a sub-ACL for FY 2013 was needed because of the expected reduction in the GB yellowtail flounder ABC in FY 2013, the Council reasoned that allowing additional time to work with these respective FMPs to develop AMs would

not increase the risk of an overage in FY 2013, as long as the AMs are developed as soon as possible and applied retroactively to be effective for any overage in FY 2013. The small-mesh fisheries have not previously caused an overage of the GB yellowtail flounder ACL, so the situation was deemed less urgent than for SNE/MA windowpane flounder.

Prior to Framework 48, the quota for GB yellowtail flounder has been allocated to only the commercial groundfish and scallop fisheries. Although small-mesh fishery catches of GB yellowtail flounder have generally been less than 100 mt in recent years, the U.S. ABC for the stock has been declining. As a result, the small-mesh fishery catches account for an increasing percentage of the total U.S. catch. Allocating a sub-ACL and, subsequently, creating an AM for these fisheries would help ensure that small-mesh fishery catches would be constrained and prevent overages of the annual quota, thereby reducing the risk of overfishing, consistent with the requirements of National Standard 1 and section 303(a)(1) of the Magnuson-Stevens Act. In addition, because GB yellowtail flounder is jointly managed with Canada, keeping U.S. catches within the U.S. TAC is important to achieve the management and conservation objectives of the Understanding. This measure would also further the goals and objectives of the FMP and National Standard 9 to minimize bycatch to the extent practicable, by creating an incentive for small mesh fisheries to reduce bycatch of this stock. A sub-ACL for small-mesh fisheries, and associated AMs, would help ensure the component of the fishery that causes an overage would be held accountable. This measure would also likely prevent inequities that would occur if the commercial groundfish and scallop fisheries were held accountable for overages caused by the small-mesh fisheries.

#### *11. Recreational Fishery AM*

Framework 48 proposed to revise the recreational AM so that the Regional Administrator may proactively adjust recreational management measures to ensure the recreational fishery will achieve, but not exceed, its sub-ACL. The recreational fishery currently only has a sub-ACL for GOM cod and for GOM haddock. To the extent possible, any changes to the recreational management measures would be made prior to the start of the fishing year and adopted through procedures consistent with the Administrative Procedure Act (APA). In addition, the Regional

Administrator would consult with the Council, or the Council's designee, and would tell the Council, or its designee, what recreational measures are under consideration for the upcoming fishing year. If time allows, the Council would also provide its Recreational Advisory Panel (RAP) an opportunity to meet and discuss the proposed management measures. These AMs require development in consultation with the Council, because the appropriate suite of measures (e.g., bag limit, minimum fish size, season) depends on the ACL specified. A default suite of measures are not automatically triggered, because the sub-ACL and, thus, appropriate measures to achieve that sub-ACL, may differ between years. Similar to trip limits for the commercial common pool fishery, a certain suite of measures are projected to achieve a certain catch. To select the appropriate suite of measures, the ACL for the fishing year in which they will be used must be known in order to ensure the projected catch does not exceed the target. The Council provided guidance on its preference of measures that NMFS should consider if additional recreational effort controls are necessary to reduce GOM cod or GOM haddock catches, though this guidance does not restrict NMFS's discretion in selecting management measures that would best achieve, but not exceed, the recreational sub-ACL. If additional effort controls are necessary to reduce cod catches, the Council's non-binding preference is that NMFS first consider increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits. If additional effort controls are necessary to reduce haddock catches, the Council's non-binding preference is that NMFS first consider increases to minimum size limits, then changes to bag limits, and adjustments to seasons last.

NMFS has approved this measure in Framework 48 because it would improve accountability in the recreational fishery. Currently, the recreational fishery AM only allows the Regional Administrator to change recreational measures if an ACL is exceeded. In addition, due to the delay in availability of recreational catch data at this time, AMs can only be implemented late in the year following an overage, at the start of the next recreational fishing season. This measure also gives NMFS and the Council the ability to adapt to changing fishery conditions, by evaluating recreational measures before the start of the fishing year to ensure those measures facilitate a target catch

consistent with the sub-ACLs specified for the recreational fishery. This would help prevent overages of the recreational sub-ACL, and prevent substantial underharvests of the recreational sub-ACL. In addition, the requirement for NMFS to consult with the Council while developing measures allows increased opportunity for public comment, and provides states more opportunity to coordinate their recreational measures with NMFS.

Through the Framework 50 proposed rule, NMFS proposed and collected public comments on adjustments to recreational measures for FY 2013. Final recreational measures for FY 2013 will be announced in the final rule for that action.

#### *12. Commercial Groundfish Fishery AMs*

##### **Change to AM Timing for Non-Allocated Stocks**

NMFS has approved the revised timing for commercial groundfish fishery AMs for stocks not allocated to sectors (GOM/GB windowpane flounder, SNE/MA windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder), to improve the effectiveness of AMs adopted through Frameworks 47 and 48 for these stocks. Prior to this action, the AMs for these stocks would be implemented in the second year following an overage of the total ACL. For example, if the total ACL for ocean pout was exceeded in Year 1, the AM would be implemented in Year 3. However, this delay may not be needed in all cases. For example, fishery-dependent data is available in almost real time in the commercial groundfish fishery. If information was available during Year 1 that the commercial groundfish fishery had exceeded the overall ACL for ocean pout, under the current system an AM would still not be implemented until Year 3. This action revises the timing for these AMs, so that if reliable information is available during the fishing year (Year 1) that shows the total ACL has been exceeded, as in the example above, the respective AM for the stock would be implemented at the start of the next fishing year (Year 2). After the AM is implemented, if updated catch information shows that the total ACL was not exceeded, the AM would be rescinded consistent with the APA. This measure increases the effectiveness of the AM and would help prevent overfishing in consecutive years, consistent with the requirements of National Standard 1 of the Magnuson-Stevens Act.

The Council, as well as commenters on the Framework 48 proposed rule, expressed concerns that final catch data for the non-allocated stocks, which include catch from state waters and non-groundfish fisheries, could not be reliably available in time to trigger an AM in Year 2, or earlier. NMFS has heard the Council and industry's concerns with respect to the availability of data, and believes this measure balances the need for effective AMs with the need for stability in order for fishing businesses to plan for the upcoming fishing year. This action modifies the timing of the AMs so that should reliable information be available (e.g., the commercial groundfish fishery catches exceed the total ACL for a stock) the AM could be implemented more quickly. However, to provide stability for groundfish vessels, any applicable AMs for the non-allocated stocks would only be implemented at the start of a fishing year.

The Framework 48 proposed rule stated that if this measure was approved and implemented on or before May 1, 2013, and reliable information shows that the total ACL for a non-allocated stock is exceeded in FY 2012, then the respective AM would be implemented on May 1, 2013, for sector and common pool vessels. NMFS has reviewed available catch information as of April 16, 2013 and determined that, based on reliable catch information, the overall ACLs for these stocks have not been exceeded. Thus, none of the non-allocated stock AMs will be implemented for sector and common pool vessels in FY 2013. For this determination, NMFS considered commercial groundfish catches calculated from the Data Matching and Imputation System (DMIS) reliable due to the near real-time availability to estimate discards. To estimate commercial scallop fishery catches, NMFS used audited and preliminary observer data and fleet-wide scallop data from DMIS through February 28, 2013. NMFS determined this information to be reliable based on the near real-time availability of observer data to estimate discard rates in the scallop fishery. NMFS continues to make improvements to its data collection programs to improve the timeliness of data, and would evaluate the reliability of this information for making such determinations on an annual basis. Area-Based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder.

NMFS has approved the proposed area-based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder through this final rule. If the

total ACL is exceeded for any of these stocks by an amount greater than the management uncertainty buffer, gear restrictions would be triggered in designated areas that have been identified as hotspots for catches of these stocks. For overages of the Atlantic halibut and Atlantic wolffish ACLs, trawl vessels would be required to use approved selective gear, and sink gillnet and longline vessels would not be allowed to fish in the applicable AM area. For overages of the SNE/MA winter flounder ACL, only trawl gear would be restricted in the applicable AM area. As previously adopted in Framework 47, possession of non-allocated stocks would also be prohibited at all times, except for Atlantic halibut, which would be reduced from one fish per trip to zero if the total ACL is exceeded by an amount greater than the management uncertainty buffer. Approved selective trawl gears include the separator trawl, Ruhle trawl, mini-Ruhle trawl, rope trawl, and other gear authorized by the Council in a management action or approved for use consistent with the process defined in § 648.85(b)(6). Currently, the effective management uncertainty buffer at the overall ACL level is 3–7 percent for non-allocated stocks, depending upon the stock. The management uncertainty buffer can be changed each time groundfish specifications are set. Because these AM areas are designed to account for an ACL overage of up to 20 percent, if the total ACL is exceeded by 20 percent or more for one of these stocks, the AM would still be implemented, but the measure would be reviewed by the Council in a future management action. In addition, should a sub-ACL be allocated to other fisheries in a future action, and AMs developed for those fisheries, the AM for any fishery would be implemented only if the total ACL for the stock is exceeded, and the fishery also exceeds its sub-ACL. A detailed description of the development of these measures was included in Item 6 of the Framework 48 proposed rule and is not repeated here.

Note that Framework 50 allocates SNE/MA winter flounder to the groundfish fishery and allows landings beginning in FY 2013. Thus, sector-specific inseason AMs will apply for any overage from a sector's allocation in the next fishing year, and this area-based AM will apply only to common pool vessels if the common pool exceeds its sub-ACL for the stock.

NMFS has approved this measure because it creates effective reactive AMs to help prevent overfishing and ensures accountability in the commercial

groundfish fishery. Proactive AMs implemented by Amendment 16 and Framework 47 were intended to prevent ACLs from being exceeded. However, reactive AMs are necessary to correct or mitigate overages of ACLs if they occur, as explained in the U.S. District Court of Appeals decision in *Oceana v. Locke et al.*, which found that the lack of sector-specific reactive AMs for the non-allocated stocks violated the Magnuson-Stevens Act. These measures are necessary to prevent overfishing of non-allocated stocks by adjusting fishery measures to reduce the likelihood that an ACL is exceeded in consecutive years. These reactive AMs are also necessary to address a remand by the Court as a result of that litigation, and to be consistent with the National Standard 1 guidelines.

Commenters on the proposed rule expressed concern that these AMs are triggered effectively by an overage of the ABC as opposed to the ACL. As NMFS explained in the proposed rule, this trigger level is an artifact of how the AMs were designed and not out of any intent to provide additional buffers before an AM is triggered. The PDT was not able to design an AM that could account for such a small overage of 1–3 percent that would not be easily undermined by a shift of effort to other areas. Furthermore, NMFS considers this to be an issue of semantics and one that does not violate the National Standard 1 guidelines. Defining the trigger as an overage greater than the management uncertainty is in concept the same as establishing an annual catch target (ACT) and a higher ACL (e.g., an ACL set equal to the ABC) that serves as the trigger for AMs, an approach which is allowed under National Standard 1 guidelines.

Commenters were also concerned about the lack of automatic measure adjustment that would account for overages larger than 20 percent of the ACL. NMFS maintains that these AMs are to account for possible overages by non-groundfish fisheries shown to have *de minimis* catches of groundfish. It is not expected that these components themselves are likely to exceed the sub-ACL by more than 20 percent, particularly with the continued implementation of proactive AMs that appear to have been effective at constraining catch below the ACLs in recent years. If zero possession continues to be an effective proactive AM, the reactive AM will likely not be triggered.

#### **Revised AM for SNE/MA Windowpane Flounder**

NMFS has approved the revised AM for SNE/MA windowpane flounder in this final rule. The revised AM now applies to the groundfish fishery and the other sub-component fisheries, which have been allocated a sub-ACL of SNE/MA windowpane flounder through this action (see Item 8 in this preamble). If the total ACL for this stock is exceeded by an amount greater than the management uncertainty buffer, and the “other sub-component” sub-ACL is also exceeded, then the area-based AM, described above, would apply to all trawl vessels using a codend with a mesh size of 5 inches (12.7 cm) or larger.

Prior to Framework 48, the AM for SNE/MA windowpane flounder only applied to commercial groundfish vessels. However, the commercial groundfish fishery has typically accounted for less than 25 percent of the total SNE/MA windowpane flounder catch in recent years. A large portion of the total SNE/MA windowpane flounder catch is caught by trawl vessels in non-groundfish fisheries fishing with mesh size of 5 inches (12.7 cm) or greater. Thus, the current AM may not effectively restrict catches of this stock if the total ACL is exceeded, which increases the likelihood of consecutive overages in future fishing years. This revision helps ensure that, in the event of an overage, catches would be effectively restricted to prevent overfishing. In addition, this action would remove potential inequities that could occur if only the commercial groundfish fishery was subject to an AM for SNE/MA windowpane flounder, even though its catches represent a small portion of the total catch for this stock.

As implemented in Framework 47, the area-based AM for commercial groundfish vessels is triggered only if the commercial groundfish fishery exceeds its sub-ACL and the total ACL is also exceeded by an amount greater than the management uncertainty buffer. Similarly, the scallop fishery's AM is triggered only if the total ACL is exceeded and the scallop fishery sub-ACL is also exceeded. This ensures that each fishery is only accountable for any overages it caused and not those caused by any other fishery with a sub-ACL of this stock.

As discussed in the previous section, commenters on the proposed rule expressed concern that non-allocated stock AMs are triggered effectively by an overage of the ABC as opposed to the ACL, and that these AMs do not have

automatic adjustments sufficient to cover an overage of more than 20 percent of the ACL. As NMFS explains above and in the response to these comments, the smallest effective AM the PDT could design accounts for at least 5 percent of the ACL. Furthermore, NMFS considers this to be an issue of semantics and one that does not violate the National Standard 1 guidelines. Defining the trigger as an overage greater than the management uncertainty is in concept the same as establishing an ACT and a higher ACL that serves as the trigger for AMs, an approach which is allowed under the National Standard 1 guidelines. NMFS also believes that these AMs are sufficient, because fisheries in the other sub-component are shown to have *de minimis* catches of groundfish. It is not expected that these components themselves are likely to exceed the ACL by more than 20 percent, given that the sub-ACL is based on estimated catch and an additional sub-ACL is being specified to constrain the catch of the scallop fishery.

#### Revised Handgear Permit AMs

The revised handgear AMs are approved through this final rule. This measure exempts Handgear A and Handgear B permits from the white hake trimester TAC AM. This exemption would remain effective unless a future action modified this AM. Handgear A and B common pool vessels would still be subject to the trimester TAC for cod, haddock, and pollock. This measure

also authorizes the Regional Administrator to exempt Handgear A and Handgear B common pool vessels from the trimester TAC provisions for other stocks if catch by these vessels is less than 1 percent of the total common pool catch of that species or stock. This determination would be made prior to the start of the fishing year, and would be implemented through procedures consistent with the APA.

Currently, all common pool vessels, including vessels using handgear, are subject to trimester TACs for allocated stocks. When 90 percent of the trimester TAC for a stock is projected to be caught, the area where the stock is predominately caught will be closed for the remainder of the trimester to gear capable of catching that stock. The common pool trimester TAC AMs were designed to apply only to gear types that caught the pertinent stock. Prior to this action, hook gear was subject to the trimester TAC provisions for cod, haddock, white hake, and pollock, although hook gear has been shown to very rarely catch white hake, making up less than 1 percent of the total common pool catch of this stock each year. Thus, NMFS has approved this measure because it maintains the original purpose of these inseason AMs while providing flexibility to small, handgear vessels that are not responsible for much catch of this stock. In addition to the exemption for white hake approved through this final rule, this measure allows modifications to other trimester

TAC AMs in the future, should new information become available that shows handgear vessels rarely catch a stock or species, or the combined catch of these vessels is less than 1 percent of the total common pool catch. This would increase the effectiveness of the common pool AMs, and would prevent potential inequities that may occur by applying an AM to vessels not responsible for catching, or exceeding, a trimester TAC.

#### 13. Commercial Fishery Minimum Fish Sizes

NMFS has approved the reductions to the minimum fish sizes for several groundfish stocks to reduce regulatory discards and increase revenue from catch. The new minimum sizes are listed in Table 4. In the groundfish fishery, all catch, including landings and discards, are counted against ACLs. Commercial discards for most stocks are assumed to have 100-percent mortality, so 100 percent of discards for these stocks are deducted from quota allocations; thus, discards are lost revenue for groundfish vessels. Reducing the minimum size for several groundfish stocks would reduce waste and allow the commercial industry to recoup some revenue from fish that would otherwise be discarded. This small amount of additional revenue may help the groundfish industry cope with the substantial reductions in catch limits expected in FY 2013.

TABLE 4—CHANGES TO MINIMUM FISH SIZES LIMITS FOR GROUNDFISH STOCKS

Species	Current Size (inches)	Proposed FW 48 Size (inches)
Cod .....	22 (55.9 cm) .....	19 (48.3 cm)
Haddock .....	18 (45.7 cm) .....	16 (40.6 cm)
Pollock .....	19 (48.3 cm) .....	No change
Witch flounder (gray sole) .....	14 (35.6 cm) .....	13 (33 cm)
Yellowtail flounder .....	13 (33.0 cm) .....	12 (30.5 cm)
American plaice (dab) .....	14 (35.6 cm) .....	12 (30.5 cm)
Atlantic halibut .....	41 (104.1 cm) .....	No change
Winter flounder (blackback) .....	12 (30.5 cm) .....	No change
Redfish .....	9 (22.9 cm) .....	7 (17.8 cm)

NMFS received several comments on the Framework 48 proposed rule expressing concern that the revised minimum sizes may increase targeting and bycatch of small fish and impact the rebuilding of groundfish stocks. As discussed in the proposed rule, the Framework 48 EA, and in the response to comments, the biological impacts that might result from these new minimum fish sizes depend on whether selectivity in the fishery shifts to smaller fish and whether catch limits are adjusted to

account for a shift, which cannot be accurately predicted. Although difficult to predict, it is possible that decent prices for smaller size classes of fish could incentivize the targeting of smaller fish at the new minimum size. According to analysis in Framework 48, this is most likely to occur for yellowtail flounder, for which there is little difference in price between size classes and a simple change in the type of codend used can modify the size of fish caught. However, the revised minimum

size is only an inch smaller than the existing minimum size and still above the length at 50-percent maturity for this stock. Analysis in Framework 48 for CC/GOM yellowtail flounder showed that a shift in selectivity by one year without a corresponding change in ABCs would result in a rebuilding time that is almost the same and a higher probability of overfishing. However, if the change in selectivity is detected and ABCs are revised, these potential impacts are mitigated. In light of these concerns,

and at the request of the Council, NMFS is exploring ways to monitor the length frequency of catch in the commercial groundfish fishery beginning in FY 2013 to see if a change in selectivity could be detected. If such an analysis could be completed, NMFS could use this information to advise the Council if adjustments should be considered in a future action.

The Massachusetts Division of Marine Fisheries (MADMF) submitted a comment on the proposed rule raising concerns that if these measures are approved and state agencies do not follow suit, sector vessels would be forced to discard fish that do not meet the state minimum fish size in violation of the federal requirement for them to retain all fish of legal size. NMFS is also concerned about discrepancies between state and federal minimum fish sizes complicating compliance and enforcement of this measure. If a state does not make corresponding adjustments to fish sizes, vessels could land their catch in other states' ports. NMFS does not favor this result and the impacts it would have on the non-conforming state, and, for that reason strongly urges all affected states to match these size reductions. To address this concern, NMFS is delaying the effective date of these new minimum sizes to July 1, 2013, to allow state agencies additional time to consider and make corresponding adjustments to their minimum sizes.

#### *14. Sector Monitoring Programs*

##### **Eliminate Dockside Monitoring**

NMFS has approved the elimination of dockside monitoring requirements for the groundfish fishery. Amendment 16 required sectors and the common pool to implement a dockside monitoring program to validate dealer-reported landings beginning in FY 2010 and 2012, respectively. Framework 45 delayed the implementation of these requirements after only a year until FY 2013. Like at-sea monitoring, the Council is concerned about the industry's ability to support this cost burden in FY 2013 and in future years, particularly in light of concerns about its utility, and proposed eliminating the dockside monitoring program altogether through Framework 48.

NMFS approved this measure because it believes that dealer reporting combined with dockside intercepts by enforcement personnel are sufficient to ensure reliable landings data at this time. Dealer-reported fish weights are used as the principle source to monitor commercial landings. Thus, dockside monitor reports, which verify dealer-

recorded weights, are somewhat redundant. Random dockside intercepts by enforcement personnel, facilitated by trip-end hauls, provide a deterrent against misreporting of catch and illegal landings. In addition, eliminating the program would reduce costs and potentially increase the profitability of the commercial industry in future years.

It was not clear from Framework 48 whether eliminating the dockside monitoring program included removing the current dockside monitoring haul requirements. NMFS proposed maintaining haul requirements in the Framework 48 proposed rule, because they facilitate the monitoring and enforcement of sector operations and landings. NMFS did not receive any comments from the Council or members of the public opposing this proposal, thus NMFS concludes that it is justified in maintaining the haul requirements at this time. These hauls will be a useful tool for both NMFS and sector managers to monitor sector vessels' activities, including the use of certain sector exemptions, and to facilitate dockside intercepts by enforcement personnel. NMFS is also clarifying the regulatory text of this proposed rule at § 648.10(k)(1), consistent with Framework 45, so that hauls may be modified in the future to be streamlined with other reporting requirements that collect similar fishery data, such as VTRs and VMS catch reports.

##### **Sector Monitoring Goals and Performance Standard**

NMFS has approved the proposed revisions to the goals and objectives, and performance standard, established for sector monitoring programs and, relying in part on section 305(d) of the Magnuson-Stevens Act, implements new regulatory text to reflect these revised goals and objectives and ensure they are carried out in a manner consistent with the Act. Amendment 16 did not lay out explicit goals for sector monitoring, but described several general purposes for the programs, including to provide accurate estimates of sector catch and to verify area and gear fished, to ensure sector allocations are not exceeded. The lack of well-defined goals and purposes for sector monitoring requirements has led to confusion about how to implement these requirements and has hindered efforts to improve them. This measure and its implementing regulatory text clarify and elaborate on the goals and objectives for existing and future groundfish monitoring programs to help the Council and NMFS to implement monitoring requirements consistent with the goals of the FMP and to

evaluate these programs in the future. More explicit goals and objectives would also assist NMFS and the sectors in designing and evaluating proposals to satisfy monitoring requirements in sector operations plans, ensuring the reliability of catch estimates and accountability of catches. The new goals and objectives include that groundfish monitoring programs improve documentation of catch, determining total catch and effort of regulated species, and achieve a coverage level sufficient to minimize effects of potential monitoring bias to the extent possible, while enhancing fleet viability. Monitoring programs should also reduce the cost of monitoring, streamlining data management and eliminating redundancy, exploring options for cost-sharing, while recognizing the opportunity costs of insufficient monitoring. Other goals and objectives include incentivizing reducing discards, providing additional data streams for stock assessments, reducing uncertainty, and enhancing the safety of the monitoring program. It is also an explicit goal of such programs to periodically evaluate them for effectiveness. The complete list of goals and objectives for groundfish monitoring programs is specified in the NE multispecies regulations at § 648.11(l) and in Framework 48.

Amendment 16 specified a performance standard that coverage levels must be sufficient to at least meet the coefficient of variation (CV) specified in SBRM (a CV of 30 percent), but was unclear as to what level the CV standard is to be applied to—discard estimates at the stock level for all sectors, or for each combination of sector and stock. This has resulted in a lack of specific direction and specification about the appropriate coverage level needed to “accurately monitor sector operations.” This measure in Framework 48 clarifies that the CV standard is intended to apply to discard estimates at the overall stock level for all sectors combined. As discussed in NMFS’s response to comments on this measure, the Council and NMFS believe this level is sufficient as a minimum standard for monitoring sector ACEs, consistent with the goals of Amendment 16 and the FMP.

Amendment 16 specified that coverage levels should be less than 100 percent, which requires that the discard portion of catch, and thus total catch, be an estimate. The level of observer coverage, ultimately, should provide confidence that the overall catch estimate is accurate enough to ensure that sector

fishing activities are consistent with National Standard 1 requirements to prevent overfishing while achieving on a continuing basis optimum yield from each fishery. NMFS's analysis of CVs achieved at the sector-stock level using a performance standard at the stock level showed that the vast majority of ACE level catch figures achieved a CV of 30 percent or better. This examination revealed that for 207 of the 256 ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent was less than 1 percent. For 43 of the remaining ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent ranged from 1–9.9 percent. There were 6 ACE allocations for which the percent of discard pounds with a CV greater than 30 percent ranged from 10–66 percent. A report of this analysis is available at: [http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013\\_Multispecies\\_Sector\\_ASM\\_Requirements\\_Summary.pdf](http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf)

Discards are only a portion of total catch, thus the majority of catch estimates are based on landings information, which is obtained by dealer reported data, verified by VTRs, and sector weekly reports. In addition, NMFS and sector managers engage in an extensive reconciliation process to quality assure and quality check data streams used to estimate and monitor sector catch toward ACEs. To further guard against possible uncertainty in these estimates resulting in an overage at the ACL level, substantial management uncertainty buffers are established before the ACL and sub-ACLs are allocated. Based on this analysis, we concluded that a CV standard at the stock level provides coverage rates that are sufficiently reliable to monitor sector ACEs. Thus NMFS has approved this measure in Framework 48.

NMFS will use this standard to help determine the minimum coverage rates for sector at-sea monitoring programs in future fishing years. Note that, although the Framework 48 document discusses the clarified standard with respect to "allocated stocks," the final regulatory text applies the CV standard to all groundfish stocks, allocated and non-allocated. This was an inadvertent error in the Framework 48 document and, thus, the Council has deemed the corrected regulatory text as consistent with its intent.

This measure also makes clear what other factors should be taken into account in determining the appropriate level of coverage for groundfish monitoring programs, as described in the clarified goals and objectives for

monitoring programs. NMFS interprets these provisions as guidance based on a practicability standard for determining the level of at-sea monitoring coverage that is appropriate for monitoring sector operations to help ensure that overall catch by sector vessels does not exceed ACEs and ACLs. Thus, NMFS has revised the regulatory text with respect to sector monitoring requirements to reflect the clarified goals and performance standard for sector monitoring programs, and to take into account the National Standards and other requirements of the Magnuson-Stevens Act. NMFS has revised the regulatory text at § 648.87(b)(1)(v)(B) to read that coverage levels must at least meet the CV standard at the overall stock level and be sufficient to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels.

In addition to the revised goals and objectives in Framework 48, NMFS will specifically take into account National Standards 2, 7, and 8 in making its determination of the appropriate level of at-sea monitoring coverage for sectors on an annual basis. These National Standards specifically speak to using the best scientific information available, minimizing costs and avoiding unnecessary duplication where practicable, taking into account impacts on fishing communities, and minimizing adverse economic impacts to the extent practicable.

#### **Reduce At-Sea Monitoring for Monkfish Trips**

Framework 48 proposed to implement a lower at-sea coverage rate for sector vessels fishing on a monkfish day-at-sea (DAS) in the SNE Broad Stock Area with extra-large mesh gillnets. Currently, sector monitoring requirements are defined to apply to any trip where groundfish catch counts against a sector's ACE. Because the Skate and Monkfish FMPs require the use of a DAS, including a groundfish DAS, to target these species, sector vessels fishing for monkfish and skates are charged ACE for any landings or discards of groundfish and are subject to sector at-sea monitoring coverage on these trips. When truly targeting monkfish or skates, however, sector vessels often use gear that has little or no bycatch of groundfish. With limited resources for at-sea monitoring, covering trips targeting skate or monkfish is arguably a waste of resources and does not contribute to improving the overall precision and accuracy of discard estimates. Thus, NMFS has approved this measure in Framework 48 that exempts a subset of sector trips that are

declared into the SNE Broad Stock Area on a monkfish DAS and using extra-large mesh gillnets from the standard at-sea monitoring coverage rate. This measure should reduce at-sea monitoring costs to sectors, particularly to gillnet vessels that fall in this category. It would also allow resources to be diverted to monitor trips that catch more groundfish, which could improve discard estimates for directed groundfish trips, and all other sector trips would still be required to meet the CV standard at a minimum.

NMFS will specify some lower coverage rate for these trips on an annual basis when determining coverage rates for all other sector trips. At a minimum, these trips would get Northeast Fishery Observer Program (NEFOP) coverage. As discussed in Item 8 of the Framework 48 proposed rule, NMFS has determined that NEFOP coverage is sufficient to monitor these trips in FY 2013. Because this subset of trips would have a different coverage level than other sector trips in the SNE Broad Stock Area, NMFS has determined that these trips require a separate discard strata for each stock to ensure the different coverage levels do not bias discard estimates. To facilitate deploying appropriate coverage levels, a sector vessel must notify NEFOP as to whether it intends to fish under this exemption through the Pre-Trip Notification System (PTNS). NMFS will provide specific instructions for how to declare this option in PTNS in a Fishery Bulletin sent to all sector vessels. To minimize the possibility that this measure could be used to avoid at-sea monitoring coverage, only vessels meeting the criteria and intending to fish exclusively in the SNE Broad Stock Area are eligible for lower coverage. Vessels declaring multi-Broad Stock Area trips are not eligible for the lower selection probability. In addition, a vessel is already prohibited from changing its fishing plan for a trip once a waiver from coverage has been issued. NMFS has revised the pre-trip notification regulations at § 648.11(k)(1) to make clear that a vessel's fishing plan includes the area to be fished, whether a monkfish DAS will be used, and gear type to be used.

This measure also requires that NMFS develop a method for identifying these trips in the fishery dependent datasets in order to ensure they are appropriately stratified in stock assessments. The NMFS Northeast Regional Office is working with the Northeast Fisheries Science Center to identify the appropriate method to transmit this information to assessment scientists. To assist NMFS in identifying these trips

for appropriate stratification in discard estimates, NMFS may require sector vessels intending to use this exemption to submit a trip-start hail declaring their intent to NMFS before departing port. If NMFS determines a trip-start hail is necessary, detailed instructions for submitting hails would be specified in a Fishery Bulletin distributed to all sector vessels.

#### *15. List of Allowable Sector Exemption Requests*

NMFS has approved a provision in Framework 48 to allow sectors to submit limited requests for exemption from portions of year-round closure areas. Framework 48 proposed to amend the list of regulations that sectors could not request exemption from. Amendment 16 allowed a sector to make requests to the Regional Administrator for exemption from some NE multispecies regulations as part of its annual sector operations plan. Amendment 16, and later Framework 47, identified a list of FMP measures that sectors could not request exemption from, including: Year-round closure areas; permitting restrictions (e.g., vessel upgrade limits, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs for non-allocated stocks. Sectors were prohibited from requesting these exemptions because they serve multiple purposes and do not necessarily act exclusively as mortality controls.

Beginning in FY 2013, sectors may request exemption from the year-round groundfish mortality closures, except for where they overlap current or proposed habitat closed areas. These areas are defined as the existing habitat closed areas specified at § 648.81(h) and the Fippennies Ledge area under consideration as a potential habitat management area in the Omnibus EFH Amendment currently under development by the Council. Sectors may not request exemption from the Western GOM Closed Area, where it overlaps with a GOM Rolling Closure Area in effect. At this time, GOM Rolling Closure Area III overlaps the northeast corner of the Western GOM Closed Area, so sectors would not be allowed to request access to this portion of the Western GOM Closed Area during May. Sectors may also not request access to Closed Area I and II from February 16th through April 30th.

Council members, members of the public, the fishing industry, and environmental groups expressed a number of concerns during the development of Framework 48 and in the public comment period on the

proposed rule, about allowing additional access to groundfish closed areas. Some comments concerned the potential for this measure and any proposed sector exemptions to undermine measures under consideration in the Omnibus EFH Amendment. Concerns were also raised about potential impacts to protected species, spawning groundfish, and to other commercial species, like lobsters, from opening these areas to additional fishing effort. Some commenters also raised concerns that allowing groundfish vessels into these areas, mainly Closed Area II, could increase gear conflicts between mobile and lobster gear. To address some of these issues, the Council imposed the limitations described above, excluding existing and potential habitat closed areas to preserve the process under way to evaluate these areas in the Omnibus EFH Amendment. The Council also took steps to continue protections for spawning groundfish by including seasonal restrictions on any sector exemptions. NMFS responds to specific comments submitted on the proposed rule for Framework 48 in this final rule.

As NMFS clarified in the proposed rule, Framework 48 does not actually approve the exemptions needed to fish in these closed areas. The impacts of any actual fishing effort, including the concerns raised in public comments during the development of Framework 48, would be evaluated and could be mitigated through the annual review and approval of sector operations plans and exemption requests for each fishing year. The Council has already asked that the specific issues raised during the development of Framework 48 be evaluated by NMFS in the consideration of any specific sector exemption requests. In addition, many of the issues regarding sector access to closed areas raised in public comments on the proposed rule, will be analyzed should NMFS propose granting sector exemption closed area access. The sector exemption review and approval process also provides better opportunity to address specific concerns with the potential impact of actual sector proposals. The Regional Administrator may include stipulations and constraints on specific exemptions to facilitate the monitoring and enforcement of sector operations or as mitigation measures to address specific potential impacts.

After review of public comments, NMFS has approved this measure in this final rule. The Council designed this measure to maintain the purpose of existing habitat areas to minimize the adverse effects of fishing on EFH, and

preserve the consideration of additional habitat and other management areas in the Omnibus EFH Amendment. The Council also took steps to limit potential impacts of requests on spawning groundfish. This change to the list of prohibited exemptions would allow the consideration and analysis of specific sector exemption requests on a case-by-case basis. If approved, sector exemptions to portions of these areas may help mitigate the expected reductions in FY 2013 catch limits by allowing sectors to potentially increase catches of healthy groundfish stocks such as GB haddock and pollock that may be more abundant in these areas.

In anticipation of this change being approved for FY 2013, sectors submitted requests for exemptions from portions of the year-round closed areas in their FY 2013 operations plans. Due to the need for additional time to analyze these new exemptions adequately, NMFS intends to consider these sector requests in a separate rulemaking from the general approval of sector operations plans for FY 2013. The closed area exemption requests would be considered as amendments to the sector operations plans through a proposed and final rule that would be available for public comment with an accompanying National Environmental Policy Act (NEPA) analysis. Any closed area exemption requests, if approved, would not be in place until after the start of the 2013 fishing year.

#### *16. Additional Corrections*

In addition to the changes specified above, the following changes to the regulations are approved to correct incorrect references and to further clarify the intent of the Council.

In § 648.4(a)(1)(ii), this rule corrects a misspelling of the word "multispecies."

In § 648.80(a)(3)(vii), this rule clarifies that rockhopper and roller gear requirements of the GOM/GB Inshore Restricted Roller Gear Area apply only to groundfish vessels on a NE multispecies DAS or sector trip. This correction is made at the request of the Council, in response to a letter sent April 30, 2012.

In § 648.82(k)(2), language prohibiting sector vessels from leasing DAS is removed. This language is left over from Amendment 13 and should have been removed in the final rule implementing Amendment 16, which allowed sectors vessels to lease DAS among themselves.

In § 648.82(n)(2)(i), this rule clarifies that common pool trimester TAC area closures are intended to apply to common pool vessels using gear capable of catching groundfish only when on a

NE multispecies DAS, and not when participating in exempted fisheries.

In § 648.82(n)(2)(ii)(A), this rule corrects the coordinates for the GB Cod Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 521, 522, 525, and 561. However, the coordinates used to define the GB Cod Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and included statistical area 562; this is rectified by this action.

In § 648.82(n)(2)(ii)(B), Points 4 and 5 incorrectly list the N. Lat. as 43°20', and this action corrects them to read 43°10'.

In § 648.82(n)(2)(ii)(H) and (I), the original coordinate AP8 was unnecessary and is removed by this action.

In § 648.82(n)(2)(ii)(J), this rule corrects the coordinates for the GB Winter Flounder Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 522, 525, 561, and 562. However, the coordinates used to define the GB Winter Flounder Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and did not include statistical areas 525 and 561; this is rectified by this action.

In § 648.84(e), this rule adds a regulatory definition for the rope separator trawl. The definition for the rope separator was inadvertently removed from the regulations by the Framework 47 final rule. This rule adds the regulatory definition back into the regulations.

In § 648.85(a)(3)(iv)(E), the regulations allow for the Regional Administrator to close the Eastern U.S./Canada Area to all vessels subject to a particular TAC allocation if that particular TAC allocation is projected to be caught. This rule clarifies that this is only to apply to allocations to sectors and common pool vessels, and not the scallop fishery or other ACL components. Amendment 16 and Framework 48 clarified that inseason and reactive accountability measures for sub-ACLs for non-groundfish components of ACLs are to be developed and administered by those respective FMPs.

In § 648.85(b)(7)(iv)(H), an explicit reference to possession limits for other groundfish stocks, including stocks prohibited from being landed, in § 648.86 is added in the description of landings limits for the Closed Area I Hook Gear Haddock Special Access Program (SAP).

In § 648.85(b)(8)(v)(C), the timing of the pre-trip notification to the observer program for a US/CA trip is revised from 72 hr to 48 hr. Prior to Amendment 16, vessels taking trips into the U.S./

Canada were required to notify the observer program of their intent to take a trip 72 hr prior to departure. With the implementation of Amendment 16, NMFS established a standardized call-in requirement to the observer program that reduced this lead time to 48 hr.

In § 648.85(d), a period that was incorrectly inserted after "NE" is removed.

In § 648.86(a)(3)(ii), periods that were incorrectly inserted after "NE" is removed.

In § 648.86(a)(3)(ii)(A)(3), the table title for the GB Herring Haddock AM Area was incorrectly published as the GOM area. This rule corrects the table title.

In § 648.87(b)(1)(ii), sector stock area coordinates that were to be implemented by Framework 44 but were inadvertently left out of the regulations are added through this rule as paragraphs (A) through (F).

In § 648.90(a)(5)(iii), a period that was incorrectly inserted after "NE" is removed.

In § 648.201(a)(2), the prohibition on landing of haddock is clarified to apply only to the haddock stock area for which the AM has been triggered. An explicit reference is added to the haddock possession restrictions in the NE multispecies regulations at § 648.86(a)(3)(ii)(A).

### Comments and Responses

NMFS received 75,393 comments during the comment period on the Framework 48 proposed rule, including 75,263 form letters opposing allowing sectors access to groundfish closed areas. Letters were also received from the Council, the USCG, MADMF, the Maine Department of Marine Resources (MEDMR), 7 environmental organizations, 3 research institutions, numerous members of the academic community, a whale watch company, 7 commercial fishing industry groups, 2 recreational fishing associations, a commercial fish dealer, and 106 individuals. Some of the comments did not address the proposed measures and thus they are not included here. Where possible, responses to similar comments on the proposed measures have been consolidated.

*Comment 1:* NMFS received one comment on the economic analysis in the draft Framework 48 EA and the IRFA. MADMF commented that the economic analysis of measures in Framework 48 should have focused on the individual level and that any other level of analysis would not result in accurate characterizations about the impacts of Framework 48 measures on individuals. MADMF also questioned

the assumption that impacts to vessels would also be applicable to ownership entities and noted that the conclusion in the IRFA that Framework 48 measures would not have a disproportionate impact on small entities seems to contradict the conclusion elsewhere in Framework 48 that small vessels would suffer the highest percent reduction in net revenues from sector monitoring requirements.

*Response:* NMFS believes the commenter may be misunderstanding the economic analyses in Framework 48. It appears the commenter has misinterpreted the conclusions in the economic analysis for this action. Individual measures are analyzed independently relative to the no action alternative for each particular measure, because each measure must be approved or disapproved based on its individual merits. The cumulative impacts of an action and all other foreseeable actions are also analyzed in the cumulative effects analysis of the EA. For example, the analysis suggested that reducing the commercial minimum fish sizes could increase revenues and, thereby, serves as a mitigation measure, when compared to not reducing the minimum sizes. Extrapolating the conclusion of the economic impact of an individual measure to impacts of the entire action is not appropriate. It is not clear what MADMF defines as an "individual" and, therefore, what analysis it believes is missing. The term "ownership entity," as opposed to a vessel, has a specific meaning in analyses under the Regulatory Flexibility Act (RFA) for Framework 48 and the proposed rule, which is where these terms are used. Similarly, small vessels are not the same as small entities. A small vessel refers to the relative size or length of the vessel itself as some measure of capacity to generate revenue. As described in the IRFA, the Small Business Administration (SBA) defines a small business as one that is: independently owned and operated; not dominant in its field of operation; has annual receipts not in excess of \$4.0 million in the case of commercial harvesting entities, or \$7.0 million in the case of for-hire fishing entities; or if it has fewer than 500 employees in the case of fish processors, or 100 employees in the case of fish dealers. This is the definition of a small entity used for the purposes of an RFA analysis. Thus, a small or large entity could own or control a number of small vessels. The assumptions used to aggregate vessels or permits to the ownership entity level was explained in the RFA section of Framework 48 (section 8.11.2), and conforms to NMFS

internal guidelines and the SBA's guidelines for economic analyses to comply with the RFA. The RFA does not require an analysis of comparative impacts between small entities, although this has been done to a degree for this action, but rather the comparative impact between large and small entities and alternatives that may reduce those comparative impacts, if they disproportionately affect small entities. NMFS's methods for predicting outcomes do not yet include agent-based models capable of predicting individual vessel-level outcomes, though NMFS is continually improving its data sources and analytical methods. In addition, the ability to report on distributional impacts at the individual vessel level is hindered by the need to protect the confidentiality of individually-reported data at this level. Thus, for some measures, such as the reduced commercial minimum fish sizes, the economic impacts were addressed qualitatively.

#### Status Determination Criteria

*Comment 2:* The Island Institute commented in support of the revised status determination criteria and how these measures will make way for setting appropriate ABCs and ACLs in Framework 50.

*Response:* NMFS agrees that the revised status determination criteria represent the best available science and would allow the appropriate ABCs and ACLs to be set beginning in FY 2013 to end overfishing and continue the rebuilding of groundfish stocks. NMFS has approved the revised status determination criteria in this final rule.

*Comment 3:* The Conservation Law Foundation (CLF), MADMF, and the Northeast Seafood Coalition (NSC) raised questions related to the methods and results of the assessments for SNE/MA yellowtail flounder, and GOM and GB cod. CLF questioned NMFS and the Council's determination that the revised SNE/MA yellowtail flounder status determination criteria represent the best available science when the recruitment scenarios that were considered by the SARC were almost equally likely, but resulted in such different stock status. MADMF pointed out that NMFS proposed two numerical values for status determination criteria for GOM cod, but did not specify which it preferred and proposed to approve. MADMF questioned why the SARC did not conclude that natural mortality for GOM cod would be sustained at 0.4 or higher. MADMF also asked NMFS to clarify why the GOM and GB cod assessments did not conclude there has been a change in productivity for these

stocks as for SNE/MA yellowtail flounder. NSC challenged that the revised status determination criteria do not represent the best available science because the assessments did not consider alternate methods for deriving  $F_{MSY}$  proxies. NSC asked NMFS to ask the Council and SSC to consider alternate methods for establishing  $F_{MSY}$  other than  $F_{40\%MSP}$  in stock assessments. They challenged that this is a policy decision with management implications and therefore should be made by the SSC and Council, rather than the NEFSC.

*Response:* NMFS first notes that an error was made in the Framework 48 proposed rule with respect to the overfishing status of SNE/MA yellowtail flounder under the two recruitment scenarios. The Framework 48 proposed rule erroneously stated that SNE/MA yellowtail was experiencing overfishing under the "two-stanza" recruitment scenario, when both recruitment scenarios actually led to the conclusion that this stock was not experiencing overfishing.

With respect to the reference points for GOM cod, two sets of status determination criteria were proposed because the SARC accepted two models at the assessment. These models resulted in one maximum fish mortality threshold, but two sets of biomass reference points. Although this approach for determining numerical values for stock status is less straightforward, both models concluded that GOM cod is overfished and undergoing overfishing. NMFS has approved both sets of revised reference points for GOM cod in this final rule.

NMFS understands CLF and MADMF's concerns about the amount of uncertainty in the biomass reference points for SNE/MA yellowtail flounder and GOM cod. SARC 54 modeled possible reasons for reduced recent recruitment of SNE/MA yellowtail flounder, but could not fully explain the low productivity of this stock. SARC 55 reviewed information on natural mortality of GOM cod, but was unable to reach a decision on which natural mortality values best characterized the system. Investigating possible sources of changes in productivity was not a specific TOR in the cod assessments, as it was in the SNE/MA yellowtail flounder assessment. However, the TORs for these assessments were vetted by the Northeast Regional Coordinating Committee (NRCC), which includes representatives of the New England and Mid-Atlantic Councils and their SSCs. There are basic TORs that are the foundation for the TORs of all assessments, but stock-specific TORs

may be added based on research recommendations, generated by developments in the science or politics of a particular stock, and vetted by the NRCC. Even without a specific TOR, the SAW working group reviews all available information and the public may submit papers to the working group to consider in their analyses and deliberations. A detailed discussion of the review panels' deliberations are available in the assessment reports and review panel summaries on the NEFSC Web site: <http://www.nefsc.noaa.gov/saw/reports.html>. More exploration is needed, yet the results of the SARC 54 and 55 assessments, even with the acknowledged uncertainty, represent the best scientific information available about the state of SNE/MA yellowtail flounder and GOM cod at this time. These reference points were endorsed by both the SSC and NEFSC for use in managing these stocks. NMFS has approved the revised status determination criteria in this final rule.

Regarding NSC's assertion that the proposed status determination criteria do not represent the best available science because the assessments did not consider alternate methods for deriving  $F_{MSY}$ , the Framework 48 proposed rule did not propose or solicit public comment on assessment methods. NMFS can only approve, partially approve, or disapprove the status determination criteria proposed in Framework 48 based upon an evaluation of its compliance with the Magnuson-Stevens Act, the National Standards Guidelines, the FMP, and other applicable law. It would not be appropriate or permissible for NMFS to choose an alternate  $F_{MSY}$  reference point through this final rule that was not considered by the SSC or Council. That being said, the TORs generated for each assessment, and vetted by the NRCC with representations by both Councils and their SSCs, specifically direct the SAW/SARC to determine  $F_{MSY}$  or, if a direct estimate of  $F_{MSY}$  cannot be determined, to select an appropriate proxy. Thus,  $F_{MSY}$  or methods for determining its proxy are evaluated and recommended by each SAW and approved by each SARC, and are not pre-determined as NSC seems to suggest, although an  $F_{MSY}$  proxy of 40%MSP may be the result in many assessments. The NSC has already forwarded its concerns about the determination of  $F_{MSY}$  proxies to the Council for consideration and the Council may choose to pursue this issue for future assessments. However, the numerical estimates of  $F_{MSY}$  proposed in Framework 48 for SNE/MA yellowtail

flounder, GOM and GB cod, were reviewed and accepted by the review panels at SARC 54 and 55, the SSC, and the Council, as the best science available for management of these stocks. Subsequently, NMFS has approved these status determination criteria as consistent with the requirements of the Magnuson-Stevens Act and the FMP.

**Comment 4:** The NEFMC, MEDMR, and Maine Coast Fishermen's Association (MCFA) urged NMFS to implement updated status determination criteria for white hake as soon as possible based upon the results of SARC 56 that recently became available. The results of this latest benchmark assessment suggest an increase in the FY 2013 ACL for white hake would be warranted, which would provide additional economic opportunity to groundfish vessels in FY 2013.

**Response:** NMFS agrees that the results of the SARC 56 benchmark assessment for white hake represent the best scientific information available for this stock and implements updated status determination criteria for white hake through this final rule (Item 7). The revised status determination criteria were not proposed for public comment in the Framework 48 proposed rule because the assessment results were not yet available (see Item 1 of the proposed rule). However, NMFS believes it is appropriate to implement the updated status determination criteria through this final rule because the Council recommended and analyzed updated status determination in Framework 48 in case the assessment results became available in time for rulemaking. In addition, the SARC 56 assessment shows a change in the stock's status, from overfished and subject to overfishing to neither overfished nor undergoing overfishing, and that is expected to meet its rebuilding end date of 2014. NMFS is implementing the revised white hake status determination criteria with a post promulgation comment period to allow for additional public comment on this measure.

#### **GB Yellowtail Flounder and SNE/MA Windowpane Flounder Sub-ACLs**

**Comment 5:** Four commenters supported establishing sub-ACLs of SNE/MA windowpane flounder for the scallop fishery and other sub-component fisheries, including revising the SNE/MA windowpane flounder commercial groundfish fishery AM to apply to other sub-component fisheries with catch of this stock. AFM generally supported the allocation of this stock to the scallop fishery. NSC, CLF, and

Oceana commented in support of both proposed sub-ACLs and the revised AM. CLF commented that these measures are justified given the significant overages of the SNE/MA windowpane flounder ACL in recent years. Oceana also commented that the proposed sub-ACLs increases accountability for fisheries with more than a *de minimis* catch of groundfish.

**Response:** NMFS agrees that the proposed measures increase accountability among fisheries with a measurable catch of groundfish. Sub-ACLs and AMs encourage these fisheries to minimize catches of SNE/MA windowpane flounder, consistent with the objectives of the FMP and National Standard 9 of the Magnuson-Stevens Act. NMFS has approved these measures through this final rule.

**Comment 6:** NMFS received seven comments in support of the revised GB yellowtail flounder sub-ACL for the scallop fishery. One individual simply expressed support for the revised sub-ACL as proposed. MEDMR, Associated Fisheries of Maine (AFM), NSC, and one individual supported the revised sub-ACL, because it improves accountability for the scallop fishery and holds each component of the fishery responsible for its own catches. NSC and MEDMR commented that the fixed percentage reflects historical catch. CLF and MEDMR believe the revised allocation creates an incentive for the scallop fishery to reduce bycatch of GB yellowtail flounder. AFM and the Portland Fish Exchange also commented that the fixed percentage provides more stability for groundfish fishermen because it is a more predictable allocation.

**Response:** NMFS agrees that the fixed percentage provides stability to the scallop and groundfish fisheries by simplifying the allocation scheme. NMFS also agrees that the revised sub-ACL provides an incentive for the scallop fishery to reduce its catch of GB yellowtail flounder and has approved this measure in this final rule.

**Comment 7:** Fisheries Survival Fund (FSF) supported the allocation of 40 percent of the GB yellowtail flounder U.S. ABC in FY 2013, because it provides for most of the scallop fishery's projected need, while providing an allocation for the groundfish fishery and maintaining an incentive for the scallop fishery to avoid yellowtail flounder. However, FSF opposed the allocation of 16 percent of the GB yellowtail flounder U.S. ABC in FY 2014 and each year after, and 36 percent of the SNE/MA windowpane flounder ACL, because they will result in lost scallop revenues over the long term. FSF also opposed

the proposed sub-ACL of SNE/MA windowpane flounder for the other sub-component fisheries, because it will reduce revenues from the fluke fishery. FSF argues that the Council made these allocations in order to maintain a directed groundfish fishery for GB yellowtail flounder. As an alternative, FSF argues, the Council could have closed the directed fishery for GB yellowtail flounder and implemented a zero possession limit for GB yellowtail flounder as it has done for SNE/MA windowpane flounder to promote the greater good, the prosecution of the more valuable scallop and fluke fisheries. FSF argues that by constraining the scallop and fluke fisheries with these sub-ACLs, the Council has not maximized the overall benefit to the nation and reduced the ability of the scallop fishery to achieve optimum yield on a continuing basis, violating National Standard 1.

FSF further contends that these measures do not minimize adverse economic impacts on fishing communities as required by National Standard 8, because they sacrifice valuable scallop and fluke fishery landings for the communities that depend on these revenues, in favor of the less valuable GB yellowtail flounder landings. FSF also urged NMFS to accelerate access for the scallop fishery to the northern edge of GB if it approves these measures to mitigate the economic impacts of the proposed measures.

**Response:** NMFS disagrees with FSF that the proposed sub-ACLs for SNE/MA windowpane flounder and GB yellowtail flounder are not consistent with the Magnuson-Stevens Act. FSF suggests that the overall benefit to the nation would be to allow the unrestrained prosecution of the scallop and fluke fisheries, based solely on their higher economic value when compared to the groundfish fishery. However, the concept of overall benefit to the nation must be evaluated in the context of optimum yield, which requires consideration and balancing of other factors in addition to economic values, including food production, recreational opportunities, the protection of marine ecosystems, and which can only be reduced based on economic, social or ecological factors. And even at OY, management measures must still prevent overfishing. Economic, social and ecological factors concerning the FMPs goals of preserving fishing opportunities for groundfish vessels and minimizing negative impacts on fishing communities, and reducing bycatch of groundfish stocks, contributed to the Council's allocation decisions for these sub-ACLs. OY must also be consistent

with other National Standards of the Magnuson-Stevens Act, particularly in this instance, National Standards 4 and 8. To focus only on OY, would potentially run afoul of National Standard 4 which requires that management measures should be fair and equitable to all fishermen and that no particular entity acquires excessive shares of fishing privileges. Also, to favor the scallop industry by maximizing overall benefits to the nation would be inconsistent with National Standard 8 which requires that management measures must take into account importance of fishery resources to fishing communities in order to provide sustained participation of such communities in fishing and, to the extent practicable, minimize adverse impacts on such communities. The new sub-ACLs are consistent with these principles.

Allocating SNE/MA windowpane flounder sub-ACLs to the scallop and fluke fisheries was necessary to prevent overfishing and ensure accountability for catches of this stock, consistent with the requirements of the National Standard 1. This is a non-allocated stock, for which possession is prohibited and all catch is discarded. As discussed in Item 8 of the preamble, until Framework 47, only the commercial groundfish common pool fishery had an AM for this stock. However, the lack of accountability for catches in the “other sub-component” fisheries, including the scallop and fluke fisheries, resulted in total catches that exceeded the ABC and OFL for this stock in FY 2010 and again in FY 2011, despite the implementation of an AM for the common pool fishery in FY 2011 to account for the overage in FY 2010. Catch by non-groundfish fisheries alone exceeded the ABC in FY 2010 and the OFL in FY 2011. Framework 47, and now Framework 48, modified the commercial groundfish fishery AMs to make them more effective. However, as these AMs do nothing to constrain total catches of SNE/MA windowpane flounder in the scallop and other sub-component fisheries where the majority of catch is taken, maintaining a sub-ACL and AMs only for the groundfish fishery does not sufficiently reduce the risk of overfishing and would not be consistent with National Standard 1 or the goals of the FMP. Additional sub-ACLs and corresponding AMs for these fisheries are necessary to constrain catches of this stock by the scallop and other sub-component fisheries and correct any overages, and to prevent overfishing, as is required by the Magnuson-Stevens Act. This measure also ensures equity

by holding the component of the fishery responsible for an overage accountable for its catch.

The Council considered not allowing landings of GB yellowtail flounder, meaning it would be considered a non-allocated stock, in this action, but rejected this alternative out of concern that there would be no incentive to minimize discards of this stock, and unrestrained catches would quickly exceed the ABC and ACL being considered for FY 2013. Taking a stock from allocated to non-allocated and prohibiting its possession does not absolve the Council of having to prevent overfishing and ensure accountability for catches of this stock. As demonstrated by the Court’s decision on Amendment 16 in *Oceana v. Locke et al.*, prohibited possession may not be a sufficient AM, by itself, and if the Council had decided not to allocate this stock in FY 2013, it would still have had to ensure accountability of any overages of the total ACL, including catches by the scallop fishery. Reducing accountability would also be inconsistent with the Council and NMFS’ obligations under the joint management agreement with Canada for this stock, and the goals of the FMP, by undermining the integrity of the TACs set under that agreement. The importance of some landings of GB yellowtail flounder to some vessels in the groundfish fishery also weighed on the Council’s decision not to make this stock prohibited. Regardless, Framework 48 does not recommend making GB yellowtail flounder a non-allocated stock and NMFS cannot unilaterally do so because it may only approve or disapprove the measures included in the framework.

This action proposed alternative methods for calculating the scallop fishery’s sub-ACL, including a method based on an estimate of projected catch and a fixed percentage. The Council selected the fixed percentage method as its preferred alternative out of concern that, with a declining ABC, scallop catches would become a larger part of the total catch if the allocation was calculated based on projected catch of yellowtail flounder. An allocation based on projected catch does not take into account changes in the ABC or the relative health of the stock. A fixed percentage also provides a greater incentive for the scallop fishery to reduce bycatch of these stocks, than an allocation based on projected bycatch, consistent with the goals of the FMP and National Standard 9, to reduce bycatch at the extent practicable. In addition, the Council believed it would be inequitable to allow scallop catches

to become a larger portion of the U.S. ABC and thereby reduce the groundfish fishery’s historic level of participation in this fishery. This would not be consistent with the goals and objectives of the FMP as described in Amendment 16 to maintain a directed commercial groundfish fishery and the shoreside infrastructure and communities that rely on it, and the requirements of National Standard 4, which requires that allocations be fair and equitable among fishermen. The Council took a similar approach with the SNE/MA windowpane flounder sub-ACL for the scallop fishery.

These factors also influenced the Council’s decision to select the fixed percentages of 16 and 36 percent of the ABCs for GB yellowtail flounder and SNE/MA windowpane flounder, respectively. For both stocks, the Council based these percentages on recent catch history. For SNE/MA windowpane flounder, the Council selected the 90th percentile of the highest scallop catches as a proportion of total catches in recent years (2010). This was also the year with the highest scallop fishery discards by weight in the time series. This resulted in an allocation of 36 percent of the ABC. Whether this will be constraining in a particular fishing year depends upon the ABC and resultant sub-ACL allocation, which was analyzed for FY 2013–2015 in Framework 50, and the AM to be developed in a future scallop action. Similarly, the fixed percentage allocation for yellowtail flounder was based on the highest amount of scallop discards as a proportion of total catches of GB yellowtail flounder from 2001–2011. The Council considered a range of 8–16 percent for this stock, with 8 percent being the average percent of total catch in the time series and 16 percent being the highest total catch (2006). For both stocks, the Council selected the percentages that would provide the greatest allocation for the scallop fishery, while still meeting the needs to minimize bycatch to the extent practicable, maintain a fair and equitable allocation for the groundfish fishery, consistent with the FMP and the Magnuson-Stevens Act. In addition, the scallop fishery’s AMs for both stocks are only triggered if it exceeds its sub-ACL by more than 50 percent, or causes an overage of the overall ACL. This effectively provides an additional 50 percent of the scallop fishery sub-ACL in any given year, if left uncaught by other components of the ACL. Although an even larger allocation for the scallop and other non-groundfish fisheries would seemingly be justified based on

a strict comparison of the economic values of these fisheries versus the groundfish fishery, the Council is expressly prohibited from making an allocation decision based solely on economic efficiency by National Standard 5 and must take into account other provisions such as fairness and equity and impacts on fishing communities. For these reasons, NMFS approves the proposed sub-ACLs for SNE/MA windowpane flounder and GB yellowtail flounder as consistent with the goals and objectives of the FMP and the requirements of the Magnuson-Stevens Act.

FSF requested that, if NMFS approved these measures in Framework 48, it should accelerate access for scallop vessels to the northern edge of Georges Bank. This area is currently a habitat closed area for the purpose of minimizing the adverse effects of fishing on habitat. As FSF is already aware, there is not a mechanism in the scallop FMP that allows NMFS to grant scallop vessels access to fish in this area without explicit Council action. The Council is already reviewing this area and allowing access to this area as part of the comprehensive review of habitat and other closed areas in the Omnibus EFH Amendment, and is targeting implementation of any measures in 2014.

**Comment 8:** NMFS received five comments supporting the proposed GB yellowtail flounder sub-ACL for small mesh fisheries. NSC and AFM commented generally in support of the proposed measure. Oceana and one individual supported the allocation because it holds each fishery component accountable for its own catch. Oceana also urged NMFS and the Council to continue evaluating groundfish catch by other fisheries and to establish sub-ACLs whenever catches are above *de minimis* levels. CLF noted that the establishment of a sub-ACL means little without an effective AM, and argued that the public should be able to know when AMs are to be developed.

**Response:** NMFS agrees that the proposed measure increases accountability for fisheries responsible for catches of groundfish. By providing an incentive for small mesh fisheries to reduce catches of GB yellowtail flounder, this measure is consistent with National Standard 9 and the objectives of the FMP to minimize bycatch of groundfish stocks to the extent practicable. NMFS has approved the GB yellowtail flounder sub-ACL for small mesh fisheries. NMFS will continue to encourage the Council to evaluate groundfish catch in non-groundfish fisheries in the biennial

review process, as well as on an ad-hoc basis if any of these fisheries appear to have caused an overage. NMFS agrees with CLF's point that AMs for small mesh fisheries must be developed as soon as possible to provide an incentive for small mesh fisheries to comply with the new sub-ACL. The Council has begun planning the development of the next framework action and AM for this sub-ACL is slated to be included for FY 2014 to cover any overage in FY 2013, if necessary. NMFS believes this provides a sufficient incentive to constrain catches within this sub-ACL in FY 2013, while providing opportunity for thorough development and evaluations of AMs with participation by small mesh fishery participants.

#### Recreational Fishery AM

**Comment 9:** CLF commented in support of revising the recreational fishery AM to allow the Regional Administrator to proactively adjust measures to ensure that the recreational fishery sub-ACLs are not exceeded. MADMF urged that NMFS should also consult directly with state agencies about proactive changes to recreational fishery measures, not just as Council members through the Council process.

**Response:** NMFS agrees that the proposed revision to the recreational fishery AM would improve accountability in the recreational fishery. Currently, the recreational fishery AM only allows the Regional Administrator to change recreational measures if an ACL is exceeded. In addition, due to the delay in availability of recreational catch data at this time, AMs can only be implemented in the third year following an overage. The Council may initiate a management action to revise recreational measures for any given fishing year commensurate with the recreational sub-ACLs being proposed or implemented for that year. However, this process offers little flexibility for the Council or NMFS to revise measures if those in place are expected to result in catches higher than the recreational allocations specified for the coming year and there is no time to complete a framework adjustment. Allowing NMFS to adjust recreational fishery measures proactively before the start of a fishing year reduces the likelihood that a recreational sub-ACL will be exceeded in that fishing year. This allows NMFS and the Council to adapt to changing fishery conditions, by evaluating recreational measures before the start of the fishing year to ensure those measures facilitate a target catch consistent with the sub-ACLs specified for the recreational fishery. NMFS has

approved the revised recreational fishery AM in this final rule. The Regional Administrator may only implement proactive measures to ensure that the recreational fishery sub-ACLs are not exceeded after consultation with the Council, which includes representatives from all the New England states. This consultation process built into this measure affords the state directors, or their representatives, to voice any concerns that they may have during this process.

**Comment 10:** NSC opposed revising the recreational fishery AM to allow the Regional Administrator to liberalize recreational measures inseason to facilitate the recreational fishery catching its sub-ACLs. NSC argued that this reflects an inconsistent application of the National Standard 1 requirements for AMs between the recreational and commercial fisheries. NSC also questioned the data NMFS would use to project recreational fishery effort inseason to make such a determination, given the limitation on recreational data timeliness.

**Response:** NMFS believes that NSC has misunderstood the proposed revision to the recreational fishery AM. The intent of the proactive AM was not to allow NMFS to project recreational fishery catch and revise recreational measures inseason. The intent of the Council in Framework 48 was for NMFS to follow a procedure similar to the Council's to revise recreational measures, using the Bioeconomic Length-structured Angler Simulation Tool (BLAST) model to identify suites of measures that would achieve but not exceed the recreational sub-ACLs in the coming fishing year, to gather input on these measures from the RAP and Council, and implement them before the start of the fishing year. The text of this measure in Framework 48 and the regulations implementing this measure state that the revised measures would be implemented prior to the start of the fishing year "to the extent possible," because the Council acknowledged the possibility that even this abbreviated, adaptable process may not be completed before the start of the fishing year in some cases. The measures for FY 2013 are a perfect example, where the Council did not take final action on FY 2013 ACLs until January 2013 and NMFS and the Council could not develop recreational measure alternatives for FY 2013 until February 2013.

NMFS contends that this change to the recreational AM is consistent with the implementation of AMs for the commercial fishery. Sector allocations, as hard TACs, are inseason AMs that are

specified as a proportion of the each groundfish fishery sub-ACL for each allocated groundfish stock. This means that, unlike recreational fishery measures, they automatically adjust to increases or decreases in ACLs from one fishing year to the next. Sectors also receive several regulatory exemptions every year to increase operational flexibility and facilitate achieving their ACEs. The common pool sub-ACLs also automatically adjust from one year to the next, and NMFS has the authority to project and revise common pool trip limits before the start of each fishing year and inseason to ensure common pool sub-ACLs are achieved but not exceeded. Contrary to NSC's opinion, the addition of a proactive AM for the recreational fishery would actually result in more consistent application of AMs across fishery components.

#### **Commercial Groundfish Fishery AMs**

*Comment 11:* The Council and a few other commenters pointed out an error in the coordinates for the proposed Atlantic halibut AM areas, and requested NMFS correct this error in the final rule.

*Response:* The coordinates for the Atlantic Halibut Fixed Gear AM Area 1 on page 67 of the draft Framework 48 EA and, subsequently, in the proposed regulations, located this area overlapping the Atlantic Wolffish Fixed Gear AM Area 1 to the northwest of Closed Area 1. However, Atlantic Halibut Fixed Gear AM Area 1 actually overlaps Atlantic Wolffish Fixed Gear AM Area 2 along the western edge of the Western GOM Closed Area. The figure on page 68 of the draft Framework 48 EA showed the correct halibut AM areas. NMFS has corrected the coordinates in the regulations implementing this final rule.

*Comment 12:* CLF and Oceana generally supported the proposed changes to AMs for non-allocated stocks in Framework 48. CLF and Oceana supported the revised timing for these AMs, and the creation of area-based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder, because they increase accountability for and constrain catches of these stocks. However, Oceana opposed the fact that these AMs would be effectively triggered by an overage of the ABC rather than the ACL, arguing that this approach is illegal and not consistent with National Standard 1 guidelines. Oceana also took issue with the fact that these AMs only account for an overage of up to 20 percent of the ACL and that any overage larger than that would require future action by the Council. Oceana contended that AMs are

required to be automatic adjustments to fishery measures and that referring the matter to the Council for further action does not satisfy these criteria, especially in light of recent overages of the SNE/MA windowpane flounder ACL by more than 100 percent. Oceana urged NMFS to partially disapprove these portions of the reactive AMs and to refer them back to the Council for further modification.

*Response:* NMFS agrees with the commenters that the revisions to non-allocated stock AMs proposed by Framework 48 would increase accountability for catches of these stocks and reduce the likelihood of an ACL being exceeded. NMFS understands Oceana's concerns regarding the trigger point for these AMs being the ABC, rather than the ACL. As discussed in Item 6 of the proposed rule preamble, using the ABC as the trigger point for these AMs was not out of any intention to provide an additional buffer for catches above the ACL. Rather, this was more an artifact of the design of the area-based AMs. The Groundfish PDT was not able to design effective area-based AMs that would account for an overage of only a few percent, while still being effective. Gear restricted areas or closures that small can be easily undermined by a shift of effort to other areas. NMFS does not consider the concept of this trigger for AMs to be illegal or inconsistent with National Standard 1 guidelines. Defining the trigger as an overage greater than the management uncertainty is in concept the same as establishing an annual catch target (ACT) and a higher ACL (e.g., an ACL set equal to the ABC) which serves as the trigger for AMs, which is allowed under National Standard 1 guidelines. So, in approving these AMs, NMFS has considered the ACL for these stocks, in effect, to be ACTs and the trigger based on exceeding the management uncertainty to be, in effect, the ACL. In this sense, these AMs are entirely consistent with National Standard 1 guidelines. By considering these AMs in this fashion, Oceana's comments are really about nomenclature, rather than any fundamental inconsistency with the concepts of Magnuson-Stevens Act or National Standard 1 guidelines. Furthermore, this is the same design as the AMs for windowpane flounder and ocean pout implemented through Framework 47, which Oceana supported.

These AMs are to account for possible overages by non-groundfish fisheries shown to have *de minimis* catches of groundfish. It is not expected that these components themselves are likely to exceed the ACL by more than 20 percent. When catches by these fisheries

have risen above *de minimis* levels, such as in the case of overages of the SNE/MA windowpane flounder in FY 2010 and FY 2011, the Council has responded by recommending sub-ACLs and fishery/gear-specific AMs for these fisheries, as is currently proposed through Framework 48. In addition NMFS zero possession for SNE/MA winter flounder and Atlantic wolffish appear to have effectively kept catches within allowable levels in recent years. If zero possession continues to be an effective proactive AM, the reactive AM will likely not be triggered. Subtracting catches by the scallop and fluke fisheries, which will now be constrained by ACLs, coupled with the proactive AMs for these stocks, it is not clear that such large overages by the remainder of the other sub-component fisheries is at all likely and, thus, that these AMs would not be sufficient.

Oceana requested that NMFS partially approve these AMs and refer the trigger point and AM for large overages of more than 20 percent back to the Council. NMFS can only partially approve measures when there are distinct, severable components that would not substantively affect the measure if one component were approved and another disapproved. The trigger point is an integral part of the proposed AMs, thus NMFS cannot simply disapprove it without disapproving the whole measure thereby leaving these stocks with no reactive AM. And it's not clear how disapproving implementing the area-based AMs for large overages and referring this back to the Council would be much different than what would be required by the AM in the event of a large overage. As Oceana points out, these reactive AMs increase accountability for catches of these stocks by ensuring adjustments are made to account for overages and by providing an incentive to restrain catches of these stocks. NMFS believes it would be better to have some reactive AMs in place than none, to constrain catches of these stocks and to address the court remand. For these reasons, NMFS has approved these measures in Framework 48. The Council may continue to modify these measures to make them even more effective through a future action.

*Comment 13:* NSC, Portland Fish Exchange, CCCHFA, and MCFA opposed the proposed revisions to AMs for non-allocated stocks. Specifically, NSC did not support revising the AM timing or reactive AMs for non-allocated stocks, because they argue that the data used for these determinations is not reliable or available in a timely manner to provide sufficient notification to the

industry of the implementation of an AM in the following fishing year. NSC also questioned whether this modification was necessary, as it was not part of the court remand to address non-allocated stock AMs. Portland Fish Exchange questioned whether such measures are necessary when SNE/MA winter flounder may be allocated by Framework 50, and halibut and wolffish are rarely encountered and are returned to the water when caught. CCCHFA did not support the application of area-based closures in an output based fishery. CCCHFA and the Maine Coast Community Sector (MCCS) also stated that Atlantic halibut is in better condition than the most recent assessment indicated and, as a result, more frequent encounters of this stock could trigger the AMs as soon as FY 2013 or 2014. CCCHFA called on NMFS to conduct an assessment for this stock and to reevaluate the proposed AM in light of the results of that new assessment. MCFA and MCCS expressed concern that the Atlantic Halibut Fixed Gear AM Areas would have significant and disproportionate economic impacts on fishing businesses from Maine that fish this area, with no corresponding benefits to the stock, because the real issue of unrestrained state fishery catches remain unaddressed. MCFA and MCCS argued that vessels and sectors that fish in these areas have not had adequate time to prepare sector exemptions or develop gear modifications that would allow continued access to this area with reduced catches of halibut. MCCS suggested that the fixed gear AMs are too broad, and should instead target sink gillnets using tie-downs to target monkfish in this area, which they believe are responsible for the most bycatch. MCCS also requested clarification as to how the AMs would be in place if triggered.

**Response:** NMFS recommended that the Council revise the timing of non-allocated stock AMs, not because it was remanded by the Court, but because it would improve the effectiveness of these AMs. To be consistent with the National Standard 1 Guidelines, AMs should correct the problems that caused an overage as soon as possible. Currently, the AMs for non-allocated stocks are implemented in the second year following an overage of the total ACL. This delay may not be needed in all cases, but the current AMs do not allow for the possibility that these AMs could be implemented sooner if reliable information is available. For example, fishery dependent data is available in almost real time in the commercial

groundfish fishery. If information was available during Year 1 that the commercial groundfish fishery had exceeded the overall ACL for ocean pout, under the revised AM timing, the respective AM for the stock would be implemented at the start of the next fishing year (Year 2). The revised timing would also allow for improvements in the timeliness of data streams from other fisheries, which NMFS is continually improving. That is why NMFS has approved the revised AM timing through this final rule. In addition, NMFS and the Council understand the need to provide stability for groundfish vessels. Thus, any applicable AMs for the non-allocated stocks would only be implemented at the start of a fishing year.

These reactive AMs for non-allocated stocks are necessary in order to rectify overages and reduce the likelihood of overages in consecutive fishing years. Although landings of these stocks are currently prohibited and, therefore, most catch is made up of discards, the Magnuson-Stevens Act requires that all mortality be accounted for. This means that even if overages of the ACL are caused by discards, an AM must be applied to reduce the likelihood of such an overage happening again and to prevent overfishing. Furthermore, the Council's inability to directly control state fishery catches, does not absolve the Council of doing what it can to prevent overages of the overall ACL. The importance of reactive AMs was further clarified by the Court decision in *Oceana v. Locke et al.* The Council designed these AMs around hotspots of bycatch for these stocks, so that if the overall ACL is exceeded, total catch of that stock might be reduced and, therefore, the likelihood that an overage would be repeated would be reduced. Locating the AMs in areas with little impact on fishing effort and bycatch, although that might reduce the impact on vessels trying to target other stocks, would not be effective. During the development of Framework 47, the Groundfish Committee briefly considered allocating these stocks to sectors, which would provide output-based AMs like stocks currently allocated to sectors. However, the Groundfish Committee remained concerned that allocations of these stocks would be too restrictive.

The Council may consider further modifications to these AMs if changes in stock size shift hotspot areas of high bycatch. Currently, a benchmark assessment for Atlantic halibut is not scheduled. Revised reference points and ABCs for this stock would not negate the need for a reactive AM for the

commercial groundfish fishery, but may increase the ACL and thereby reduce the likelihood that it would be exceeded. Assessments are scheduled through the NRCC, which prioritizes them based on many factors, including how old the most recent assessment is, whether an management action is imminent, whether there is any new information or progress in research that would revise the assumptions or inputs of the assessment, and other priorities. If the commenters are interested in a new assessment for this stock, they may propose it to the Council to bring to the NRCC.

The Council could also refine these AMs to target more specific gears, if a specific gear configuration is identified to be responsible for most bycatch. The AMs approved in Framework 48 apply to those gears identified as having the highest bycatch of these stocks by SBRM observer coverage. Trawl gear was found to be responsible for the majority of discards of halibut, followed by a much smaller amount discarded by gillnet gear. It may be possible that tie-down nets targeting monkfish in these areas are responsible for the majority of bycatch of Atlantic halibut, as suggested by MCCS, but the SBRM gear modes are not defined to this fine a scale. However, these AMs were designed based on the best available information about areas and gears with the highest bycatch of these stocks. Delaying the implementation of these AMs to further refine them would mean that possible overages of the overall ACLs for these stocks would not be accounted for in the interim, which would not be consistent with National Standard 1. Although these AMs may be further refined and improved through future Council actions, they would increase accountability for and constrain catches of these stocks at this time. For these reasons, NMFS has approved these AMs in this final rule.

The Council expressly prohibited sectors from requesting exemptions from the AMs for non-allocated stocks through Framework 47. However, it did provide for the possibility that selective gears could be approved for use in these areas. If MCCS is successful at identifying gear types that could be used in the Atlantic halibut AM areas with little bycatch of this stock, it could submit those gears for review through the same process used to authorize selective trawl gear at § 648.85(b)(6)(iv)(J)(2).

Note that Framework 50 allocates SNE/MA winter flounder to the groundfish fishery and allows landings. This means that this stock is subject to sector-specific inseason AMs, coupled

with a pound-for-pound payback of any overage from a sector's allocation in the next fishing year. In this case, the area-based AM would apply only to common pool vessels if the common pool exceeds its sub-ACL for the stock. If triggered, these AMs would be in place for only the fishing year in which they are implemented.

*Comment 14:* NMFS received one comment, from the Northeast Hook Fishermen's Association (NEHFA), supporting the revised trimester TAC AMs for handgear vessels. NEHFA supported this measure because it would help small handgear vessels, which account for a small percentage of catches of groundfish stocks, but for which groundfish provides an important revenue stream.

*Response:* NMFS agrees with NEHFA that handgear vessels account for such a small portion of the white hake catch that exempting them from the trimester TAC AMs is justified. This measure would not increase the risk of the common pool exceeding its sub-ACL for this stock, but would relieve an inequity currently present in the common pool inseason AMs. Exempting handgear vessels from these inseason AMs for white hake would reduce the costs of these AMs for handgear vessels by allowing them to continue fishing for other groundfish stocks when an AM for white hake is triggered. That is why NMFS has approved this measure in Framework 48.

#### Commercial Fishery Minimum Fish Sizes

*Comment 15:* MEDMR, Portland Fish Exchange, AFM, NSC, and two individuals supported the proposed reductions in commercial minimum fish sizes. Commenters generally supported this measure because it would reduce waste. One commenter supported this measure because it would help would allow the commercial industry to compete with imports from foreign countries, which have lower minimum sizes. One commenter supported this measure because it would generate additional revenue for groundfish vessels and act as a mitigation measure for FY 2013 catch limit reductions. Another commenter suggested the proposed minimum sizes are more consistent with the selectivity of existing allowable mesh sizes. One commenter noted that these sizes are larger than those originally proposed by the Groundfish PDT and take into account the maturity and biology of groundfish stocks.

*Response:* NMFS agrees with the commenters that reducing the commercial minimum fish sizes as

proposed in Framework 48 would reduce waste, provide more opportunity to achieve OY and provide additional revenue to groundfish vessels in FY 2013 that could help mitigate some of the negative economic impacts expected from reductions in catch limits. As indicated by the analysis in Framework 48, this measure would be expected to allow more fish caught and counted against quotas to have economic value rather than be wasted. Under a full retention scenario, estimated additional gross revenues in the short term could be substantial. While reducing the minimum sizes would not be expected to generate quite as much additional revenue, it would increase revenues from quota used for groundfish vessels, especially sector vessels. In addition, these minimum sizes are generally consistent with the length at which 50 percent of fish are expected to be mature. In this way, this measure attempts to balances the benefits of reducing waste, with the need to ensure many fish can spawn before being caught. For these reasons, NMFS approved this measure in Framework 48.

*Comment 16:* CCHFA, MADMF, MCFA, and CLF opposed the proposed reduction in commercial minimum fish sizes. CCHFA specifically expressed concern about reducing the minimum fish sizes for cod and haddock, when both GOM and GB cod are overfished and the incoming year class of GB haddock may be what sustains the fishery for the next few years. These commenters generally opposed the measure because it would increase effort on smaller fish, undermine rebuilding programs, and reduce long-term productivity of these stocks. MCFA and CLF expressed concern that reducing the minimum sizes would reduce the current disincentive to target small fish created by counting all discards against quotas, which was an objective of sector management. CLF, MCFA, and MADMF expressed concern that the reduced minimum sizes would encourage fishermen to target smaller fish and potentially increase the use of net liners in order to maximize the retention of legal-sized fish, and could drive stocks into further decline. Thus, they argue that reducing the minimum sizes would increase, rather than reduce, discards overall. They believe that the risk of a shift in selectivity and potential consequences are too high. MADMF argues that maintaining the minimum size above the length at 50 percent maturity is not sufficient or defensible, because research has shown that repeat spawners are important for spawning success.

*Response:* NMFS understands commenters concerns that this measure may change incentives in targeting fish but it is not possible to accurately predict whether and to the extent that this may actually occur, and the consequences on conservation objectives, due in part to the context in which these reductions in fish size will apply. As NMFS discusses in Item 13 of the preamble, there are two components of uncertainty as to the potential impacts from this measure. First, it is unclear whether a shift in selectivity is likely. According to analysis in Framework 48, this is most likely for yellowtail flounder, for which there is little difference in price between size classes and a simple change in the type of codend used can modify the size of fish caught. The second component to the uncertainty is whether the shift in selectivity could be detected and ABCs could be adjusted to account for this change. Although a shift in selectivity could affect rebuilding time and the probability of overfishing, if this shift is detected and ABCs are adjusted, these potential impacts may be mitigated. That is why NMFS is exploring ways to monitor the length frequency of catch in the commercial groundfish fishery beginning in FY 2013 to see if a change in selectivity could be detected. If such an analysis or data can be put together, NMFS can advise the Council if adjustments to measures may be needed.

Traditional notions as to likelihood of a shift of fishing behavior to target small fish may not be as applicable in the context of the sector program. All catch is counted against sector ACE to create an incentive to minimize discards in order to maximize the value of a sector's quota. However, despite this incentive, sector vessels are still experiencing regulatory discards. Analysis by the Groundfish PDT showed that the majority of discards of groundfish stocks for which size changes are proposed occurred just below the minimum size. The PDT concluded that a size reduction of an inch would reduce discards of cod, haddock, plaice, and yellowtail flounder. The Council then increased the sizes from those proposed to reduce the majority of discards to sizes that would be consistent with or above the length at 50 percent maturity. NMFS believes the proposed reductions to minimum sizes represent a balance between the need to reduce waste and maximize the value of resources expended, and to need to ensure the continued rebuilding of groundfish stocks. All catch would still be counted against sector allocations, including

discards, which should maintain an incentive to reduce discards. It is unclear, in light of such severe reductions in catch limits, whether the expected shifts in fishing behavior will result, given the need to maximize the profitability of every fish caught. Moreover, in light of joint and several liabilities of sector vessels, there is increased incentive for sectors to self-enforce against any illegal activity, such as use of liners or misporting, that facilitate targeting of small fish. For these reasons, NMFS has approved this measure in Framework 48.

*Comment 17:* MADMF also stated that if these measures are approved and state agencies don't follow suit, sector vessels would be forced to discard fish that do not meet the state minimum fish size in violation of the federal requirement for them to retain all fish of legal size. MADMF also suggested that NMFS should reduce sectors' allocations to account for the additional quota gained from reducing the amount of discards charged through discard rates.

*Response:* NMFS is also concerned about discrepancies between state and federal minimum fish sizes complicating compliance and enforcement of this measure. To address this concern, NMFS is delaying the effective date of these new minimum sizes to July 1, 2013, to allow state agencies additional time to consider and make corresponding adjustments to their minimum sizes. If a state does not make corresponding adjustment to fish sizes, vessels would not be forced to illegally discard fish as they could land in other states' ports. NMFS, however, would not favor this result and the impacts it would have on the non-conforming state, and, for that reason strongly urges all affected states to match these size reductions.

With respect to MADMF's concern that reducing the minimum fish sizes increases the amount of available quota to sectors, NMFS believes this concern arises from a misunderstanding about how sector discard rates are applied. Discard rates generated from observed trips are intended to be representative of the discard rates for each stock on unobserved trips. So, for example, for a single trip in FY 2012, the fish between the current minimum size and new minimum size would have been discarded. If the trip was observed, the sector would have been charged for these discards based on observer data. If the trip was unobserved, the sector would have been charged for these discards based on the discard rate calculated from the observed trips. If total catch remained the same on that same trip in FY 2013, those fish

between the current minimum size and new minimum size would be landed instead of discarded. Regardless of whether the trip was observed, the sector would be charged for those fish based on dealer reports of those landings. The sector would then also be charged for the discards below the new minimum size, from either observer data or the new reduced discard rate. Thus, in this example, total catch would remain the same, but fish between the current and new minimum sizes would shift from discards to landings. So sectors would not necessarily be able to catch more fish overall compared to their allocations. Even if an adjustment were somehow appropriate, NMFS does not have the authority to adjust sector allocations without Council action. Although initial rates at the beginning of the year would be based on previous fishing years, once these rates transition to inseason discard rates in FY 2013, they would be based on observed discards on trips carrying an observer in FY 2013. In addition, discards were not used in the computation of vessel PSCs, but are charged to sector allocations.

*Comment 18:* CCHFA, MEDMR, and one other individual stated a preference for full catch retention to improve data collection and minimize the cost of at-sea monitoring to the industry.

*Response:* The Council considered a full retention requirement for sector vessels, but did not recommend it because it was not sufficiently developed for implementation in FY 2013. NMFS, therefore, does not have the authority to replace minimum fish sizes with such a measure as part of its partial approval and implementation of Framework 48 measures. However, the Council passed a motion at their December 20, 2012 meeting to pursue full retention for further development in a future action. NMFS encourages the commenters to participate in the Council process as it considers this option for a future fishing year.

### Sector Monitoring Programs

*Comment 19:* AFM, NSC, and the MADMF supported delaying industry's responsibility to pay for at-sea monitoring costs to FY 2013. However, MADMF expressed concern that approving this measure would lead to continued delays of industry cost responsibility in subsequent actions.

*Response:* NMFS understands commenters concerns about industry being able to bear the cost of monitoring, especially in light of the substantial reductions in catch limits expected in FY 2013. That is why NMFS intends to cover the full cost of monitoring for sectors in FY 2013 to the

extent that it can, by continuing its NMFS At-sea Monitoring Program. Although exact effort levels next year are uncertain, NMFS believes that if sector vessels take fewer trips overall as expected, NMFS will be able to cover 100 percent of the costs of sector monitoring. The availability of these funds makes the Framework 48 measure somewhat moot, but NMFS still cannot approve this measure in Framework 48. This measure is not consistent with the goals of the FMP or the requirements of the Magnuson-Stevens Act, because it would not ensure monitoring levels sufficient to monitor ACLs and sector ACEs. Rather, coverage levels would be determined by the amount of available NMFS funding which, without specific appropriations for this purpose, would not guarantee even minimum coverage levels to meet the performance standard as required by Amendment 16 and Framework 48. NMFS also shares MADMF's concerns that approving this measure in Framework 48 would establish an inappropriate precedent for future fishing years.

*Comment 20:* CLF opposed the proposed delay of industry responsibility for the costs of at-sea monitoring. CLF contended that the fishing industry should be responsible for the costs of monitoring the harvest of a public trust resource and that it is not clear that the industry could not actually afford these costs. CLF points out that this data is necessary for quality assessments and argues that adequate data for assessments and management should not be sacrificed just because quota levels are low.

*Response:* NMFS agrees with CLF that delaying industry cost responsibility to FY 2014 and specifying coverage levels according the amount NMFS can fund is not sufficient to ensure the adequate monitoring of ACLs and sector ACEs. As CLF notes, adequate at-sea monitoring is necessary for quality data for assessments and reliable estimates of sector and groundfish fishery catches for the purposes of determining if allocations have been exceeded. Basing coverage levels on NMFS funds alone would not ensure that levels are sufficient to at least meet the performance standard and goals and objectives for monitoring programs defined by Amendment 16 and Framework 48. For these reasons, NMFS has disapproved this measure in Framework 48.

*Comment 21:* MEDMR, AFM, NSC, the Portland Fish Exchange, MCFA, and one individual commented in support of the proposed sharing of at-sea monitoring costs between NMFS and sectors. Commenters supported this

measure because they believed that industry could not support these costs under reduced catch levels. NSC and MEDMR supported continued efforts by NMFS and the Council to develop a workable for the NE Multispecies FMP, including joining the Squid/Mackerel/Butterfish and Herring FMAT/PDT.

**Response:** NMFS agrees with commenters that this cost-sharing concept has merit and is worth exploring. However, as explained in Item 2 of the preamble, this measure is not consistent with the requirements of the Anti-Deficiency Act and other appropriations law and policy as developed. As defined, this measure would require NMFS to pay for portions of at-sea monitoring costs that are beyond its statutory obligations and, thus, its appropriations. This measure would also have required NMFS to share payment of some obligations with sectors, which is prohibited. For these reasons, NMFS disapproved this measure through this final rule. However, NMFS believes that a similar measure, if modified, could be workable and is available to assist the Council in further developing this concept for a future action. In addition, as described in the response to Comment 19, NMFS intends to cover the full cost of at-sea monitoring for sectors in FY 2013, to the extent that it can, to address industry's concerns about their ability to bear this burden in FY 2013 in light of the substantial reductions in catch limits that are expected.

**Comment 22:** One individual commented against the proposed cost-sharing mechanism, out of a belief that it was not sufficiently developed at this time. This commenter stated that the industry should work directly with NMFS, and not involve other parties, in the development of a workable measure when appropriate.

**Response:** NMFS agrees with the commenter that the proposed monitoring cost-sharing mechanism was not sufficiently developed in this action. That is why NMFS has disapproved this measure through this final rule. NMFS is already assisting the mackerel and herring FMPs to explore cost sharing mechanisms for those fisheries for FY 2014 and can help the Council in further developing this mechanism for the NE Multispecies FMP for a future action if interested.

**Comment 23:** CLF, NSC, and MCFA supported eliminating dockside monitoring requirements for sectors. Commenters generally supported eliminating this program because it did not provide useful or timely data and, therefore, was not worth its costs. CLF supported eliminating this requirement

provided that hails requirements are maintained and that dockside intercepts are effective and sufficient for enforcement. MCFA thought that dockside monitoring should be reconsidered if full retention is adopted in a future action. MADMF did not support or oppose this measure, but asked that NMFS clarify why it believes that dockside intercepts by enforcement personnel will be sufficient to monitor sector landings. MADMF and NSC also supported retaining hail requirements to assist with the deployment of enforcement personnel, but NSC requested that NMFS improve the timeliness of confirmation of receipts for hails. NSC also supported NMFS' intent to clarify the regulations to allow for streamlining of these reporting requirements in the future. MADMF asked whether NMFS and the Office of Law Enforcement have adequate capability to compare hails to observed landings to monitor sector and common pool landings against allocations.

**Response:** NMFS agrees with commenters that the dockside monitoring program as currently designed is not necessary or sufficiently useful in monitoring sector landings. Dealer reports are the principle data source for commercial landings information. In addition, eliminating the program would reduce costs and potentially increase the profitability of the commercial industry in future years. Eliminating this program would reduce redundancy and reduce costs for the commercial groundfish vessels, thereby increasing net revenues in future fishing years. That is why NMFS approved eliminating the dockside monitoring program, but maintained hail requirements, through this final rule. To the extent that dockside monitoring creates a disincentive to misreport or hide landings that may be used for monitoring purposes, NMFS believes dockside intercepts by enforcement personnel, supported by hail requirements, goes a long way to meet this objective. Should the Council consider full retention of fish in a future action, dockside monitoring should be reconsidered.

NMFS understands NSC's concerns regarding latency issues affecting the timeliness of confirmations of receipts and vessels' ability to comply with this measure. That is why NMFS is continually making improvements to its systems to address these types of issues. NMFS agrees that redundancy should be avoided and costs should be streamlined where possible, thus NMFS has also approved its clarification to the regulations that would allow streamlining of hails with other similar

reporting requirements in the future when appropriate.

Law enforcement personnel, including OLE uniformed officers, special agents, and state partners, have access to the data reported in trip start and trip end hails through a secure database. Enforcement personnel do have the capacity to use this information to plan dockside intercepts, and to compare it to other landings data sources. However, NMFS would like to caution commenters that hails were instituted for the purposes of coordinating deployment of dockside monitors. Estimated weights of landings were required to be reported in order to allow the monitoring provide to plan for the type catch that would be offloaded and monitored and the length of the offload. This information was not intended or designed to be used for the verification of dealer reports or VTRs. The estimated weights reported are expected to be the captain's good faith estimate of catch and would not be expected to exactly match a dealer's recorded weights and so are not used for this purpose.

**Comment 24:** NSC, AFM, and CCCHFA commented in support of the proposed revisions to the goals and objectives and performance standard for groundfish monitoring programs.

**Response:** NMFS agrees that the measures proposed by Framework 48 clarify the goals and objectives and the performance standard for groundfish monitoring programs. This would help the Council, NMFS, and sectors implement and evaluate these programs more effectively. NMFS has approved these revisions in this final rule.

**Comment 25:** CLF and Oceana opposed the proposed revisions to the goals and objectives and performance standard for groundfish monitoring programs. They argue that these measures are a fundamental component of sector AMs and, therefore, cannot be revised through a framework adjustment. They argue that adjustments to these requirements through the framework process was not contemplated or specified by Amendment 16 and, thus, urge NMFS to disapprove these proposed changes on procedural grounds. The commenters further contend that the effectiveness of sector AMs depends on the ability of individual sectors to know and manage catch toward their ACEs and thus, for sector AMs to ensure accountability as required by the Magnuson-Stevens Act, the appropriate level for monitoring these catches is at the sector ACE level, rather than the ACL. They urged NMFS to disapprove the proposed action to apply the CV standard at the overall

stock level and instead select the alternative that would apply it at the sector-stock level. The commenters were generally supportive of the proposed goals and objectives for groundfish monitoring programs as consistent with the original purpose of these measures in Amendment 16. However, they expressed concern with the inclusion of the terms "to the extent possible" with respect to minimizing potential monitoring bias, and "cost-effectiveness" with respect to stratifying discards. They argued that this provides too much discretion for the implementation of these programs as a component of sector AMs. MADMF also expressed concern that the inclusion of a practicability standard would result in coverage rates that are not sufficient for accurate catch accounting.

**Response:** NMFS disagrees that sector monitoring requirements cannot be revised through a framework action. Section 4.8.2 of Amendment 16 expressly states that frameworkable measures are not limited to the items listed in that section. In addition, sector monitoring requirements, including coverage levels and the performance standard, are listed under sector administration provisions in Amendment 16, which is listed as a frameworkable measure in section 4.8.2. As the commenters note, the regulations at § 648.90(a)(2)(iii) list at-sea and dockside monitoring requirements among the measures that may be modified through the biennial review process, as well as AMs, changes to other administrative measures, and any other measures currently included in the FMP. In addition, the Council deemed these regulations as consistent with their intent in Amendment 16. These changes are at most clarifications and elaborations on how to determine appropriate monitoring levels, not wholesale changes to the monitoring requirements. So, NMFS believes that these changes are lawful under the combination of allowable framework provisions of the FMP and section 305(d) of the Magnuson-Stevens Act which authorizes NMFS to implement regulations necessary to ensure that Council measures are carried out in a manner consistent with the Act.

Oceana and CLF raised similar concerns that recommended coverage rates based on a CV standard that is applied at the overall stock level would not provide reliable catch estimates for the purpose of implementing AMs at the sector ACE level. As NMFS discussed in its summary of the appropriate level of at-sea monitoring on sectors at [http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013\\_Multispecies\\_.pdf](http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_.pdf) and in response to these same comments on the proposed rule for FY 2013 sector operations plans, Amendment 16 specified that ASM coverage levels should be less than 100 percent. This means that discards and, thus, total catch by definition shall be based on estimates, rather than absolute numbers. Thus, NMFS believes that it is appropriate to utilize its stated practicability standard in the application of sector monitoring requirements. The level of observer coverage combined with the self-reporting requirements for sectors should provide confidence that the overall catch estimate is accurate enough to ensure that sector fishing activities are consistent with National Standard 1 requirements to prevent overfishing while achieving on a continuing basis optimum yield from each fishery. In the above referenced analysis in response to Oceana's comments, NMFS examined the 256 sector ACE level catch figures (16 fishing sectors \* 16 ACE allocations) in comparison to the CV30 standard for FY 2011. This examination reveals that for 207 of the 256 ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent was less than 1 percent. For 43 of the remaining ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent ranged from 1–9.9 percent. There were 6 ACE allocations for which the percent of discard pounds with a CV greater than 30 percent ranged from 10–66 percent. In addition, discard estimates provided by required at-sea monitoring coverage rates are not the sole source of information for monitoring of sector catch and making a determination about whether a sector has exceeded its ACE. Discard estimates, to which the CV standard applies, is only a portion of total catch. Landings, provided by dealer purchase reports, comprise the majority of total catches for groundfish stock. The CV analysis is conducted to evaluate the calculation of discards, which are typically less than 10 percent of the overall catch of the allocated groundfish stocks, and in FY 2011 were less than 5 percent of the catch for most allocated stocks (while discards were a higher percentage of total catch for GOM yellowtail flounder, GB East cod, and American plaice, the total catch of those stocks were less than 90 percent of the sub-ACLs and the CVs for those stocks ranged from 4.4 to 15.4). To monitor sector catch, not just discards, NMFS and sector managers rely on a number of data sources, including observer data,

#### *Sector ASM Requirements*

*Summary.pdf* and in response to these same comments on the proposed rule for FY 2013 sector operations plans, Amendment 16 specified that ASM coverage levels should be less than 100 percent. This means that discards and, thus, total catch by definition shall be based on estimates, rather than absolute numbers. Thus, NMFS believes that it is appropriate to utilize its stated practicability standard in the application of sector monitoring requirements. The level of observer coverage combined with the self-reporting requirements for sectors should provide confidence that the overall catch estimate is accurate enough to ensure that sector fishing activities are consistent with National Standard 1 requirements to prevent overfishing while achieving on a continuing basis optimum yield from each fishery. In the above referenced analysis in response to Oceana's comments, NMFS examined the 256 sector ACE level catch figures (16 fishing sectors \* 16 ACE allocations) in comparison to the CV30 standard for FY 2011. This examination reveals that for 207 of the 256 ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent was less than 1 percent. For 43 of the remaining ACE allocations, the percent of discard pounds for which the CV was greater than 30 percent ranged from 1–9.9 percent. There were 6 ACE allocations for which the percent of discard pounds with a CV greater than 30 percent ranged from 10–66 percent. In addition, discard estimates provided by required at-sea monitoring coverage rates are not the sole source of information for monitoring of sector catch and making a determination about whether a sector has exceeded its ACE. Discard estimates, to which the CV standard applies, is only a portion of total catch. Landings, provided by dealer purchase reports, comprise the majority of total catches for groundfish stock. The CV analysis is conducted to evaluate the calculation of discards, which are typically less than 10 percent of the overall catch of the allocated groundfish stocks, and in FY 2011 were less than 5 percent of the catch for most allocated stocks (while discards were a higher percentage of total catch for GOM yellowtail flounder, GB East cod, and American plaice, the total catch of those stocks were less than 90 percent of the sub-ACLs and the CVs for those stocks ranged from 4.4 to 15.4). To monitor sector catch, not just discards, NMFS and sector managers rely on a number of data sources, including observer data,

VMS, VTRs, VMS catch reports, and dealer reports. Sectors are also required to submit weekly reports, which are broken down to the sub-trip level catch and gear information, and these reports are stepped up to daily certain catch thresholds (for FY 2013 the daily reporting threshold is 90% of any ACE) are reached. NMFS conducts weekly reconciliation of NMFS and sector reports with sector managers to verify that each sector and NMFS have the best available data to monitor catch and sector ACEs. In addition, due to the joint and several liability of sector members for certain violations, including illegal discarding and misreporting of catch, there is a strong incentive for sector members to self-enforce monitoring and reporting requirements and ensure the sector has the most accurate information available. Based on the totality of this information, NMFS concludes that the performance standard implemented at the overall stock level results in reliable catch estimates for monitoring sector ACEs.

The monitoring program, including the application of the performance standard, must be implemented consistent with the different goals and objectives of sector monitoring programs, as well as the requirements of the other National Standards, which requires a balancing of competing objectives. As NMFS discussed in Item 14 of the preamble, in addition to the revised goals and objectives in Framework 48, NMFS will specifically take into account National Standards 2, 7, and 8 in making its determination of the appropriate level of at-sea monitoring coverage for sectors on an annual basis. These National Standards specifically speak to using the best scientific information available, minimizing costs and avoiding unnecessary duplication where practicable, taking into account impacts on fishing communities, and minimizing adverse economic impacts to the extent practicable. In addition, to account for any lack of absolute precision and accuracy in estimating overall catch by sector vessels, uncertainty buffers are deducted before specifying commercial groundfish fishery sub-ACLs. In light of all these requirements, and in absence of any evidence provided by the commenters to the contrary, NMFS concludes that sector monitoring requirements overall, including the performance standard applied at the overall stock level, are sufficient to monitor sector catch toward ACEs.

**Comment 26:** CLF, NSC, and CCCHFA supported the provision to reduce at-sea monitoring coverage on trips targeting

monkfish in the Southern New England. Commenters supported this measure because it would reallocate limited resources and coverage to trips that catch groundfish. CLF called for the development of a full retention/electronic monitoring program for such trips, because it would provide valuable catch data and compliance incentives, rather than reducing coverage. CLF also urged NMFS to monitor this exemption to ensure it does not create a loophole for groundfish discards.

**Response:** NMFS agrees that this measure would prioritize limited resources and monitoring coverage for trips that catch groundfish. Currently these trips that catch little to no groundfish are receiving the same level of coverage as other sector trips, with no resultant benefits to the overall precision and accuracy of groundfish discard estimates. By exempting these trips from some level of at-sea monitoring coverage, those resources can be directed to cover trips with actual catches of groundfish and, thereby, improve the estimates of groundfish discards. For these reasons, has approved this measure through this final rule.

NMFS understands CLF's concerns that this measure could create a loophole for increased discards of groundfish. However, given the size of mesh used on these trips (10 in, 25.4 cm), it is unlikely that catch of groundfish on these trips would increase beyond those analyzed in the development of Framework 48.

#### **GB Yellowtail Flounder Management Measures**

**Comment 27:** NMFS received three comments opposing a separate GB yellowtail flounder discard rate stratum for statistical area 522. NSC, CLF, and one individual opposed this measure because it would complicate monitoring and increase administrative burden to NMFS and sectors without any real benefit. CLF expressed concern that this measure would create another loophole for misreporting of catch of GB yellowtail flounder by vessels on unobserved trips and urged NMFS not to approve this measure until it can implement measures to reduce misreporting.

**Response:** NMFS shares the commenters concerns that this measure could complicate monitoring and increase the administrative burden for sectors and NMFS without any measurable benefits. Because of the potential added cost of implementing and administering this measure, it may increase costs more than it provides benefits to the fishing industry or the

efficient management and monitoring of catches, which would not be consistent with National Standards 5 and 7 of the Magnuson-Stevens Act. Both sectors and NMFS would have to modify quota monitoring programs and reports to accommodate the new strata, increasing the administrative burden for sector managers and NMFS. NMFS also remains concerned about how this revised strata, combined with other changes to the discard rate method in FY 2013, will affect the variance of discard rates and thereby affect our ability to achieve the performance standard for sector monitoring at recommended coverage rates. As CLF notes, it is also possible that this measure could further complicate monitoring and increase uncertainty of catch estimates by creating an incentive to misreport catches of GB yellowtail flounder on unobserved trips as having been caught in statistical area 522 in order to get a reduced discard rate.

On the other hand, this measure would have no real benefits for a sector that could not be achieved under the existing discard rate scheme. A separate discard rate in statistical area 522 could benefit an individual vessel fishing in deeper water in this area with a lower GB yellowtail flounder discard rate that would not be influenced by higher GB yellowtail flounder discards by other vessels in its sector fishing elsewhere on Georges Bank. However, the sector's fishing season on GB would still be limited by the total catch of GB yellowtail flounder by all its member vessels. If some vessels in the sector continued to have high discard rates of GB yellowtail flounder on other parts of Georges Bank, the entire stock area could still close early in the season, including statistical area 522. This finer stratum would not free a sector from having to manage its vessels' effort to extend its fishing season next year.

Thus, NMFS agrees with commenters approving this measure would increase the cost and administrative burden of sector monitoring for sectors and NMFS without any corresponding benefits to sectors. NMFS has concluded that this would not be consistent with the requirements of National Standard 5 and 7 and NMFS has disapproved this measure in Framework 48.

**Comment 28:** AFM, the Portland Fish Exchange, and one individual commented in support of the revised GB yellowtail flounder discard rate strata for sector vessels. Commenters believed this measure would more accurately reflect actual discard rates of GB yellowtail flounder in statistical area 522, and enable sector vessels to have a longer fishing season on Georges Bank.

**Response:** NMFS agrees that finer scale strata would allow discard rates to more closely reflect actual discard rates over smaller areas. However, as discussed fully in NMFS's response to Comment 27, NMFS disagrees that this measure would have any real benefits for a sector that could not be achieved with existing discard rate strata. A separate discard rate in statistical area 522 could benefit an individual vessel fishing in this area with a lower GB yellowtail flounder discard rate.

However, this measure alone would not prevent a sector's fishing season on GB from ending prematurely. As a result of this new strata, GB yellowtail discard rates in the rest of GB would be higher and, thus, if the sector did not also manage yellowtail flounder discards on other parts of GB, it would still be limited by the total catch of GB yellowtail flounder by all its member vessels. As analysis showed in the Framework 48 EA, the new strata are unlikely to affect the overall discard estimates of GB yellowtail flounder, meaning that sector vessels would still have to avoid GB yellowtail flounder in order to prolong their fishing season. The most effective way to prolong a sector's fishing season on GB would be through active management of effort and catch by its member vessels. If a sector wanted to incentivize its vessels to fish in deeper water and avoid yellowtail flounder, or ensure that one member's high yellowtail flounder discard rate does not penalize another vessel that avoids yellowtail flounder, they could differentially charge individual member shares based on discard behavior. Sectors can do this under the existing discard strata scheme, without unnecessarily complicating monitoring for other sectors. In contrast, the proposed measure could have real effects on monitoring practices for both NMFS and sectors. Implementing this measure would increase administrative costs and burden associated with monitoring and without any real benefits for sectors, which would reduce efficiency and would not be consistent with National Standards 5 and 7. NMFS believes the reduced efficiency is not justified in light of the lack of real benefits from this measure as discussed in the response to the previous comment on this measure. For these reasons, NMFS has disapproved this measure in Framework 48.

#### **List of Allowable Sector Exemption Requests**

**Comment 29:** Over 75,000 comments were received from various groups and individuals opposing the proposed change to allowable sector exemption

requests as it pertained to year-round groundfish closure areas. Many of these comments were form letters submitted through online nongovernment organization campaigns. By comparison, a limited amount of comments were received supporting the proposed change to allowable sector exemption requests.

The comments opposing the exemption proposal that would allow sectors to request access to year-round closure areas raise several objections. While some of the specific comments raise slightly different points, the major issues raised are enumerated below. Some of the topics have a great deal of interrelatedness. By categorizing the issues in this manner, NMFS can provide a focused series of responses. The primary issues raised are:

1. Commenters stated the areas should not be opened because they provide important protection for critical life stages and spawning activities of critically depressed fish stocks. Many comments also stated the stocks in question warrant additional closed area protections, not less.

2. Commenters stated that access to closed areas would provide only short-term nominal economic gain but could cause long-term biological impacts. Commenters assert that because of this the areas should remain closed.

3. Many commenters presented arguments alleging the Framework 48 action illegally segments the required NEPA analysis from the Council's ongoing Omnibus Habitat Amendment. Commenters assert that NMFS and the Council are seeking to avoid development of an Environmental Impact Statement (EIS) to evaluate the potential impact of providing potential access to closed areas.

4. Some commenters allege the decision to provide sector exemptions for closed area access was made before the results of analysis were available.

5. Many comments were received stating the closed area consideration requires an EIS analysis under NEPA as it is significant as defined by NEPA criteria, the Framework 48 analysis is insufficient, and the Framework 48 EA's Finding of No Significant Impact (FONSI) conclusions are not supported by the available analysis.

6. Commenters stated the impacts to Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA) protected species are inadequate and, in some regards, completely absent from the Framework 48 analyses.

7. Commenters state the rulemaking and analytical procedure used for Framework 48 was inappropriately conducted, insufficient, and

circumvented necessary public participation and comment.

8. Commenters stated the closed areas in question are mischaracterized as redundant mortality control closures in Framework 48. Commenters state that the areas under consideration were created for and provide much broader benefits than just controlling fishing mortality.

9. Commenters allege Framework 48 analysis did not analyze a sufficient range of alternatives when considering closed area access through sector exemption.

10. Commenters assert the scope and scale of the action requires an FMP amendment, stating the action cannot be taken through a framework adjustment to the FMP.

*Response:* The comments opposing modification of the allowable sector exemption request provisions are misapplied with respect to the Framework 48 rulemaking process. NMFS is not permitting access to year-round closed areas through the measures implemented in this final rule. Nor is NMFS modifying or changing any closed areas or essential fish habitat areas or boundaries. This rule only modifies the list of allowable sector exemptions under current regulations. This modification itself does not provide any access to groundfish closed areas at this time. This action merely allows sectors the opportunity to request access to portions of year-round closed areas through their annual sector operations plans by removing the prohibition on granting such requests. A more extensive analysis than was conducted for Framework 48 is necessary for NMFS to make any determination on potential sector access to closed areas for FY 2013, or in subsequent fishing years.

The Regional Administrator, in conjunction with requesting sectors, is obligated under the sector exemption process established in Amendment 16 to consider whether to approve sector exemption requests that are not prohibited under the FMP. To do so, analysis of the requested exemptions is necessary to determine if the exemption in question can be approved. From the Amendment 16 final rule preamble (75 FR 18276; April 9, 2010):

Sectors may [still] request and analyze additional exemptions as part of their yearly operations plans, but such exemptions need to be approved by the Regional Administrator.

The accompanying regulations for the sector exemption approval process are found at § 648.87(c)(1) and(2). Summarized, these regulations specify

that NMFS, through the Regional Administrator, will allow exemptions that are consistent with the goals and objectives of the FMP and conduct the approval process consistent with the Administrative Procedure Act (APA) and other applicable law. The other applicable law includes, among others, NEPA, the Magnuson-Stevens Act, MMPA, ESA, and the Regulatory Flexibility Act.

By lifting the prohibition on sectors requesting access to year-round closed areas, NMFS will evaluate requests in the same process as any exemption request consistent with the process outlined in Amendment 16 and past practices. Sector requests were made in the sector's respective 2013 operations plans submitted in September 2012 in anticipation of this prohibition being lifted in this action to meet a May 1, 2013 effective date. However, NMFS reiterates that no decisions on sector exemption requests have been made to access closed areas in conjunction with Framework 48 since this framework simply addresses a procedural issue pertaining to closed area openings. Further, since the necessary analyses have not yet been completed, an additional sector rule to consider and potentially approve any year-round closure openings would be delayed beyond May 1. Indeed, NMFS must still decide which, if any, exemptions will be granted, and, if granted, whether seasonal, area, gear or other types of limitations are necessary to ensure any exemption will be consistent with the conservation and management requirements of the groundfish FMP and the Magnuson-Stevens Act. The analysis in Framework 48 is based, in part, on a preliminary analysis by the Closed Area Technical Team (CATT) that provides an initial overview of potential impacts. However, the analysis did not specifically analyze the actual impacts of granting any exemptions because Framework 48 is not intended to make decisions concerning the closed area exemption requests. The level of detail in these analyses for Framework 48 was sufficient for the type of change implemented in Framework 48 but is not sufficient to determine if, when, or how sectors may be permitted closed area access through exemptions. Accordingly, the change implemented by Framework 48 to allow NMFS to consider granting sectors access to closed areas has no actual impacts.

NMFS and the Council initiated the process of evaluating potential sector access to closed areas late in 2012 when the issue was first raised at the Council level. The CATT was formed in part for this purpose and provided a cursory

analysis of closed areas and the potential impacts of allowing fishing in these areas for Framework 48. CATT analysis is ongoing and continues to evaluate in greater detail the appropriate areas needed to provide protection to rebuilding groundfish stocks. Many of the issues and concerns raised in the extensive public comments submitted for Framework 48 are important considerations in NMFS' ongoing analysis. In response to the concerns raised, the Council limited the potential access to the closed areas only to the portions that did not infringe on currently defined habitat areas or any currently proposed areas included in the draft Omnibus Habitat Amendment. NMFS is concerned that any access provided to closed areas must be done in a responsible manner such that stock recovery is not impeded, protected species are not negatively impacted, and sensitive habitat and life stages are protected. This ongoing analysis, when complete, will be provided to the public with opportunity for review and additional comment, consistent with the sector exemption review process conducted for all sector exemption requests and APA.

NMFS has initiated an EA in connection with the separate rulemaking process concerning these requests to conduct the specific environmental impact evaluations for the closed area sector exemption requests. In connection with the separate rulemaking concerning these requests, if the ongoing analysis determines that a FONSI cannot be supported for access to the closed areas, the agency may elect to develop an EIS prior to proceeding or cease closed area access consideration until such time that the Council's Omnibus Habitat Amendment is completed.

Once informed by analysis, NMFS will also publish a proposed rule outlining what type of access, if any, may be granted to sectors as exemptions in the 2013 fishing year. The proposed rulemaking would also outline any conditions required for exemption use, if granted.

For example, as was stated publicly by the Northeast Regional Administrator in the December 2012 and January 2013 Council meetings, NMFS is analyzing the potential to provide seasonal access with selective gears to Closed Areas I and II, and the Nantucket Lightship Closed Area, to target healthy fish stocks. Generally, NMFS is analyzing in what months closed areas may be accessed to avoid peak spawning activity of depressed fish stocks, gear conflicts, and encounters with MMPA and ESA protected species. NMFS is

also evaluating habitat-related impacts. The analysis is examining what selective gears may better minimize catch of depressed fish stocks while providing strong catches of healthy stocks. The initial analysis along with substantial public opposition to opening closed areas in the Gulf of Maine, i.e., the Western Gulf of Maine and Cashes Ledge Closed Areas, suggest that it may not be possible or desired to provide access to these areas in FY 2013.

NMFS has also stated in the proposed sector operations plan approval rule (78 FR 16220; March 14, 2013) that it is considering a 100-percent monitoring requirement for participation in any closed area exemption granted for FY 2013. NMFS acknowledges the potential costs associated with monitoring are substantial and may limit the utility of closed area access, if provided for FY 2013. NMFS views this requirement as a necessary component to responsibly monitor activity in closed areas, if access is permitted in FY 2013. NMFS has already committed to providing funding for required at-sea monitoring for general fisheries and is looking into other possible means to fund all, or part, of the monitoring requirements being considered for potential approval of requests for access to year-round closure areas.

NMFS has been clear that the specific evaluation of closed area access would occur as a separate step through an independently severable analysis and, if warranted, rulemaking. NMFS currently anticipates that the ongoing analysis will continue through mid-June. Should the analysis support responsible alternatives for sector access to closed areas, proposed rulemaking would occur this summer.

The issues raised in public comment for this rule, as NMFS has pointed out, will be analyzed if and when NMFS decides to propose granting any sectors access to closed areas. Most of the issues raised in these comments already have been identified by NMFS as part of the closed area sector exemption analysis initiated in early 2013 and helped inform the Council in limiting closed areas access to avoid conflicts with existing and future habitat concerns.

The removal of the prohibition on requesting access to specific portions of closed areas as a sector exemption implemented by this rule is not self-actuating and in that sense is more procedural in nature. It removes a regulatory impediment to granting such requests but does not, itself, provide closed area access or predetermine that such access would be granted when requested. NMFS has determined, however, that the concept of allowing

access to closed areas on a limited and controlled basis that NMFS can prescribe through the sector exemption process is supportable and necessary, consistent with Magnuson-Stevens Act, National Standards and other requirements, to provide possible mitigation of negative impacts resulting from severe cutbacks in catch limits by facilitating achieving optimum yield (OY) for some groundfish stocks. For that reason, NMFS does not believe it is necessary to fully analyze potential, speculative impacts that do not result from this action nor to disapprove the procedural measure allowing sectors to request and be granted access based on the specific objections raised by public comment. As long as the types of concerns raised by the public regarding access to closed areas can be adequately addressed or accounted for in the sector exemption process, there is no basis for disapproving the procedural measure in Framework 48 allowing access to be granted. To illustrate that potential, the following provides NMFS' preliminary responses to each enumerated objection based on NMFS' ongoing analysis on whether to grant limited access to closed areas to sectors:

*1. The areas should not be opened because they provide important protection for critical life stages and spawning activities of critically depressed stocks.* NMFS acknowledges that the status of many key NE groundfish stocks is poor. NMFS is concerned about potential impact on stock recovery that may result from access to closed areas and this is a key investigation being developed in the ongoing closed area sector exemption analysis. However, no decision has been made at this time on whether sectors will be granted access to closed areas in FY 2013, nor has a decision been made on how access may be structured if granted.

The CATT is deeply involved in ascertaining how potential changes in closed areas as part of the Omnibus Habitat Amendment may impact fish stocks. NMFS is an active member of the CATT and has already been making use of CATT-generated analyses in its sector exemption evaluation. NMFS is conducting independent evaluation of the specific impact of seasonal access with selective gear in Closed Areas I and II, and the Nantucket Lightship Closed Area, as part of the closed area sector exemption evaluation process. NMFS's analysis is geared toward identifying key times in which access to closed areas may potentially disrupt or otherwise impact spawning activities with the intent of not providing closed area access during such times. The

analysis is ongoing and will be provided to the public with an anticipated availability of mid-summer, 2013.

*2. Access to closed areas would provide only short-term nominal economic gain but could cause long-term biological impacts.* NMFS agrees that the limited analysis conducted for Framework 48 indicates that economic benefit is difficult to predict one way or the other. If economic benefit is small, that may mean that the closed areas are not that important to groundfish stocks and access to the closed areas is not detrimental. On the other hand, if there are significant amounts of groundfish stocks in the closed areas, it may be important to allow fishing on a controlled and conservative basis in order to maximize OY for those stocks. To be sure, as indicated in these analyses, the long-term impact on recovering stocks in these closed areas is of paramount importance. But to deny any opportunity to fish in the closed areas unnecessarily limits the possibility of providing the fishing industry the opportunity to catch as much fish as possible as long as the long-term health of groundfish stocks is protected.

*3. The action illegally segments the required NEPA analysis from the Council's ongoing Omnibus Habitat Amendment.* NMFS disagrees that either Framework 48 or the as-of-yet completed closed area sector exemption request evaluation segments the NEPA analysis. Classic segmentation concerns raised by commenters pertain only to situations wherein the responsible agency seeks to *avoid* development of an EIS. This is not the case here. In its broadest sense, segmentation occurs when an agency impermissibly narrows the scope of its NEPA analysis by either failing to evaluate the environmental impacts of an entire multi-stage decision where irreversible commitments are made at the initial decision point without consideration of the environmental impacts of later stages; or, where the agency excludes connected actions (i.e. those that are interrelated or interdependent) from the scope of its NEPA analysis. Neither of those circumstances is present in this case. In addition, the initial decision to allow sectors to request exemptions from closed sectors does not make any irretrievable commitment. That is, it would not commit the agency to any future course of action that will cause adverse consequences to the environment. Again, prior to approving or disapproving any specific request for access, the agency will consider the environmental impacts and prepare the appropriate level of NEPA analysis; i.e.

an EA or EIS. Moreover, the actions at issue are not interdependent or interrelated; each is supported by its own rationale and has independent utility as explained below. The EA for Framework 48 rightly supports a FONSI, in large part, because rescinding the prohibition on sectors requesting specific closed area exemptions does not itself result in actual impacts on the environment, nor does it cause indirect effects that are later in time but reasonably foreseeable. Any potential indirect effects are merely speculative. NMFS has acknowledged that an EIS will be completed if a FONSI cannot be supported based on the EA evaluating the closed area sector exemption requests. The EA is serving its intended purpose to facilitate our determination as to whether any significant impacts will result from a decision on closed area exemption requests, and thus whether an EIS may be required for that action. If NMFS determines that the impacts from a later action to grant some level of access to closed areas would necessitate consideration in an EIS, and NMFS decides to move forward with said action rather than wait for completion of the ongoing Omnibus Habitat Amendment, a Notice of Intent would be published in the FR to make the public aware of the agencies intent to prepare an EIS. As indicated here, NMFS is interested in developing potential alternatives for closed area sector exemption analysis that seek to minimize potential impacts. To the extent that commenters contend that this Framework 48 measure is an attempt to unlawfully "segment" the larger Omnibus Habitat Amendment to avoid an EIS, those concerns are misplaced. In support of their comments, they cite to federal court decisions that define segmentation as splitting federal actions into smaller units to avoid developing an EIS. The Council and NMFS have every intention to and are preparing an EIS for the Omnibus Amendment. Moreover, the inclusion of the procedural measure to allow access to closed areas is not being "split off" from the Omnibus Habitat Amendment. The measure is a discrete action, independently justified and analyzed that does not foreclose any consideration of alternatives in the Omnibus Habitat EIS nor does it result in obviating the need to prepare an EIS for the Omnibus Habitat Amendment. While the Framework 48 measure may involve similar issues as the Omnibus Habitat Amendment, they are not directly connected actions. NEPA is a procedural statute intended to require full analysis of environmental impacts

and is not intended to dictate outcomes. All actions that relate to closed areas do not have to be evaluated within the scope of a single NEPA document. The fact that the Omnibus Habitat Amendment is examining closed areas in a separate action through an EIS does not preclude the Council and NMFS' consideration and adoption of independent measures in the meantime that are tangentially related to the amendment, as long as those actions independently satisfy NEPA requirements. Moreover, even if there were a credible basis for concluding that the Framework 48 measures was a splitting off of an action from the Omnibus Habitat Amendment, for which there is not, the Framework 48 measure meets the test cited by commenters concerning segmentation. The measure is a discrete action, independently justified and analyzed that does not foreclose any consideration of alternatives in the EIS being prepared for the Omnibus Habitat Amendment nor does it irretrievably commit resources. Thus, NMFS considers the scope of the EA supporting the implementation of the Framework 48 measure allowing the granting of access to closed areas to be consistent with NEPA.

*4. The decision on closed areas was made before the results of analysis were available.* NMFS disagrees that any decision to grant access to closed areas has been made. As has been stated previously, the action in Framework 48 only removes the prohibition on sectors requesting year-round closed area exemptions. It does not grant or guarantee any such exemptions will be provided much less how any exemptions would be structured, if granted. NMFS has stated multiple times its intent to conduct thorough analyses to inform decision-making on the requests for closed area sector exemptions. This analysis is ongoing and, as such, no decisions on closed area access have been made at the time of this rule's publication. Any access proposed will be fully informed by rigorous analysis that began early in 2013 and is anticipated to be completed during the summer of 2013.

Rulemaking, consistent with APA, will also occur as needed.

*5. The action requires an EIS analysis under NEPA as it is significant as defined by NEPA criteria, the Framework 48 analysis is insufficient, and the FONSI conclusions are not supported by the available analysis.* NMFS disagrees with the assertions made by the commenters. Given the action implemented in Framework 48 to allow sectors to request exemption from

closed areas not designated for habitat conservation, the analysis was wholly appropriate. In fact, it went beyond what was necessary given that the procedural change involved with the Framework 48 action does not itself result in any impacts on the environment. Because the action in Framework 48 merely removes a regulatory prohibition and does not actually provide any closed area access, the FONSI determinations are appropriate. NMFS acknowledges that the analysis conducted by the Council in the Framework 48 EA does discuss potential impacts if closed area access is granted. However, NMFS asserts that the potential impacts discussed are applicable to the cumulative impacts of the action, but are not determinative in the FONSI, nor are they specifically relevant to the Framework 48 measure because no actual impacts will occur.

As previously stated, NMFS has initiated an EA for evaluation of potential closed area sector exemptions in FY 2013. However, the substantive analyses needed to determine if a FONSI can be supported have not yet been completed. NEPA process is clear that if a FONSI cannot be supported, then an EIS must be developed if the agency wishes to continue the development of the action. NMFS is aware of the timing considerations involved with the Council's initial request to consider sector closed area access exemptions in FY 2013. If analyses conclude that a FONSI determination cannot be made for potential closed area exemptions, even if the access is constrained in a manner to reduce or eliminate potential impacts, NMFS and the Council will need to evaluate what is the most logical next step: To develop a separate EIS to consider only potential sector closed area exemptions or to defer any access considerations until such time that the Council's Omnibus Habitat Amendment is completed. It is neither possible nor appropriate at this time to try and determine if a FONSI can be supported for sector year-round closed area exemptions.

*6. The impacts to species afforded protections under MMPA and ESA are inadequate and, in some regards, completely absent from the Framework 48 analyses.* NMFS acknowledges that substantial additional analyses are necessary to fully evaluate potential marine mammal and ESA listed, threatened, and candidate species impacts associated with potential closed area access prior to considering if, when, and how access may be provided. Much of the Framework 48 analysis was a cursory evaluation of potential future

impacts if sectors were provided access to closed areas. The impacts on MMPA and ESA species cannot be specifically considered or determined until it is known what limitations may be prescribed on closed area access if access is granted (see preceding response pertaining to analysis). However, the conclusions reached for cumulative effects analysis and FONSI statement determinations consider the procedural nature of the actual change implemented by Framework 48. Specifically, the action to rescind the prohibition on sectors requesting exemptions from closed areas without providing any actual access to such areas. NMFS has initiated an ESA-mandated Section 7 consultation and is reviewing potential impacts to marine mammals in the closed area sector exemption consideration. As previously stated, these analyses will be made available for review and comment in conjunction with proposed rulemaking this summer. NMFS was aware of many of the issues and concerns raised in public comment on Framework 48 and will make use of all the comments received to better ensure that the ongoing sector exemption review thoroughly examines the potential impacts for use in decision-making.

*7. The rulemaking and analytical procedure used was inappropriately conducted, insufficient, and circumvented necessary public participation and comment.* NMFS disagrees with assertions made by the commenters. NMFS reiterates that it has been forthright about the potential closed area sector exemption process since outlining the sector exemption approach as a possibility for considering closed area access in FY 2013. For clarity, here is the process as it has been described and occurred: First, the Council considered and ultimately recommended to remove the prohibition on sector exemption requests on a limited basis for year-round closed area access not designated as habitat areas in Framework 48. This component was developed through the Council process and provided substantial opportunity for public participation and input. Many of the same objections and comments raised in connection with this rule were considered in the Council's decision to include the Framework 48 measure and influenced its decision to limit access to non-habitat areas. NMFS has conducted Framework 48 rulemaking consistent with the APA by providing opportunity for public comment.

Concurrent to NMFS review and rulemaking for the Framework 48 component, sectors were informed that they could submit closed area

exemption requests in their FY 2013 sector operations plans in the fall of 2012 in anticipation that access could be potentially approved as early as the start of FY 2013, if the Framework 48 procedural measure was approved. This was done even though the prohibition on such requests was still in effect. The purpose of this was twofold: To better understand the scope and scale of potential requests moving forward in the exemption review and analysis and to help streamline the review process so that if closed area access was provided at some point in FY 2013, some of the administrative process could be frontloaded.

Finally, NMFS explained that the agency would undertake the necessary review and analysis of closed area sector exemption requests if the provisions in Framework 48 were approved. Now, with this rule, NMFS has approved the Framework 48 provisions that allow sectors to request closed area exemptions, interested sectors have submitted requests for FY 2013, and NMFS is continuing the process of reviewing and analyzing those requests. This is not dissimilar to the normal process undertaken for sector exemption review except that a regulatory change was needed to make the requests in question legal.

Another difference in the closed area consideration that differs from the standard sector exemption review process is that there is no time certain needed for completion of the review process. Closed area exemption analysis was anticipated to be extensive and it was doubtful from the onset that analysis would be complete for the May 1, 2013, start of the fishing year. Because the closed area sector exemption evaluation is not tied to the start of the fishing year, this affords additional time for review, analysis, and action development and, because the concerns raised in the Framework 48 public comment, additional time for public review and comment through normal APA rulemaking. NMFS is proceeding as quickly as possible; however, there are substantial analyses that need to be completed as part of the closed area access consideration process.

We are hopeful that analyses will be completed in time to allow the public and Council an opportunity to review the analytical work prior to the June Council meeting.

*8. The areas in question are mischaracterized as redundant mortality control closures.* NMFS acknowledges that the mortality control characterization of those portions of closed areas not specifically designated

as habitat conservation areas has become a misapplied term of art. The record clearly shows that the areas in question were created with several considerations in mind, including protection for spawning stocks and improvement of benthic habitats. The argument that any additional constraints on mortality under a “hard TAC” or ACL system are redundant is unsubstantiated. By the logic implied by this statement, no additional management constraints other than a catch limit would be necessary to successfully manage fisheries. Clearly, there are benefits to establishing additional controls on fisheries such as gear restrictions to minimize take of juvenile fish or to reduce take of other more depleted stocks. NMFS and the Council’s CATT are conducting analyses that seek to provide information on the potential stock benefits of providing protections to critical life stages and/or spawning periods through restricted time and area access to existing closed areas.

*9. An insufficient range of alternatives were analyzed.* NMFS disagrees. In considering whether a sufficient range of alternatives have been examined in the context of fishery management, it must be acknowledged that each framework or amendment is incremental in nature and builds on extensive examination of myriads of alternatives of how best to manage a fishery. So, any consideration of specific new measure has benefitted from the examination of many alternatives in previous actions. For example, one commenter claims that exempted fishing permits (EFPs) should have been considered as an alternative for accessing closed areas. This option was discussed and considered by the Agency in the initial discussions on how to potentially provide closed area access in FY 2013. EFPs can be issued by NMFS under existing regulations and, as such, are an option that requires no specific Council analysis. If used, the EFP process would conduct the necessary analyses.

During the development of Framework 48, the Council considered and rejected potential access to habitat closed areas as well as several modifications to closed area boundaries. The status quo, wherein no modification to the sector exemption prohibition list was made, was analyzed in Framework 48. The remaining alternative analyzed was, as previously described, the procedural change in the sector exemption prohibition list to allow sectors to request exemptions for access to year-round closure areas not defined as habitat closure areas. Having rejected

alternatives that modified closed area boundaries, the remaining option of adopting the procedural change considering the non-habitat areas that remained for consideration was sufficient. As previously stated, this was the only action undertaken by Framework 48.

Potential alternatives for actual closed area exemptions will be developed by NMFS as part of the sector exemption review. NMFS has previously stated it is considering a sub-set of the available so-called “mortality” closed areas for potential sector exemptions. To date, NMFS has indicated it is interested in examining alternatives that permit seasonal access to select areas with selective gear types designed to increase access to healthy stocks while minimizing impacts on depressed fish stocks and ESA-listed, threatened, and candidate species, and marine mammals.

*10. The action cannot be undertaken by a framework adjustment to the FMP.* NMFS disagrees that consideration of closed area sector exemption access cannot be undertaken through framework adjustment to the FMP. Furthermore, NMFS asserts that the *Oceana v. Evans* (389 F.Supp.2d 4 (2005)) decision is not applicable in the context raised by commenters.

Section 648.90 of the NE Multispecies regulations contains among other things, a description of the Council’s FMP framework adjustment process. Section 648.90(a)(2)(iii) lists items that may be addressed through a framework adjustment. This list includes changes to closed areas, management boundaries, essential fish habitat, and, most on point for this action, sector administration provisions and sector allocation requirements and specifications.

Several commenters assert that the adjustment contemplated access to year round closed areas through sector exemption requests, is beyond the scope of what is permissible in a framework adjustment. They cite in support of their position that the action cannot be undertaken through framework adjustment, citing *Oceana v. Evans* that states that allowing access to closed areas is a fundamental change to the FMP and is also inconsistent with the goals and objectives established for the FMP.

*Oceana v. Evans* specified that an FMP amendment would be necessary when a new concept or radical changes to an existing concept were made in a way not considered in the previous FMP, prior amendments, or in hearings held in preparation of such actions. The findings in that case are distinguishable

from the facts in Framework 48. The FMP involved in that case, as contrasted to the framework, did not have specific listing of a frameworkable measure to alter the boundaries of EFH. Moreover, closed area access is not a new concept in the FMP, nor is it a radical change to procedurally change the prohibition on sectors requesting closed area access exemptions. Various levels of access and modification of closed areas has occurred on numerous occasions since the inception of the FMP and though several subsequent amendments. As previously stated, all the Framework 48 action does is remove the prohibition on sectors requesting access to closed areas through exemptions. It does not change the boundaries of the closed areas or EFH, nor does it fully open the closed areas. It only permits the potential for limited access to year-round closed areas by sectors. Additional analysis is necessary to determine if, when, and how sectors may be exempted to access these closed areas.

Beyond the Framework 48 action, the areas where NMFS is examining potential sector access through exemptions are all areas that are open seasonally and to specific gears through either Special Access Programs or scallop rotational access areas. Inherent in the process previously outlined for review and analysis of potential sector exemptions, i.e., the next phase under consideration by NMFS, is the need to ensure consistency with the goals and objectives of the FMP. If the action eventually contemplated by NMFS were inconsistent with the goals and objectives, then it would be a fair assertion that the action in question should be developed through an FMP amendment. Because NMFS intends to analyze alternatives that seek to minimize potential negative impacts and, as a result, remain wholly consistent with the FMP objectives, it asserts that the sector exemption evaluation for closed area access can be developed through a framework adjustment.

In summary, NMFS asserts that the action implemented by Framework 48 is primarily procedural in nature with no actual environmental impacts, and, as such, the majority of comments and issues raised do not apply. Rather, they are issues to be addressed moving forward in the sector exemption review process. NMFS has determined that the concept of allowing access to closed areas on a limited and controlled basis through the sector exemption process is supportable and necessary, consistent with Magnuson-Stevens Act, National Standards and other requirements. The access, if ultimately granted is designed

to provide possible mitigation of negative impacts resulting from low FY 2013 catch limits by facilitating achieving OY for some groundfish stocks. NMFS intends to only consider potential access to the closed areas in areas that do not infringe on currently defined habitat areas or any currently proposed areas included in the draft Omnibus Habitat Amendment. Furthermore, NMFS is developing the analyses around alternatives that provide potential seasonal access to Georges Bank and Southern New England with selective gear. NMFS has been and continues to work on analyses that seek to address many of the issues raised. NMFS anticipates providing information on the status of the analysis and rulemaking at the June 2013 Council meeting.

#### **Requirement To Stow Trawl Gear While Transiting**

*Comment 30:* Eight commenters, including the Council, the Portland Fish Exchange, AFM, NSC, MEDMR, and three individuals, supported removing trawl gear stowage requirements for groundfish vessels. Commenters stated that the gear stowage requirements are no longer useful and that VMS is sufficient to enforce transiting of closed areas. Some commenters urged NMFS to approve this measure because the existing requirements are unsafe. One commenter suggested that the existing requirements actually make it easier for a vessel to illegally fish in a closed area, because it gives the illusion that trawl gear is properly stowed from the air. The Council also noted that neither the USCG nor NMFS representatives opposed the proposed measure when it came up for vote at Council meetings.

*Response:* NMFS disagrees that the existing trawl gear stowage requirements are no longer useful and that VMS is a sufficient alternative tool for enforcement of closed areas. As discussed in Item 4 of the preamble to this final rule, a few VMS positions or a reduced calculated speed in a closed area is not sufficient to enforce the prohibition on fishing when vessels are allowed to transit a closed area. The purpose of gear stowage requirements were not just to make stowed gear visible from the air, but to increase the time it would take for vessels to hide illegal fishing activity before a boarding by enforcement personnel at sea. They could also be a deterrent by increasing the likelihood of being caught. Eliminating these requirements for only some vessels would complicate enforcement and could make it difficult to detect and prosecute unlawful fishing in closed areas, which would

undermine the effectiveness of these areas to achieve the objectives for which they were established as conservation and management measures in the FMP, including the protection of spawning and juvenile fish, habitat, and protected species. To the extent that closed areas were established to comply with sections 303(a)(1) and (7), and National Standard 9 of the Magnuson-Stevens Act to rebuild or ensure the long-term sustainability of fish stocks and fisheries, to minimize the adverse effects of fishing on habitat, or minimize bycatch of certain stocks or protected species, undermining these measures would be inconsistent with these provisions. Although the Council commented that the requirements are a relic of an earlier management regime, it did not provide any additional rationale to address NMFS concerns that eliminating these requirements would undermine the conservation objectives of closed areas and be inequitable to vessels in other FMPs. It is also not clear why the Council believes these measures do not apply in a sector management or ACL and AM system, when sector vessels are still prohibited from fishing in closed areas.

Although this measure would have some safety benefits for groundfish vessels, it would have been inconsistent with National Standard 4 of the Magnuson-Stevens Act requiring measures to be fair and equitable because it does not extend the safety benefits to other fisheries. Framework 48 also did not provide sufficient rationale as to why eliminating these requirements, rather than modifying them, satisfied the criteria of National Standard 10 to reduce risk while meeting the needs of conservation and management. For these reasons, NMFS has disapproved this measure in Framework 48.

NMFS does share commenters concerns, however, that the existing trawl gear stowage requirement can be unsafe for crew in bad weather. That is why NMFS will be initiating a separate management action to consider modifications to the gear stowage definition recommended by the Council's VMS/Enforcement Committee to address safety concerns while still meeting the needs of conservation and management. With respect to one commenter's concern that this measure actually makes it easier for vessels to hide illegal fishing activity, the VMS/Enforcement Committee considered this issue during its deliberations and examined different materials that could be used to cover the net while still making it visible from the air. NMFS intends to consider these materials and

other ideas the Council or industry may have to improve the enforcement of these requirements from the air in its separate rulemaking.

*Comment 31:* The USCG and CLF opposed eliminating gear stowage requirements for groundfish trawlers and urged NMFS to disapprove this measure. The USCG commented that the proposed measure would make current and future closed areas virtually unenforceable. While VMS is an effective tool to enforce closed areas when transits are not allowed, it is not sufficient to document vessel activities when transiting is allowed. The USCG contends that eliminating these measures would reduce the time required to set and recover fishing gear, and thereby undermine enforcement of transiting restrictions at sea. The USCG also maintains that inconsistent gear stowage requirements would unnecessarily complicate enforcement, undermining the conservation objectives of closed areas. Furthermore, the USCG is concerned that this measure does not extend safety benefits to vessels in other FMPs, raising serious equity issues. CLF noted this measure was adopted against the advice of the Council's VMS/Enforcement Committee, and is concerned that removing these requirements would further exacerbate what it believes to be already an extensive problem of illegal fishing activity and misreporting of catch.

*Response:* NMFS agrees with the commenters that the proposed measure does not adequately balance the needs of safety with those of conservation and management, which is one reason why NMFS has disapproved this measure in Framework 48. NMFS agrees that these requirements are still needed to enforce the prohibition on fishing in closed areas and do not wish eliminating these requirements in the name of safety to open up a loophole for illegal fishing that would undermine the conservation benefits of closed areas for protecting spawning fish and habitat. Given that NMFS is initiating a separate rulemaking to address safety issues while ensuring and even improving the effectiveness of the requirements for enforcement, NMFS has disapproved this measure in Framework 48.

#### **Correction to Eastern U.S./Canada Quota Monitoring**

*Comment 32:* The Council, CLF, Earthjustice, and CCCHFA commented against NMFS proposed correction to the regulations. The Council and other commenters questioned NMFS' authority to make this change without explicit Council action, and asked NMFS to disapprove this change,

particularly in light of continued concerns of misreporting of catches of Eastern GB stocks. The Council also noted that NMFS proposed change would not be consistent with the regulations that the Council deemed as consistent with Amendment 16. The commenters urged NMFS to return to the former method of monitoring, counting all catch of cod, haddock, and yellowtail against Eastern GB TACs, to eliminate possible incentives to misreport these stocks that may have arisen by NMFS change to its monitoring practices since 2010. Earthjustice also requested that NMFS apply its correction retroactively and adjust catches for FY 2010–2012 and payback any overages that result to be consistent with the regulations.

**Response:** NMFS acknowledges the clarification provided by the Council and has disapproved its proposed correction in this final rule. In light of this clarified interpretation of Amendment 16, NMFS will revise its quota monitoring methods beginning with FY 2013 to be consistent with the regulations and will count all catch of cod, haddock, and yellowtail caught on trips inside and outside the Eastern U.S./Canada Area against the U.S./Canada TACs, sub-ACLs, and ACEs. The details of how NMFS intends to implement this monitoring method are described in Item 4 of the preamble. NMFS does not intend to apply this measure retroactively to FY 2010–2012, because that would unfairly penalize sector vessels and the common pool by changing the rules long past the time they could do anything to comply with them. NMFS disagrees that adjusting catches in FY 2010–2012 would result in more accurate catch estimates, but rather estimates that are consistent with the letter of the regulations. Estimates under the precautionary method may be more accurate, if one believes estimates of Eastern GB catches are biased low because vessels report some catch as from GOM or Western GB. Neither the Council nor NMFS, however, believe that all catches of cod, haddock, or yellowtail on all multi-area trips into the Eastern U.S./Canada Area are actually caught in Eastern GB. The purpose of this measure is not to apportion catch more accurately, but to provide a disincentive to fish in both the Eastern Area and Western GB/GOM and thereby be able to misreport catch. One would expect that if this measure had been in place during FY 2010–2012, fewer trips would have been fished in both the Eastern Area and other areas. Thus, applying this measure retroactively would not necessarily

result in catch estimates that are more accurate, but rather estimates that are perhaps biased high instead of low. Retroactively adjusting catch estimates would also have implications for other stocks, biasing low catches of Western GB stocks and GOM cod and haddock, which would potentially underestimate mortality on those stocks. NMFS maintains that catch estimates in FY 2010–2012 were consistent with NMFS interpretation of Amendment 16 at the time, as NMFS described in the preamble to the Amendment 16 final rule, and the guidance NMFS provided to common pool and sector vessels for complying with the regulations. NMFS will revise its monitoring protocol for FY 2013 going forward, which would allow sector and common pool vessels to plan their fishing seasons based on the new rate of utilization of their Eastern allocations.

**Comment 33:** MEDMR, NSC, AFM, and one individual commented in support of NMFS proposed change to the regulations. The commenters believed that NMFS existing monitoring method was consistent with the Council's intent in Amendment 16 to increase operational flexibility for vessels to fish in multiple areas and to apportion catch according the area reported fished. Some commenters argued that there is no evidence of widespread misreporting, and emphasized that even if there was it would have management and not biological implications. Some commenters expressed concerns that returning to the Framework 42 method of catch attribution would not fix misreporting issues, but would only reduce flexibility for vessels, thereby making trips to Eastern GB too costly and reducing vessels' ability to target GB haddock. One commenter was concerned that the Framework 42 method would actually result in less accurate catch estimates by incorrectly apportioning catch.

**Response:** NMFS understands commenters concerns, but in light of the clarification received from the Council, NMFS is disapproving its proposed correction in this final rule and will instead revise its monitoring protocol to be consistent with the regulations. NMFS does not believe it has authority in the context of this action to reconsider and override the Council's clarified intent in Amendment 16 regarding this measure. A detailed description of how NMFS intends to implement the requirements is available in Item 5 of the preamble. NMFS agrees that the intent of Amendment 16 was to attribute catch to stock based on all available information (see 4.2.3.5.3 of

Amendment 16). This would seem to conflict with the language of Framework 42. As discussed in the preamble, NMFS intends to implement both of these requirements by counting all catch of cod, haddock, and yellowtail on trips that declare into the Eastern U.S./Canada area inseason for the purpose of determining when a TAC has been reached and a closure is necessary. At the end of the fishing year, for the purposes of determining if a TAC has been exceeded and an AM is triggered, NMFS will subtract any catches on trips that declared into the Eastern U.S./Canada but showed no fishing activity in those areas on VMS. NMFS believes this would satisfy the intent of Framework 42 and Amendment 16, and meet our obligations to ensure the integrity of US/Canada TACs. Although there may be no conclusive evidence of misreporting of Eastern GB catches, the Council chose through Framework 42 to address a management problem with a policy decision to count catch in precautionary inseason to maintain the integrity of TACs agreed to with Canada. As noted in the response to Comment 32, this measure is not intended to necessarily attribute catch more accurately but to address a specific management problem, which is to ensure the U.S./Canada TACs are not exceeded. Because NMFS did not provide details of this monitoring method in the proposed rule for Framework 48, NMFS will collect additional public comment on it at this time.

#### Changes From the Proposed Rule

NMFS has made three changes from the proposed rule. Based upon public comment, the coordinates for the Atlantic Halibut Fixed Gear AM Area 1 was revised to correct errors contained in the proposed rule. In addition, NMFS withdrew its proposed correction to the regulations pertaining to monitoring the Eastern U.S./Canada TACs, and will instead be returning to the Framework 42 method of monitoring (see Item 5 of the preamble). Finally, NMFS implements revised status determination criteria for white hake through this interim final rule (see Item 7 of the preamble).

#### Classification

The Administrator, Northeast Region, NMFS, determined that the approved measures of Framework 48 are necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

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

The Assistant Administrator for Fisheries finds good cause to waive the notice and comment provisions in 5 U.S.C. 553(b)(B) for the status determination criteria for white hake because it is impracticable and contrary to the public interest. As discussed more fully in Item 7 of the preamble, the purpose of implementing the revised status determination criteria for white hake make solicitation of public comment contrary to the public interest. The results of the February 2013 benchmark assessment for white hake are a change from the previous assessment and indicate that the stock is no longer overfished or undergoing overfishing. These criteria represent the best scientific information available and support an increase to the FY 2013 ABC and ACL for this stock. Implementing revised status determination criteria through this final rule is necessary in order to incorporate the best scientific information available into the FMP and to allow NMFS potentially to take separate action to implement an appropriate ABC and ACL for white hake in FY 2013. This could result in the benefit of revenues associated with a higher white hake catch limit in FY 2013, including increased landings of white hake and other groundfish species caught with it. Because a sector vessel must stop fishing in a stock area once its sector has reached its allocation for that particular stock, additional allocation of white hake extends the fishing season for sector vessels in the white hake stock area, including for other species. This is particularly true for unit stocks like white hake, for which the stock area encompasses the entire region. Additional white hake quota could also extend the fishing season for common pool vessels, which have a sub-ACL for this stock.

This action could not allow for prior public comment because the scientific review process and determination could not have been completed any earlier due to the inherent time constraints associated with such process. The benchmark assessment for white hake was completed in February 2013, but a summary report documenting the assessment results was not released until April 2, 2013, after publication of the Framework 48 proposed rule. However, because the Council included and recommended an alternative in

Framework 48 to implement the revised status determination criteria in FY 2013, should it become available in time for rulemaking, NMFS is approving the revised status determination criteria through this final rule. The time necessary to provide for prior notice and opportunity for public comment would delay the incorporation of the best scientific information available into the FMP for management. It would also extend the time necessary to develop an action to implement a revised quota for this stock for FY 2013, should NMFS decide to do so. In the interest of receiving public input on this action, NMFS is publishing the revised status determination criteria as an interim final measure and is requesting public comments on it in this rule.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely manner to incorporate the best scientific information available to establish appropriate quotas to prevent overfishing in FY 2013, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. This action incorporates the best scientific information available from recent stocks assessments into the FMP to allow Framework 50, a parallel action, to specify appropriate catch limits to prevent overfishing and achieve optimum yield. There is a need to implement this action in timely manner, because the 2013 fishing year begins on May 1, 2013. Without this action, appropriate quotas based on the best available science would not be set, and virtually the entire groundfish fishery would not receive allocations of groundfish stocks to begin fishing, which would have significant negative economic impacts on fishery participants and the communities that depend on them. In addition, there were unavoidable time constraints outside the agency’s control, because the Council took final action and submitted Framework 48 much later than originally scheduled. As a result, review of the framework, and the entire rulemaking process was delayed.

A Final Regulatory Flexibility Analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS’s responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/RIR/IRFA is available from the both the Council and NMFS (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the

analyses contained in the IRFA, and that discussion is not repeated here.

## Final Regulatory Flexibility Analysis

### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

### *Summary of Significant Issues Raised in Public Comments*

NMFS’s response to all comments received on the proposed rule, including those that raised significant issues or commented on the economic analyses summarized in the IRFA can be found in the “Comments and Responses” section of this rule. As outlined in that section, significant issues were raised by the public with respect to:

- The procedural-type change allowing sectors to request access to year-round closed areas;
- Reactive AMs for non-allocated stocks;
- Modifications to sector at-sea monitoring requirements;
- Reduction in minimum fish sizes, and;
- Sub-ACLs for GB yellowtail flounder and SNE/MA windowpane flounder for the scallop fishery.

Detailed responses are provided to the specific significant issues raised by the public comment and are not repeated here. The proposed change to GB discard strata was disapproved as a result of the public comments received. No other changes to the proposed rule measures were necessary as a result of public comments.

### *Description and Estimate of Number of Small Entities To Which the Rule Will Apply*

The information analyzed in the RFA analysis indicated for 2011, the most recent complete year of data available, there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small and 58 are large entities as per SBA guidelines. As stated in the IRFA, a definition of dependence was also used to examine potential impact of this rule on small entities. Dependence was defined as entities deriving greater than 50 percent of gross sales from sales of either regulated groundfish or from scallops. This definition was used to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, 135 entities are groundfish-dependent, with 131 small

and 4 large. Forty-seven entities are scallop-dependent, with 39 small and 8 large.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains a revision to collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0605 (Amendment 16 reporting requirements). Framework 48 adjusts the sector at-sea monitoring pre-trip notification and NEFOP notification implemented through Amendment 16, by adding a question to allow fishermen to indicate what fishery they intend to participate in. This change is necessary to identify monkfish trips in Southern New England that may qualify for the exemption from sector at-sea monitoring coverage, in order to deploy at-sea monitors appropriately to achieve the coverage levels required by the FMP. Currently, all groundfish vessels make these notifications to the NEFOP through the PTNS via an online form, a telephone call, or email to NEFOP. When sector at-sea monitoring programs become established, the pre-trip notification may be made to NEFOP or other at-sea monitoring provider, via a telephone call or email or through a secure database. Public reporting burden for the Amendment 16 reporting requirements is estimated to average two minutes per individual response for sector at-sea monitoring pre-trip notification and NEFOP notification, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Framework 48 only adds a question to these notifications and would not affect the number of entities required to comply with these notifications (approximately 900 permits enrolled in sectors and 1482 limited access NE multispecies permits). The revision to these requirements is not expected to change this burden estimate.

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

#### Description of the Steps Taken To Minimize Economic Impact on Small Entities

**Introduction.** The Regulatory Flexibility Act (RFA) analysis is required to evaluate the impact of Federal proposed and final rules on small business entities. Federal agencies are required in this analysis to identify reasonable alternatives that may mitigate impacts on small business entities. The RFA does not compel specific regulatory outcomes. Moreover, the RFA does not require agencies to consider or adopt alternatives that are inconsistent with law or outside the scope and purpose of the regulations.

NMFS's ability to minimize economic impacts is constrained, in part, by recommendations of the Council. NMFS has only the ability to approve, partially approve, or disapprove Council-recommended measures. The Agency cannot revise or substitute Council-recommended measures in the framework review and implementation process. This limits the range of alternatives that can be considered in Framework 48 to the suite of preferred and non-preferred alternatives forwarded by the Council. NMFS does have the ability through independent rulemaking under specifically defined Magnuson-Stevens Act criteria to implement alternative measures that respond to emergencies or end overfishing. In situations where Council recommendations are determined consistent with the Magnuson-Stevens Act and other applicable law, NMFS is obligated to implement the measures in question.

**Framework 48 measures.** NMFS is disapproving the provision to eliminate trawl gear stowage requirements as recommended by the Council along with measures pertaining to at-sea monitoring industry cost sharing, at-sea monitoring cost responsibility of sectors, and discard rate strata for GB yellowtail flounder. The rationale for disapproving these Council-recommended Framework 48 measures is outlined in detail in the preamble and not repeated here. For all other Framework 48 measures described in the preamble, NMFS has determined the Council recommendations are consistent with applicable requirements of the Magnuson-Stevens Act and other law. As a result, NMFS is implementing the measures, as proposed by the Council, and the available mitigation is limited as a result.

The approved measures change status determination criteria, modify management measures for at-sea monitoring, allow exemption requests

from sectors to year-round closures, change minimum size restrictions for allocated fish, and modify some AMs. The IRFA concluded the Framework 48 alternatives have the potential to impact a large number of small entities, and while some of the options may significantly alter profitability, none of them would have a disproportionate impact on small entities.

The new status determination criteria impacts the catch limits set for each species. In situations where the revised status determination criteria result in much lower catch limits than under the no action alternative considered in the IRFA, then the measures implemented by this rule would reduce fishing revenues. NMFS is required by the Magnuson-Stevens Act National Standard 2 to use the best available scientific information in setting catch limits. The new stock status determination criteria implemented by NMFS have been certified as the best available scientific information by the NEFSC. The no action alternative is inconsistent with the Magnuson-Stevens Act because it would continue to use outdated stock assessment data that is not the best available scientific information and; therefore, it cannot be implemented.

Establishing sub-ACLs for SNE/MA windowpane flounder and for GB yellowtail flounder impacts both the groundfish and scallop fisheries by shifting accountability for overages or changing the method of sub-ACL calculation. SNE/MA windowpane sub-ACLs for the scallop and other sub-components fisheries can reduce the likelihood of an overage and overfishing. Avoiding overages and overfishing may, in turn, lower operating costs and result in higher future revenues. If sub-ACLs are set below average yearly landings for a given fishery, and if AMs are severely restrictive, the impacted vessels could experience a substantial reduction in their profitability.

The modifications to the scallop fishery GB yellowtail flounder sub-ACL would use a fixed percentage to determine the scallop fishery allocation of the GB yellowtail flounder—40 percent in FY 2013 and 16 percent in each subsequent year. The economic impacts to fishing businesses will depend on the overall GB yellowtail flounder ABC and the probability of an overage, both of which are currently unquantifiable. The 16-percent fixed rate may be prohibitive to maximizing the value from scallop landings. In the worst-case scenario, if an overage occurred that closed a valuable access area to the scallop fishery, the scallop

industry could suffer a \$16.9 million dollar loss in economic benefits. A non-preferred alternative was considered by the Council to use a set 90-percent of estimated scallop catch as the determinant of the scallop sub-ACL. Since the allocation method of the 90 percent alternative does not adjust for changes in the ABC, it could lead to a very low groundfish fishery sub-ACL for GB yellowtail flounder but mitigate potential impact to the scallop fishery. The measure to establish a small-mesh fishery sub-ACL for GB yellowtail flounder would use a fixed percentage, based on previous catch history, to set the allocation. This measure is expected to have similar impacts and unknowns as the other sub-ACLs, but with respect to the small-mesh groundfish vessels. The sub-ACL modifications implemented by this rule provide overall benefit to the nation in terms of the broader concept of optimum yield and further ensure the likelihood of overfishing is prevented. The non-preferred GB yellowtail flounder scallop sub-ACL determinant or not establishing additional sub-ACLs would not be consistent with National Standards 1, 4, 5, or 8 and the goals and objectives of the FMP. As such, these non-preferred approaches that may mitigate impacts to the scallop, small-mesh, and Mid-Atlantic fisheries were not favored by the Council and not approved by NMFS.

Modifying the groundfish sector monitoring requirements would impact all sector vessels. The removal of dockside monitoring implemented in this rule for FY 2013 has a positive economic impact by lowering operating costs and increasing probability. As such, it provides the maximum economic impact mitigation in comparison to the alternative that would require industry funded dockside monitoring to be in place for FY 2013 and beyond. The disapproved cost-sharing provision was intended to reduce the overall cost of at-sea monitoring paid for by the industry and would have provided similar positive impacts by lowering costs and increasing profits; however, the measure as recommended by the Council was not consistent with anti-deficiency and other Federal laws and policies and could not be implemented by NMFS. Similarly, eliminating the industry's responsibility to pay for at-sea monitoring would have positive economic impacts. This alternative would not ensure that coverage levels are sufficient to monitor sector allocations and satisfy the Amendment 16 monitoring requirements and, as a result, could not be approved. NMFS

has committed to fully funding the required at-sea monitoring cost for FY 2013. This will provide a 1-year short-term relief to sector vessels until FY 2014. Had this funding not been made available, industry would have been required to fully fund at-sea monitoring in FY 2013 at a substantial economic impact. As modified by Amendment 16, the FMP requires industry to fully fund at-sea monitoring; however, NMFS has provided this funding each fishing year since 2010.

Modifying the minimum size limits for commercially allocated groundfish species would be expected to positively impact sector vessels. The lower minimum size restrictions will allow a portion of previously wasted regulated discards to become landings. This is expected to provide a positive economic impact on net trip revenues, as more fish will be landed for the same amount of expended quota as under the no action alternative. Under the full-retention alternative, there could have been unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue. This could also occur under the changed minimum fish sizes. Maintaining minimum mesh sizes may help to mitigate some of this effect.

Based on public comment received, the modification of sector discard strata for GB yellowtail flounder in Federal statistical area 522 was not approved in this rule. This had the potential for positive impacts on revenue for large trawl vessels that predominantly fish this area.

The measure to modify AM timing for stocks not allocated to sectors is expected to help prevent overfishing. Controlling overfishing ensures long-term positive impacts. Under this provision, AMs would not be implemented mid-season, which will be beneficial to business planning. There is, however, the potential for short-term decreases in revenue based on implementation of AMs as catches may be reduced in the year AMs are enacted. The ability to implement AMs as soon as possible to correct the operational issue that caused the ACL overage, consistent with the National Standard 1 Guideline recommendations, is constrained in this case by the timing of data availability. The approach implemented by this rule provides a balance of ensuring AMs are enacted on the best available information in as timely a manner as possible. In that regard, little else could be done with respect to AM timing that remains consistent with National Standard 1.

Framework 48 would also create area-based AMs for Atlantic halibut, Atlantic

wolfish, and SNE/MA winter flounder. In the event these AMs are triggered, trawl vessels would be forced to use selective gears within designated closure areas and fixed-gear vessels would be forced to cease fishing entirely inside designated closure areas. If triggered, these areas could have economic impacts in the \$4 million to \$5 million dollars for trawl vessels, and around \$1 million for fixed-gear vessels, based on FY 2010 information. These AMs were nondiscretionary as they were required by a remand from Federal appellate court.

The measures to revise the recreational AM and to allow sectors to request year-round closed area exemptions has no immediate direct economic impact, because these measures only confer authority on the Regional Administrator to take action at a later date. Subsequent actions to implement specific adjustments to recreational measures or to consider sector exemption requests will fully analyze potential economic impacts to small entities, consistent with RFA requirements.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (i.e., information bulletin) are available from NMFS (see **ADDRESSES**) and at the following Web site: <http://www.nero.noaa.gov/>.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 29, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is 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.*

- 1. In § 648.4, revise paragraph (a)(1)(ii) to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(ii) *Open access permits.* A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an “open access multispecies”, “handgear”, or “charter/party” permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

\* \* \* \* \*

- 2. In § 648.7, remove and reserve paragraph (a)(4), revise paragraph (e)(3), and remove paragraph (h) and redesignate paragraph (i) as paragraph (h).

The revision reads as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

- 3. In § 648.10, revise paragraph (k)(1)(iii) and add paragraph (k)(1)(iv) to read as follows:

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

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(iii) *Trip-start hail report.* If instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c), the operator of a vessel must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or NMFS of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; an estimate of the date and time of arrival to port; and any other information as instructed by the Regional Administrator. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. The trip-start hail report may be submitted via VMS or some other method, as instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c). If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the sector manager or NMFS, the operator must contact the intended receiver to confirm the trip-start hail report via an independent back-up system, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-start hail report with any other applicable reporting requirements..

(iv) *Trip-end hail report.* Upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species

managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-end hail reports with any other applicable reporting requirements.

\* \* \* \* \*

- 4. In § 648.11, revise paragraphs (k)(1) and (2) and add paragraph (l) to read as follows:

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

\* \* \* \* \*

(k) \* \* \*

(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance

of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

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

(I) *NE multispecies monitoring program goals and objectives.*

Monitoring programs established for the NE multispecies are to be designed and evaluated consistent with the following goals and objectives:

(1) Improve documentation of catch:

(i) Determine total catch and effort, for each sector and common pool, of target or regulated species; and

(ii) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(2) Reduce the cost of monitoring:

(i) Streamline data management and eliminate redundancy;

(ii) Explore options for cost-sharing and deferment of cost to industry; and

(iii) Recognize opportunity costs of insufficient monitoring.

(3) Incentivize reducing discards:

(i) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(ii) Collect information by gear type to accurately calculate discard rates.

(4) Provide additional data streams for stock assessments:

(i) Reduce management and/or biological uncertainty; and

(ii) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(5) Enhance safety of monitoring program.

(6) Perform periodic review of monitoring program for effectiveness.

■ 5. In § 648.14:

- a. Revise paragraph (e)(1);
- b. Remove paragraph (k)(14)(x);
- c. Redesignate paragraphs (k)(14)(xi) and (xii) as paragraphs (k)(14)(x) and (xi), respectively, and revise them;
- d. Remove and reserve paragraphs (k)(18)(i)(B) through (D); and
- e. Revise paragraphs (k)(19) introductory text, (k)(19)(i), and (k)(20).

The revisions read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \*

(e) \* \* \*

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

\* \* \* \*

(k) \* \* \*

(14) \* \* \*

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(5)(iii)(A).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(5)(iv)(A).

\* \* \* \*

(19) *At-sea/electronic monitoring service providers.* It is unlawful for any at-sea/electronic monitoring service provider, including individual at-sea monitors, to do any of the following:

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

\* \* \* \*

(20) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder.* It is unlawful

for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

\* \* \* \*

- 6. In § 648.80, revise paragraph (a)(3)(vii) to read as follows:

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

\* \* \* \*

(a) \* \* \*

(3) \* \* \*

*(vii) Rockhopper and roller gear*

*restrictions.* For all trawl vessels fishing on a NE multispecies DAS or sector trip in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

**INSHORE RESTRICTED ROLLER GEAR AREA**

Point	N. Latitude	W. Longitude
1 .....	42°00'	(1)
2 .....	42°00'	(2)
3 .....	42°00'	(3)
4 .....	42°00'	69°50'
5 .....	43°00'	69°50'
6 .....	43°00'	70°00'
7 .....	43°30'	70°00'
8 .....	43°30'	(4)

1 Massachusetts shoreline.

2 Cape Cod shoreline on Cape Cod Bay.

3 Cape Cod shoreline on the Atlantic Ocean.

4 Maine shoreline.

\* \* \* \*

- 7. In § 648.82:

■ a. Revise paragraphs (k)(2)(i), (n)(1) introductory text, (n)(2)(ii) introductory text, (n)(2)(ii)(A) and (B), (n)(2)(ii)(H) through (J), and (n)(2)(ii)(M);

■ b. Remove and reserve paragraph (n)(2)(iv); and

■ c. Revise paragraph (n)(2)(vi).

The revisions read as follows:

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

\* \* \* \*

(k) \* \* \*

(2) \* \* \*

(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A

permit specified under paragraphs (b)(5) and (6) of this section, respectively.

\* \* \* \*

(n) \*

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year, once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(H)(2). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If, based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any

differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the

vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded up to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

\* \* \* \*

(2) \*

(ii) *Stock area closures.* Unless otherwise specified in this paragraph (n)(2)(ii), if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred to all common pool vessels on a NE multispecies DAS using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area

specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred. Common pool vessels holding either a Handgear A or B permit and fishing with handgear or tub trawls are exempt from stock area closures for white hake. The Regional Administrator may exempt Handgear A and B permitted vessels from stock area closures for other stocks pursuant to this paragraph (n)(2)(ii) if it is determined that catches of the respective species or stock by these vessels are less than 1 percent of the common pool catch of that species or stock. The Regional Administrator shall make such determination prior to the start of the fishing year through a notice published in the **Federal Register**, consistent with the Administrative Procedure Act, and any such determination shall remain in effect until modified.

(A) *GB Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

#### GB COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	42° 20'	70° 00'
2 .....	42° 20'	( <sup>1</sup> )
3 .....	41° 50'	( <sup>1</sup> )
4 .....	41° 50'	67° 40'
5 .....	41° 10'	67° 40'
6 .....	41° 10'	67° 10'
7 .....	41° 00'	67° 10'
8 .....	41° 00'	67° 00'
9 .....	40° 50'	67° 00'
10 .....	40° 50'	66° 50'
11 .....	40° 40'	66° 50'
12 .....	40° 40'	66° 40'
13 .....	39° 50'	66° 40'
14 .....	39° 50'	68° 50'
15 .....	41° 00'	68° 50'
16 .....	41° 00'	69° 30'
17 .....	41° 10'	69° 30'
18 .....	41° 10'	69° 50'
19 .....	41° 20'	69° 50'
20 .....	41° 20'	( <sup>2</sup> )
21 .....	( <sup>3</sup> )	70° 00'
22 .....	( <sup>4</sup> )	70° 00'

#### GB COD TRIMESTER TAC AREA—Continued

Point	N. Latitude	W. Longitude
23 .....	( <sup>5</sup> )	70° 00'

<sup>1</sup> U.S./Canada maritime boundary.

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

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

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

<sup>5</sup> North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

#### GOM COD TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	69° 20'
2 .....	43° 40'	69° 20'
3 .....	43° 40'	69° 00'
4 .....	43° 10'	69° 00'
5 .....	43° 10'	69° 10'
6 .....	43° 00'	69° 10'
7 .....	43° 00'	69° 20'
8 .....	42° 50'	69° 20'
9 .....	42° 50'	69° 40'
10 .....	42° 20'	69° 40'
11 .....	42° 20'	70° 00'
12 .....	( <sup>2</sup> )	70° 00'

<sup>1</sup> Intersection with ME shoreline.

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

\* \* \* \* \*

(H) *American Plaice Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

#### AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	68°00'
2 .....	44°10'	67°50'
3 .....	44°00'	67°50'
4 .....	44°00'	67°40'
5 .....	( <sup>2</sup> )	67°40'
6 .....	42°53.1'	67°44.4'
7 .....	( <sup>2</sup> )	67°40'
8 .....	41°10'	67°40'
9 .....	41°10'	67°10'
10 .....	41°00'	67°10'
11 .....	41°00'	67°00'
12 .....	40°50'	67°00'
13 .....	40°50'	66°50'
14 .....	40°40'	66°50'
15 .....	40°40'	66°40'
16 .....	39°50'	66°40'
17 .....	39°50'	68°50'
18 .....	41°00'	68°50'
19 .....	41°00'	69°30'
20 .....	41°10'	69°30'
21 .....	41°10'	69°50'
22 .....	41°20'	69°50'
23 .....	41°20'	( <sup>3</sup> )
24 .....	( <sup>4</sup> )	70°00'
25 .....	( <sup>5</sup> )	70°00'

#### AMERICAN PLAICE TRIMESTER TAC AREA—Continued

Point	N. Latitude	W. Longitude
14 .....	40°40'	66°50'
15 .....	40°40'	66°40'
16 .....	39°50'	66°40'
17 .....	39°50'	68°50'
18 .....	41°00'	68°50'
19 .....	41°00'	69°30'
20 .....	41°10'	69°30'
21 .....	41°10'	69°50'
22 .....	41°20'	69°50'
23 .....	41°20'	( <sup>3</sup> )
24 .....	( <sup>4</sup> )	70°00'
25 .....	( <sup>5</sup> )	70°00'

<sup>1</sup> Intersection with ME shoreline.

<sup>2</sup> U.S./Canada maritime boundary.

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

<sup>4</sup> North-facing shoreline of Nantucket, MA.

<sup>5</sup> South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

#### WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	68°00'
2 .....	44°10'	67°50'
3 .....	44°00'	67°50'
4 .....	44°00'	67°40'
5 .....	( <sup>2</sup> )	67°40'
6 .....	42°53.1'	67°44.4'
7 .....	( <sup>2</sup> )	67°40'
8 .....	41°10'	67°40'
9 .....	41°10'	67°10'
10 .....	41°00'	67°10'
11 .....	41°00'	67°00'
12 .....	40°50'	67°00'
13 .....	40°50'	66°50'
14 .....	40°40'	66°50'
15 .....	40°40'	66°40'
16 .....	39°50'	66°40'
17 .....	39°50'	68°50'
18 .....	41°00'	68°50'
19 .....	41°00'	69°30'
20 .....	41°10'	69°30'
21 .....	41°10'	69°50'
22 .....	41°20'	69°50'
23 .....	41°20'	( <sup>3</sup> )
24 .....	( <sup>4</sup> )	70°00'
25 .....	( <sup>5</sup> )	70°00'

<sup>1</sup> Intersection with ME shoreline.

<sup>2</sup> U.S./Canada maritime boundary.

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

<sup>4</sup> North-facing shoreline of Nantucket, MA.

<sup>5</sup> South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall

apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

#### GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	42°20'	68°50'
2 .....	42°20'	(1)
3 .....	40°30'	(1)
4 .....	40°30'	66°40'
5 .....	39°50'	66°40'
6 .....	39°50'	68°50'

<sup>1</sup> U.S./Canada maritime boundary

\* \* \* \* \*

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawls, within the area bounded by straight lines connecting the following points in the order stated:

#### WHITE HAKE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
1 .....	(1)	69°20'
2 .....	43°40'	69°20'
3 .....	43°40'	69°00'
4 .....	43°20'	69°00'
5 .....	43°20'	67°40'
6 .....	(2)	67°40'
7 .....	42°53.1'	67°44.4'
8 .....	(2)	67°40'
9 .....	41°20'	67°40'
10 .....	41°20'	68°10'
11 .....	41°10'	68°10'
12 .....	41°10'	68°20'
13 .....	41°00'	68°20'
14 .....	41°00'	69°30'
15 .....	41°10'	69°30'
16 .....	41°10'	69°50'
17 .....	41°20'	69°50'
18 .....	41°20'	(3)
19 .....	(4)	70°00'
20 .....	(5)	70°00'

<sup>1</sup> Intersection with ME shoreline.

<sup>2</sup> U.S./Canada maritime boundary.

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

<sup>4</sup> North-facing shoreline of Nantucket, MA.

<sup>5</sup> South-facing shoreline of Cape Cod, MA.

\* \* \* \* \*

(vi) *Trip limit adjustment.* When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(H)(2) is projected to be caught, the Regional Administrator may specify, consistent with the APA, a possession limit for these stocks that is calculated to prevent the yearly sub-

ACL from being exceeded prior to the end of the fishing year.

\* \* \* \* \*

■ 8. In § 648.83, revise paragraph (a)(1) to read as follows:

#### § 648.83 Multispecies minimum fish sizes.

(a) \* \* \*

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

#### MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod .....	19 (48.3 cm)
Haddock .....	16 (40.6 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder .....	12 (30.5 cm)
American plaice (dab) .....	12 (30.5 cm)
Atlantic halibut .....	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish .....	7 (17.8 cm)

\* \* \* \* \*

■ 9. In § 648.84, add paragraph (e) to read as follows:

#### § 648.84 Gear-marking requirements and gear restrictions.

\* \* \* \* \*

(e) *Rope separator trawl.* A rope separator trawl is defined as a four-seam bottom trawl net (i.e., a net with a top and bottom panel and two side panels) modified to include both a horizontal separator panel and an escape opening in the bottom belly of the net below the separator panel, as further specified in paragraphs (e)(1) through (3) of this section.

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

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

(3) *Escape opening.* The escape opening must be positioned in the bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (e)(2) of this section. Longitudinal lines may be used to maintain the shape of the escape opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

■ 10. In § 648.85, revise paragraphs (a)(2)(ii) and (iii), (a)(3)(iv)(E), (b)(7)(iv)(H), (b)(8)(v)(C), and (d) to read as follows:

#### § 648.85 Special management programs.

(a) \* \* \*

(2) \* \* \*

(ii) *Adjustments to TACs.* Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage in the following fishing year and may be

subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

(iii) *Distribution of TACs.* For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between sectors approved pursuant to § 648.87(c), common pool vessels, scallop vessels, and other applicable fisheries, as specified in § 648.90(a)(4). Approved sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the sector's allocation of the overall ACL for these stocks, based upon the fishing histories of sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that sector may only be harvested outside of the Eastern U.S./Canada Area. For example, if a sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(3) \* \* \*

(iv) \* \* \*

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation for NE multispecies common pool or sectors specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (i.e., haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II

Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

\* \* \* \* \*

(b) \* \* \*  
(7) \* \* \*  
(iv) \* \* \*

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise restricted by § 648.86, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

\* \* \* \* \*

(8) \* \* \*

(v) \* \* \*

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 48 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

\* \* \* \* \*

(d) *Haddock incidental catch allowance for some Atlantic herring vessels.* The haddock incidental catch allowance for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management

Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

\* \* \* \* \*

- 11. In § 648.86, revise paragraphs (a)(3)(ii)(A)(1), (3), and (4), to read as follows:

#### **§ 648.86 NE Multispecies possession restrictions.**

\* \* \* \* \*

(a) \* \* \*  
(3) \* \* \*  
(ii) \* \* \*  
(A) \* \* \*

(1) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.85(d), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(2) and (3) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

\* \* \* \* \*

(3) *The Herring GB Haddock Accountability Measure Area.* The Herring GB Haddock AM Area is defined by the straight lines connecting

the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

**HERRING GB HADDOCK  
ACCOUNTABILITY MEASURE AREA**

Point	N. Latitude	W. Longitude
1 .....	42° 20'	70° 00'
2 .....	42° 20'	(1)
3 .....	40° 30'	(1)
4 .....	40° 30'	66° 40'
5 .....	39° 50'	66° 40'
6 .....	39° 50'	68° 50'
7 .....	(2)	68° 50'
8 .....	41° 00'	(3)
9 .....	41° 00'	69° 30'
10 .....	41° 10'	69° 30'
11 .....	41° 10'	69° 50'
12 .....	41° 20'	69° 50'
13 .....	41° 20'	(4)
14 .....	(5)	70° 00'
15 .....	(6)	70° 00'
16 .....	(7)	70° 00'

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

<sup>2</sup> The intersection of the boundary of Closed Area I and 68° 50' W. long.

<sup>3</sup> The intersection of the boundary of Closed Area I and 41° 00' N. lat.

<sup>4</sup> The intersection of the east-facing shoreline of Nantucket, MA, and 41° 20' N. lat.

<sup>5</sup> The intersection of the north-facing shoreline of Nantucket, MA, and 70° 00' W. long.

<sup>6</sup> The intersection of the south-facing shoreline of Cape Cod, MA, and 70° 00' W. long.

<sup>7</sup> The intersection of the north-facing shoreline of Cape Cod, MA, and 70° 00' W. long.

(4) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1-April 30), which differs from the herring fishing year (January 1-December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(2) or (3) of this section, shall be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011-April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012-April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

\* \* \* \* \*

- a. Add paragraphs (b)(1)(ii)(A) through (F);
  - b. Revise paragraphs (b)(1)(v)(B), (b)(1)(vi)(B), (b)(2)(xi), (b)(4) introductory text, (b)(4)(i)(F) and (G), (b)(4)(i)(I), and (J), and (b)(4)(ii);
  - c. Remove paragraphs (b)(4)(iii);
  - d. Redesignate paragraph (b)(4)(iv) as paragraph (b)(4)(iii);
  - e. Remove paragraph (b)(5);
  - f. Redesignate paragraph (b)(6) as paragraph (b)(5) and revise it; and
  - g. Revise paragraph (c)(2)(i); and
- The revisions and additions read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*  
(ii) \* \* \*

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM 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 CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by rhumb lines connecting the following points in the order stated:

**CC/GOM YELLOWTAIL FLOUNDER STOCK AREA**

Point	N. Latitude	W. Longitude
1 .....	(1) .....	70° 00'
2 .....	(2) .....	70° 00'
3 .....	41° 20'	(3)
4 .....	41° 20'	69° 50'
5 .....	41° 10'	69° 50'
6 .....	41° 10'	69° 30'
7 .....	41° 00'	69° 30'
8 .....	41° 00'	68° 50'
9 .....	42° 20'	68° 50'
10 .....	42° 20'	(4)

<sup>1</sup> Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.

<sup>2</sup> Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.

<sup>3</sup> Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.

<sup>4</sup> U.S./Canada maritime boundary.

(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 rhumb lines connecting the following points in the order stated:

**SNE/MA YELLOWTAIL FLOUNDER STOCK AREA**

Point	N. Latitude	W. Longitude
1 .....	35° 00'	(1)
2 .....	35° 00'	(2)
3 .....	39° 00'	(2)
4 .....	39° 00'	69° 00'
5 .....	39° 50'	69° 00'
7 .....	39° 50'	68° 50'
8 .....	41° 00'	68° 50'
9 .....	41° 00'	69° 30'
10 .....	41° 10'	69° 30'
11 .....	41° 10'	69° 50'
12 .....	41° 20'	69° 50'
13 .....	41° 20'	(3)
14 .....	(4)	70° 00'
15 .....	(5)	70° 00'

<sup>1</sup> Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. lat.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. lat.

<sup>4</sup> Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. long.

<sup>5</sup> Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. long.

(C) *GOM Haddock Stock Area.* The GOM Haddock 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 GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

**GOM HADDOCK STOCK AREA**

Point	N. Latitude	W. Longitude
1 .....	(1) .....	70° 00'
2 .....	42° 20'	70° 00'
3 .....	42° 20'	67° 40'
4 .....	(2) .....	67° 40'
5 .....	(3) .....	67° 40'
6 .....	43° 50'	67° 40'
7 .....	43° 50'	(4)
8 .....	(4) .....	67° 00'
9 .....	(5) .....	67° 00'

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. long.

<sup>2</sup> U.S./Canada maritime boundary southern intersection with 67° 40' W. long.).

<sup>3</sup> U.S./Canada maritime boundary northern intersection with 67° 40' W. long.).

<sup>4</sup> U.S./Canada maritime boundary.

<sup>5</sup> Intersection of the south-facing ME coastline and 67° 00' W. long.

(D) *GB Haddock Stock Area.* The GB Haddock 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 GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United

■ 12. In § 648.87:

States, 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, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

#### GB HADDOCK STOCK AREA

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> ) .....	70° 00'
2 .....	42° 20' .....	70° 00'
3 .....	42° 20' .....	( <sup>2</sup> )

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

(E) *Redfish Stock Area.* The Redfish 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 redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a rhumb line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter 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 GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

#### GOM WINTER FLOUNDER STOCK AREA

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> ) .....	70° 00'
2 .....	42° 20' .....	70° 00'
3 .....	42° 20' .....	67° 40'
4 .....	( <sup>2</sup> ) .....	67° 40'
5 .....	( <sup>3</sup> ) .....	67° 40'
6 .....	43° 50' .....	67° 40'
7 .....	43° 50' .....	( <sup>4</sup> )
8 .....	( <sup>4</sup> ) .....	67° 00'
9 .....	( <sup>5</sup> ) .....	67° 00'

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. long.

<sup>2</sup> U.S./Canada maritime boundary southern intersection with 67° 40' N. lat.).

<sup>3</sup> U.S./Canada maritime boundary northern intersection with 67° 40' N. lat.).

<sup>4</sup> U.S./Canada maritime boundary.

<sup>5</sup> Intersection of the south-facing ME coast-line and 67° 00' W. long.

\* \* \* \* \*

(v) \* \* \*

(B) *Independent third-party monitoring program.* Beginning in

fishing year 2013 (May 1, 2013), a sector must develop and implement an at-sea or electronic monitoring program to verify area fished, as well as catch and discards by species and gear type, and that is consistent with the goals and objectives of groundfish monitoring programs at § 648.11(l). The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(1) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(1) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(1)(i) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(1) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea monitoring program shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(1)(i) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board.

(i) *At-sea/electronic monitoring.* Unless otherwise specified in this paragraph (b)(1)(v)(B)(1)(i), beginning in

fishing year 2013, coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. In making its determination, NMFS shall take into account the goals and objective of groundfish monitoring programs at § 648.11(l), the National Standards and requirements of the Magnuson-Stevens Act, including but not limited to the costs to sector vessels and NMFS, and any other relevant factors. For FYs 2013 and beyond, NMFS shall specify a separate coverage rate, lower than the coverage rate for all other sector trips, for sector trips fishing with 10-inch (25.4-cm) mesh or larger gillnets on a monkfish DAS, pursuant to § 648.91(c)(1)(iii), and only in the SNE Broad Stock Area, as defined at § 648.10(k)(3)(iv).

(2) *Hail reports.* For the purposes of the at-sea monitoring requirements specified in paragraph (b)(1)(v)(B) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering at-sea monitoring services. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (b)(1)(v)(B) of this section, or specified in the annual sector operations plan, consistent with paragraph (b)(5) of this section.

(3) *Notification of service provider change.* If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) \* \* \*

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon

regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

\* \* \* \* \*

(2) \* \* \*

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any haul reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

\* \* \* \* \*

(4) *Independent third-party monitoring provider standards.*

Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and/or at-sea monitors as eligible to provide sector

monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) \* \* \*

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training); vessel owner; and service provider;

\* \* \* \* \*

(I) Proof that the service provider's at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and

\* \* \* \* \*

(ii) *Service provider performance requirements.* At-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(1) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(2) A service provider must be able to deploy at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(3) A service provider must report at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(4) A service provider must assign at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(5) A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(6) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy an at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(1) If the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(2) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(3) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(4) Failure to pay for previous deployments of at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(1) At-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(2) Incident/non-compliance reports (e.g., failure to offload catch); and

(3) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

\* \* \* \*

(5) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program

developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(1) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements—(A) Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(1) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan.

If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has

been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(1) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements—(1) Confirmation of pre-trip notification.* Upon receipt of a pre-trip notification pursuant to paragraph (b)(5)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(5)(ii) of this section.

(2) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards—(A) Vessel requirements.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(1) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) \* \* \*  
(2) \* \* \*

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) *Fippennies Ledge Area.* The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

#### FIPPENNIES LEDGE AREA

Point	N. Latitude	W. Longitude
1 .....	42°50.0'	69°17.0'
2 .....	42°44.0'	69°14.0'
3 .....	42°44.0'	69°18.0'
4 .....	42°50.0'	69°21.0'

(B) [Reserved]

\* \* \* \* \*

■ 13. In § 648.89, revise paragraph (f)(2) and add paragraph (f)(3) to read as follows:

#### § 648.89 Recreational and charter/party vessel restrictions.

\* \* \* \* \*

(f) \*

(2) *Reactive AM adjustment.* If it is determined that any recreational sub-

ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

(3) *Proactive AM adjustment.* When necessary, the Regional Administrator, after consultation with the New England Fishery Management Council, may adjust recreational measures to ensure the recreational fishery achieves, but does not exceed any recreational fishery sub-ACL in a future fishing year. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the Council: for cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

- 14. In § 648.90:
  - a. Revise paragraphs (a)(4)(iii) introductory text and (a)(4)(iii)(B), (C), and (E);
  - b. Add paragraphs (a)(4)(iii)(F) through (H); and
  - c. Revise paragraphs (a)(4)(iv)(B) and (a)(5).

The revisions and additions read as follows:

#### § 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

\* \* \* \* \*

(a) \*

(4) \*

(iii) *ABC/ACL distribution.* The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-

components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (H) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (H) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

\* \* \* \* \*

(B) *Regulated species or ocean pout catch by exempted fisheries.* Unless otherwise specified in paragraphs (a)(4)(iii)(F) or (G) of this section, regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. The Atlantic sea scallop fishery shall be allocated 40 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013, and 16 percent in fishing year 2014 and each fishing year thereafter, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on

this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section. Based on information available, NMFS shall project the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(iii)(H)(1) of this section.

\* \* \* \* \*

(E) *SNE/MA windowpane flounder catch by the Atlantic sea scallop fishery.* SNE/MA windowpane flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. The Atlantic sea scallop fishery shall be allocated 36 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(F) *SNE/MA windowpane flounder catch by exempted fisheries.* SNE/MA windowpane flounder catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). The specific value of the sub-components of the ABC/ACL for SNE/MA windowpane flounder distributed to these other fisheries shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section.

(G) *GB yellowtail flounder catch by small mesh fisheries.* GB yellowtail flounder catch by bottom trawl vessels fishing with a codend mesh size of less than 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted

fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(H) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (G) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(H).

(1) *Recreational allocation.* Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(H)(1) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(i) *Stocks allocated.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(1), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(ii) *Process for determining if a recreational allocation is necessary.* A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(2) *Commercial allocation.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(2), the ABC/ACL for regulated species or ocean pout stocks

available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(H)(1) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic Wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(H)(2) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(3) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) \* \* \*

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to § 648.87(b)(1)(v)(A).

(v) \* \* \*

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) through (G) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following

fishery year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(H) of this section, then the applicable a.m. for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(2) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.87(b)(1)(iii)

shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(1) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(1) of this section, then no AMs shall take effect for the recreational fishery.

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, or SNE/MA winter flounder was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

(1) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(1), by any amount greater than the management uncertainty buffer, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(2) of this section, the applicable AM Area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of overages of both the groundfish fishery and exempted fishery sub-ACLS, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are otherwise developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common

pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

#### NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. Latitude	W. Longitude
1 .....	41°10'	67°40'
2 .....	41°10'	67°20'
3 .....	41°00'	67°20'
4 .....	41°00'	67°00'
5 .....	40°50'	67°00'
6 .....	40°50'	67°40'
1 .....	41°10'	67°40'

#### NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. Latitude	W. Longitude
1 .....	42°10'	67°40'
2 .....	42°10'	67°20'
3 .....	41°00'	67°20'
4 .....	41°00'	67°00'
5 .....	40°50'	67°00'
6 .....	40°50'	67°40'
1 .....	42°10'	67°40'

#### SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°30'
2 .....	41°10'	71°20'
3 .....	40°50'	71°20'
4 .....	40°50'	71°30'
1 .....	41°10'	71°30'

#### SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA 1

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°50'
2 .....	41°10'	71°10'
3 .....	41°00'	71°10'
4 .....	41°00'	71°20'
5 .....	40°50'	71°20'
6 .....	40°50'	71°50'
1 .....	41°10'	71°50'

#### SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	73°30'
2 .....	40°30'	73°30'
3 .....	40°30'	73°50'
4 .....	40°20'	73°50'
5 .....	40°20'	( <sup>2</sup> )
6 .....	( <sup>3</sup> )	73°58.5'
7 .....	( <sup>4</sup> )	73°58.5'
8 .....	40°32.6' ( <sup>5</sup> )	73°56.4' ( <sup>5</sup> )

#### SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2—Continued

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	73°30'

<sup>1</sup>The southern-most coastline of Long Island, NY at 73°30' W. longitude.

<sup>2</sup>The eastern-most coastline of NJ at 40°20' N. latitude, then northward along the NJ coastline to Point 6.

<sup>3</sup>The northern-most coastline of NJ at 73°58.5' W. longitude.

<sup>4</sup>The southern-most coastline of Long Island, NY at 73°58.5' W. longitude.

<sup>5</sup>The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

§ 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

#### ATLANTIC HALIBUT TRAWL GEAR AM AREA

Point	N. Latitude	W. Longitude
1 .....	42°00'	69°20'
2 .....	42°00'	68°20'
3 .....	41°30'	68°20'
4 .....	41°30'	69°20'

#### ATLANTIC HALIBUT FIXED GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°20'
2 .....	42°30'	70°15'
3 .....	42°20'	70°15'
4 .....	42°20'	70°20'

#### ATLANTIC HALIBUT FIXED GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1 .....	43°10'	69°40'
2 .....	43°10'	69°30'
3 .....	43°00'	69°30'
4 .....	43°00'	69°40'

(3) *Atlantic wolffish.* If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(3), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6).

consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic Wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

#### ATLANTIC WOLFFISH TRAWL GEAR AM AREA

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°30'
2 .....	42°30'	70°15'
3 .....	42°15'	70°15'
4 .....	42°15'	70°10'
5 .....	42°10'	70°10'
6 .....	42°10'	70°20'
7 .....	42°20'	70°20'
8 .....	42°20'	70°30'

#### ATLANTIC WOLFFISH FIXED GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1 .....	41°40'	69°40'
2 .....	41°40'	69°30'
3 .....	41°30'	69°30'
4 .....	41°30'	69°40'

#### ATLANTIC WOLFFISH FIXED GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°20'
2 .....	42°30'	70°15'
3 .....	42°20'	70°15'
4 .....	42°20'	70°20'

(4) SNE/MA winter flounder. If NMFS determines the overall ACL for SNE/MA winter flounder is exceeded, as described in this paragraph (a)(5)(i)(D)(4), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order

listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the SNE/MA Winter Flounder Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for SNE/MA winter flounder is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

#### SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°40' (1)
2 .....	41°10'	71°20'
3 .....	41°00'	71°20'
4 .....	41°00'	71°40'

<sup>1</sup> Point 1 connects to Point 2 along 41°10'N or the southern coastline of Block Island, RI, whichever is further south.

#### SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1 .....	41°20'	70°30'
2 .....	41°20'	70°20'
3 .....	41°00'	70°20'
4 .....	41°00'	70°30'

#### SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 3

Point	N. Latitude	W. Longitude
1 .....	41°20'	69°20'
2 .....	41°20'	69°10'
3 .....	41°10'	69°10'
4 .....	41°10'	69°20'

#### SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 4

Point	N. Latitude	W. Longitude
1 .....	41°20'	69°20'
2 .....	41°20'	(1)

#### SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 4—Continued

Point	N. Latitude	W. Longitude
3 .....	(1)	69°00'
4 .....	41°00'	69°00'
5 .....	41°00'	69°10'
6 .....	41°10'	69°10'
7 .....	41°10'	69°20'

<sup>1</sup> The southwest-facing boundary of Closed Area I.

(E) [Reserved].

(ii) AMs if the overall ACL for a regulated species or ocean pout stock is exceeded. If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (G) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect. (iii) AMs if the incidental catch cap for the Atlantic herring fishery is exceeded. At the end of the NE

multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the **Federal Register**, accordance with the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage

occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

- \* \* \* \* \*
- 15. In § 648.201, revise paragraph (a)(2) to read as follows:

**§ 648.201 AMs and harvest controls.**

\* \* \* \* \*

(a) \*

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, i.e., the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3) of this part, may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM

Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area.

Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area, for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

\* \* \* \* \*

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