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Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 50; Interim Final Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 130219149–3397–02]**

**RIN 0648–BC97**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 50

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

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

**SUMMARY:** NMFS partially approves Framework Adjustment 50 (Framework 50) to the Northeast (NE) Multispecies Fishery Management Plan (FMP), and implements the approved measures. NMFS also implements three parallel emergency actions to set fishing year (FY) 2013 catch limits for Georges Bank (GB) yellowtail flounder and white hake, and to modify the maximum Gulf of Maine (GOM) cod carryover available to sectors from FY 2012 to FY 2013. Framework 50 sets specifications for FYs 2013–2015, including 2013 total allowable catches (TACs) for U.S./Canada stocks, and revises the rebuilding program and management measures for Southern New England/Mid-Atlantic (SNE/MA) winter flounder. This final rule also implements FY 2013 management measures for the recreational and common pool fisheries and clarifies how to account for sector carryover for FY 2013 and for FY 2014 and beyond. These actions are necessary to prevent overfishing, rebuild overfished stocks, achieve optimum yield (OY), and ensure that management measures are based on the best available scientific information.

**DATES:** Effective May 1, 2013, except for:

The amendment to § 648.87 (b)(1)(i)(C) is effective May 3, 2013, through October 30, 2013.

The amendment to § 648.90 is effective May 2, 2013.

The specification of the white hake and GB yellowtail flounder catch limits under ''Annual Catch Limit Specifications'' in the preamble are effective May 3, 2013, through October 30, 2013.

Comments on the carryover measures for FY 2014 and beyond, and the re-estimation of the SNE/MA yellowtail flounder catch by scallop vessels, must be received by June 17, 2013.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2013–0053, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0053*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Interim Final Measures for NE Multispecies Sector Carryover.''
- *Fax:* (978) 281–9135, Attn: Sarah Heil.

*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* 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 50, associated emergency rules, and other measures, the environmental assessment (EA), its Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis prepared by the Council and NMFS are available from John K. Bullard, Regional Administrator, NMFS Northeast Regional Office (NERO), 55 Great Republic Drive, Gloucester, MA 01930. The FRFA analysis consists of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in this final rule and Framework 50, Associated Emergency Rules, and Other Measures. The EA/RIR/FRFA is also accessible via the Internet at: *http://www.nero.noaa.gov/sfd/sfdmulti.html*.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257, fax: 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The FMP specifies management measures for 16 species 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 include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, Acadian 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, make up the groundfish complex.

The New England Fishery Management Council (Council) developed and adopted Framework 50, in conjunction with Framework 48 to the FMP (Framework 48), based on the biennial review process established in the FMP to set annual catch limits (ACLs) and to revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. The Council initially intended to set the specifications for FYs 2013–2015, including adoption of FY 2013 TACs for U.S./Canada stocks, through Framework 48. Framework 48 also includes measures to establish allocations of SNE/MA windowpane flounder and GB yellowtail flounder for some non-groundfish fisheries, modify sector management and groundfish fishery accountability measures (AMs), and help mitigate anticipated impacts of the FY 2013 catch limits. At its December 2012 meeting, the Council voted to remove the specifications from Framework 48 and initiate a separate specifications package (Framework 50) for final action at its January 2013 meeting. Due to the reductions in catch limits anticipated for FY 2013, the Council needed additional time to explore any flexibility that may be available for setting specifications, and to complete the necessary analyses for the proposed measures. The Council also needed additional time to develop new management measures for SNE/MA winter flounder that were expected to help mitigate the anticipated impacts of the FY 2013 catch limits. In addition, the results of the December 2012 benchmark assessments for GOM and GB cod were not yet available when the Council took final action on Framework 48, but became available prior to the Council's January 2013 meeting.

**Disapproved Measures**

*FY 2013 GB Yellowtail Flounder Catch Limits*

NMFS disapproves the FY 2013 Acceptable Biological Catch (ABC) of 1,150 mt (U.S. quota 495 mt) for GB yellowtail flounder that the Council proposed in Framework 50, on grounds that it is inconsistent with the necessary provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), particularly the National Standard 1 requirement to prevent overfishing, and the National Standard 2 requirement to use the best scientific information available. During the development of Framework 50, and in the proposed rule for this action, NMFS expressed concern about this ABC and cautioned that it may not be approvable, as it did not appear to be based on the best scientific information available and could lead to overfishing.

The 2012 Transboundary Resources Assessment Committee (TRAC) assessment for GB yellowtail flounder was completed in June 2012. A detailed summary of the 2012 TRAC assessment can be found at: *http://www2.mar.dfo-mpo.gc.ca/science/trac/tsr.html*. The 2012 TRAC noted that, in recent years, catches based on the approved assessment model (Split Series model) have not reduced fishing mortality below the fishing mortality limit reference ($F_{ref}$),[1] or increased spawning stock biomass (SSB) as expected. There was also a significant retrospective pattern in the 2012 assessment, which causes SSB to be overestimated and fishing mortality (F) to be underestimated. As a result, the TRAC recommended that 2013 catches should not be based on the assessment results without adjusting for the retrospective bias. The 2013 unadjusted catch from the Split Series model would be approximately 882 mt. This is the catch that would result from F that, if applied over the long term, would result in maximum sustainable yield ($F_{MSY}$). Based on the assessment results, 2013 catches should not be above 882 mt, and in order to account for scientific uncertainty in the assessment, should be considerably below this level to help ensure that overfishing does not occur.

The 2012 TRAC performed five sensitivity analyses to attempt to minimize the retrospective bias and evaluate a few potential factors (i.e., missing catch, an increased natural mortality rate (M), a combination of missing catch and increased M) that might explain the retrospective pattern in the assessment. The results from the sensitivity analyses help characterize the scientific uncertainty and risk in the 2013 catch advice, and were used by the TRAC as the basis of the 2013 catch advice. Based on the sensitivity analyses, a 2013 quota of 200 mt would have a high probability that F would be less than $F_{ref}$, and that SSB would increase. A 2013 quota between 400–500 mt would result in an F that is below $F_{ref}$ (in one of the five sensitivity runs), or that SSB would increase (in the other four sensitivity runs). The 2012 TRAC results indicate that the lower end of the 2013 quota range would have a greater probability that F would be less than $F_{ref}$, and that the adult biomass would increase, than the higher end of the range.

The Council's Scientific and Statistical Committee (SSC) recommended a FY 2013 ABC for GB yellowtail flounder of 200–1,150 mt and determined that the overfishing limit (OFL) is unknown. The SSC noted that a 2013 catch limit of 200 mt would have a low probability of overfishing and would be expected to allow the stock to increase, and that a 2013 catch limit of 400–500 mt would have a greater probability of overfishing than 200 mt, but would likely allow some rebuilding. The SSC also noted that the rationale for a FY 2013 ABC of 400–500 mt is similar to the rationale of its ABC recommendation for FY 2012. The SSC recommended an ABC of 1,150 mt as a backstop measure only, and noted that unintentional bycatch may exceed 500 mt, but total removals should be less than the FY 2012 ABC of 1,150 mt. The SSC noted in its November 2012 report that its recommendation for 1,150 mt was qualitative and not based on the 2012 TRAC assessment, and concluded that this ABC represented a status quo catch limit relative to the FY 2012 ABC.

The SSC also recommended that there should be no directed fishery for GB yellowtail flounder, and that measures should be taken to reduce bycatch as much as possible. In its September 2012 report, the SSC noted that an ABC of 1,150 mt would only be appropriate when management measures have a high probability of resulting in low Fs. The SSC did not provide any detail on what it intended by its recommendation for reducing bycatch, or what management measures it expected the Council to modify to meet this recommendation. Nonetheless, the Council did not adopt or modify any management measures that would necessarily prevent targeting of GB yellowtail flounder, or result in a high probability of low Fs under this ABC alternative. The SSC did not endorse an FY 2013 ABC of 1,150 mt as an appropriate catch level for any directed fishing, and as a result, the Council's proposed ABC of 1,150 mt is not consistent with the SSC's recommendation.

Moreover, NMFS has determined that the 2012 TRAC assessment for GB yellowtail flounder represents the best scientific information available, and notes that the SSC did not reject the 2012 TRAC assessment. The recommendation for a FY 2013 ABC of 1,150 mt is higher than the catch levels suggested by the unadjusted Split Series model results (882 mt). The TRAC indicated that 2013 catches based on the unadjusted model would likely fail to achieve management objectives, and would not appropriately account for the retrospective bias in the assessment. Therefore, based on the 2012 assessment, a FY 2013 ABC of 1,150 mt would almost certainly fail to prevent overfishing. As a result, NMFS has determined that a 2013 catch of 1,150 mt is inconsistent with National Standards 1 and 2 of the Magnuson-Stevens Act, which requires that management measures must prevent overfishing and be based on the best scientific information available. Thus, NMFS disapproves the FY 2013 ABC of 1,150 mt adopted by the Council in Framework 50.

**Approved Measures**

The Framework 50 measures that are approved are described below. All of the measures in Framework 50 are approved except for the FY 2013 ABC for GB yellowtail flounder that was described in the previous section. This final rule also implements FY 2013 management measures for the common pool and recreational fisheries. These measures are not part of Framework 50, and are being implemented under Regional Administrator (RA) authority provided by the FMP.

In addition, this final rule implements three parallel emergency actions under authority provided in section 305(c) of the Magnuson-Stevens Act. The Magnuson-Stevens Act authorizes the Secretary of Commerce (Secretary) to implement emergency rules or interim measures if the Secretary finds that an emergency involving a fishery exists, or

[1] The fishing mortality limit reference ($F_{ref}$) for GB yellowtail flounder (0.25) was negotiated as part of the U.S./Canada Resource Sharing Understanding. The Transboundary Management Guidance Committee's harvest strategy is to maintain a low to neutral risk of exceeding $F_{ref}$. The $F_{ref}$ for GB yellowtail flounder is equal to $F_{MSY}$ (0.25) that is applied in the U.S. to calculate overfishing limits consistent with the Magnuson-Stevens Act. See Item 3 for more information on the joint (U.S./Canada) management of transboundary GB groundfish stocks.

that interim measures are needed to reduce overfishing. The Secretary can also implement emergency rules or interim measures if the Council finds that one of these factors exists and requests that the Secretary act. NMFS issued guidance defining when an emergency involving a fishery exists (62 FR 44421; August 21, 1997). This guidance defines an emergency as a situation that: (1) Arose from recent, unforeseen events; (2) presents a serious conservation or management problem in the fishery; and (3) can be addressed through interim emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and the deliberative consideration of the impacts on participants to the same extent as would be expected under the formal rulemaking process (if the emergency rule is being implemented without the opportunity for prior public comment). NMFS policy guidelines also state that an emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or preserve a significant economic opportunity that otherwise might be lost.

NMFS, on behalf of the Secretary, is using section 305(c) emergency rulemaking authority to:

- Implement FY 2013 GB yellowtail flounder catch limits that differ from the Council's recommended levels;
- Increase the FY 2013 white hake catch limits from those proposed in Framework 50; and
- Modify the maximum allowable carryover for GOM cod that is available to sectors from FY 2012 to FY 2013.

Rationale for how each of these actions satisfies the criteria for emergency rulemaking is provided within their respective sections later in this preamble.

An additional set of measures to modify sector carryover provisions for FY 2014 and beyond are being implemented under authority of section 305(d) of the Magnuson-Stevens Act, which says that the Secretary may independently promulgate regulations necessary to ensure that fishery management plans or amendments are carried out, and implemented, in accordance with the Magnuson-Stevens Act. These measures are necessary to reconcile conflicts between the sector carryover program and the conservation objectives of the FMP as well as to clarify how to account for carryover catch in a manner consistent with the National Standards of the Magnuson-Stevens Act.

*1. SNE/MA Winter Flounder Rebuilding Program*

The current rebuilding strategy for SNE/MA winter flounder was implemented in 2004 with a targeted rebuilding end date of 2014 with a median probability of success. In 2008, data showed that the stock would not rebuild by 2014, even in the absence of all fishing mortality, but would likely rebuild between 2015 and 2016. As a result, Amendment 16 to the FMP (Amendment 16) adopted management measures that would result in Fs as close to zero as practicable. The stock is not currently allocated to sectors, and possession is prohibited by commercial and recreational vessels.

A benchmark assessment was completed in June 2011 for SNE/MA winter flounder and concluded that there was less than a 1-percent chance that SNE/MA winter flounder would rebuild by 2014, even if no fishing mortality were allowed from 2012 to 2014. Based on the assessment results, NMFS determined that SNE/MA winter flounder was not making adequate rebuilding progress. Section 304(e)(7) of the Magnuson-Stevens Act says that, if the Secretary finds that an FMP has not resulted in adequate progress toward ending overfishing and rebuilding, the Secretary must immediately notify the Council and recommend conservation and management measures that would achieve adequate progress. Therefore, on behalf of the Secretary, NMFS notified the Council in May 2012 that the SNE/MA winter flounder rebuilding program was not making adequate progress. As a result, NMFS also notified the Council that it must implement a revised rebuilding plan for the stock within 2 years, or by May 1, 2014, consistent with the rebuilding requirements of the Magnuson-Stevens Act. In December 2012, the Council developed a proposal to re-specify the ABC for SNE/MA winter flounder to achieve an ACL of at least 1,400 mt while continuing to prevent overfishing. The Council also proposed to allocate this stock to sectors beginning in FY 2013. To allow the Council's proposed revisions to the management approach for SNE/MA winter flounder (see Item 2 of this preamble for more information), NMFS notified the Council that it must revise the rebuilding program for this stock.

Therefore, this action revises the rebuilding strategy for SNE/MA winter flounder to rebuild the stock by 2023 with a median probability of success. During the rebuilding program, catch limits will be set based on the F that would rebuild the stock within its rebuilding timeframe ($F_{rebuild}$). However, groundfish stock projections have recently demonstrated a tendency to overestimate stock growth. Therefore, short-term catch advice for SNE/MA winter flounder could reduce catches from $F_{rebuild}$ in order to account for the scientific uncertainty in the projections. If SNE/MA winter flounder stock size increases more rapidly than originally projected, $F_{rebuild}$ will be recalculated, which could allow increased catch limits in the future.

The minimum rebuilding time ($T_{min}$) is the amount of time a stock is expected to take to rebuild to its MSY biomass level in the absence of any fishing mortality. For SNE/MA winter flounder, $T_{min}$ is 6 years (from 2013), or 2019. Because the stock can rebuild in less than 10 years in the absence of all fishing mortality, the maximum rebuilding period for SNE/MA winter flounder is 10 years. A rebuilding end date of 2023 rebuilds the stock as quickly as possible taking into account the needs of fishing communities. This rebuilding strategy would return greater net benefits than a rebuilding strategy that targets an end date between 2019 and 2023.

*2. SNE/MA Winter Flounder Management Measures*

Landing Restrictions

As described in Item 1 of this preamble, the prohibition on retention for SNE/MA winter flounder was adopted by Amendment 16 to keep Fs as close to zero as practicable in order to rebuild this stock. This measure has effectively reduced fishing mortality and overfishing is not occurring for this stock. At its December 2012 meeting, the Council developed measures to modify the management program for SNE/MA winter flounder as one way to help mitigate the anticipated impacts of the reductions in the FY 2013 catch limits.

This action allocates SNE/MA winter flounder to sectors, and as described below, subjects the stock to an inseason AM that closes the stock area to sectors once their Annual Catch Entitlement is caught. As adopted by Amendment 16, each vessel's potential sector contribution (PSC) for SNE/MA winter flounder will be calculated using dealer landings during FYs 1996 through 2006. In addition, this action allows commercial and recreational vessels to land SNE/MA winter flounder. Sector vessels are required to land all legal-sized SNE/MA winter flounder, and common pool vessels may land legal-sized fish within the trip limit, or any other inseason restrictions, specified by

the RA. The minimum fish size for SNE/MA winter flounder for both commercial and recreational vessels is 12 inches (30.5 cm). Initial FY 2013 trip limits for common pool vessels are provided in Item 8 of this preamble.

Allowing landings of SNE/MA winter flounder is expected to provide additional fishing opportunities for groundfish vessels in FY 2013 that will help offset low quotas for some groundfish stocks, and promote OY in the fishery. Landings of the stock will also provide the opportunity to collect biological samples from landed fish after possession has been prohibited in recent years.

Commercial Fishery AMs

Since Amendment 16, the AM for SNE/MA winter flounder has been zero possession, and there was no reactive AM for the stock. In December 2011, a Court order in *Oceana* v. *Locke* required that reactive AMs be developed for all of the stocks not allocated to sectors. As a result, Framework 48 proposed an area-based AM for commercial groundfish vessels that would implement gear restrictions for common pool and sector vessels in certain areas if the total ACL for SNE/MA winter flounder was exceeded. This action replaces this area-based AM for sector vessels with the standard inseason sector AM, since the stock is being allocated to sectors. All catch (landings and discards) of SNE/MA winter flounder will be attributed to a sector's ACE. Sector vessels will be required to stop fishing inseason in the SNE/MA winter flounder stock area once the entire sector's ACE is caught, unless the sector leases additional ACE. If a sector exceeds its ACE for the fishing year, it will be subject to an additional AM that will reduce the sector's ACE in the following fishing year by the amount of the overage.

This action also implements an area-based AM for common pool vessels. The AM will be triggered if the common pool sub-ACL is exceeded by more than the management uncertainty buffer. Currently, the management uncertainty buffer for the common pool fishery is 5 percent for SNE/MA winter flounder. The management uncertainty buffers can be revised each time the specifications are set, so the buffer used for the common pool fishery could change in future actions. The common pool fishery makes up only about 2 percent of the total catch of SNE/MA winter flounder, and other components of the fishery typically underharvest their portions of the ABC. As a result, triggering the common pool AM for this stock by an overage of the sub-ACL that exceeds the management uncertainty buffer is not expected to increase the likelihood that the total ACL would be exceeded, or that overfishing would occur, and will help achieve OY in the fishery.

The AM for common pool vessels requires that trawl vessels fishing on a NE multispecies day-at-sea (DAS) must use approved selective trawl gear in the SNE/MA Winter Flounder AM Areas. Approved gears include the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action, or approved for use consistent with the process defined in § 648.85(b)(6). This area-based AM does not restrict common pool vessels fishing with longline or gillnet gear. If triggered, the AM will be implemented in the fishing year following the overage, and would be effective for the entire fishing year. The AM would account for an overage of the common pool sub-ACL of up to 20 percent. If the common pool fishery exceeds its sub-ACL by 20 percent or more, the AM will be implemented, and this measure will be reconsidered by the Council in a future action.

As adopted by Amendment 16, if the total ACL is exceeded, and the overage is caused by a sub-component of the fishery that is not allocated a sub-ACL, and does not have an AM, the overage will be distributed among the components of the fishery that do have a sub-ACL, and if necessary, the pertinent AM will be triggered. If sub-ACLs are allocated to additional fisheries in the future, and AMs developed for those fisheries, the AM for any fishery would only be implemented if it exceeds its sub-ACL, or if the total ACL for the stock is exceeded. If only one fishery exceeds it sub-ACL, only the AM for that fishery will be implemented.

*3. U.S./Canada TACs*

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are managed jointly with Canada through the U.S./Canada Resource Sharing Understanding (Understanding). Each year the Transboundary Management Guidance Committee (TMGC), a government-industry committee made up of representatives from the United States and Canada, recommends a shared TAC for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit reference for each stock ($F_{ref}$ = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). The TMGC's harvest strategy also specifies that when stock conditions are poor, fishing mortality should be further reduced to promote rebuilding. The shared TACs are allocated between the United States and Canada based on a formula that considers historical catch percentages (10-percent weighting) and the current resource distribution based on trawl surveys (90-percent weighting). The U.S./Canada Management Area comprises the entire stock area for GB yellowtail flounder; therefore, the U.S. TAC for this stock is also the U.S. ABC. Eastern GB cod and haddock are sub-units of the total GB cod and haddock stocks. The U.S./Canada TACs for these stocks are a portion of the total ABC.

Assessments for the three transboundary stocks were completed in June 2012 by the TRAC. A detailed summary of the 2012 TRAC assessment can be found at: *http://www2.mar.dfo-mpo.gc.ca/science/trac/tsr.html*. The TMGC met in September 2012 to recommend shared TACs for FY 2013. Based on the results of the 2012 TRAC assessment, the TMGC recommended a shared TAC of 600 mt for eastern GB cod, 10,400 mt for eastern GB haddock, and 500 mt for GB yellowtail flounder. At its November 14, 2012, meeting, the Council recommended the TMGC's guidance for eastern GB cod and haddock for FY 2013, but it did not recommend the TMGC's guidance for GB yellowtail flounder. The Council selected a preferred-alternative for GB yellowtail flounder of 1,150 mt for FY 2013, which is more than double the TMGC's recommendation of 500 mt.

The 2013 U.S./Canada TACs and the percentage share for each country are listed in Table 1. This action approves the eastern GB cod and haddock TACs adopted in Framework 50. However, as described previously in this preamble, NMFS disapproves the FY 2013 GB yellowtail flounder ABC (1,150 mt) adopted by the Council in Framework 50. Because the Council typically sets specifications for multiple years at a time, Framework 47 to the FMP (Framework 47) (77 FR 26104; May 2, 2012) specified an ABC of 1,150 mt for GB yellowtail flounder for FYs 2012–2013. The FY 2013 ABC was based on the 2011 TRAC assessment, which was the best scientific information available, and the SSC and the Council fully intended to replace this ABC in a future management action based on the 2012 TRAC assessment. The FY 2013 ABC that was previously specified in Framework 47 (1,150 mt) is identical to the ABC proposed by the Council in Framework 50 that NMFS is

disapproving because it is would likely result in overfishing and would not be based on the best scientific information available. Thus, NMFS's disapproval of the FY 2013 ABC proposed in Framework 50 leaves the fishery with the same catch limit for this stock, as adopted by, and approved in, Framework 47. Due to serious conservation concerns, and the potential for this catch limit to cause harm to the resource, NMFS is instead implementing a FY 2013 ABC of 500 mt (U.S. TAC 215 mt) through emergency rulemaking, as more fully discussed later in this preamble (see Item 4).

The Understanding requires that any overages of the U.S. TACs for eastern GB cod, eastern GB haddock, or GB yellowtail flounder be deducted from the U.S. TAC in the following fishing year. If FY 2012 catch information indicates that the U.S. fishery exceeded its TAC for any of the shared stocks, NMFS is required to reduce the FY 2013 U.S. TAC for that stock. If an overage occurs, NMFS will announce the necessary overage deduction as soon as possible in FY 2013. As adopted in Framework 48, if any fishery that is allocated a portion of the U.S. TAC exceeds its allocation, which causes an overage of the U.S. TAC, the overage deduction will be applied to this fishery's sub-ACL in the following fishing year.

TABLE 1—FY 2013 U.S./CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES

| TAC | Eastern GB cod | Eastern GB haddock | GB yellowtail flounder emergency action |
|---|---|---|---|
| Total Shared TAC | 600 | 10,400 | 500 |
| U.S. TAC | 96 (16%) | 3,952 (38%) | 215 (43%) |
| Canada TAC | 504 (84%) | 6,448 (62%) | 285 (57%) |

*4. OFLs and ABCs*

The OFL for each stock in the FMP is calculated using the estimated stock size and $F_{MSY}$. The SSC recommends ABCs for each stock that are lower than the OFLs to account for scientific uncertainty. In most cases, the ABCs are calculated using the estimated stock size for a particular year, and are based on the catch associated with 75 percent of $F_{MSY}$, or $F_{rebuild}$, whichever is lower. This is the Council's default ABC control rule that was adopted by Amendment 16. However, in recent years, catch projections for groundfish stocks have been overly optimistic. Catch projections often overestimate stock growth and underestimate fishing mortality. As a result, even catches that were substantially lower than the projected catch resulted in overfishing for some stocks. So, in many cases, the SSC has recommended ABCs that are lower than the catch associated with 75 percent of $F_{MSY}$ or $F_{rebuild}$, or constant catches for FYs 2013–2015, in order to further account for scientific uncertainty. Appendix III to the Framework 50 EA provides additional detail on the OFLs and ABCs adopted by the Council for each stock (see **ADDRESSES** for information on how to get this document).

As part of the biennial review process for the FMP, the Council adopts OFLs and ABCs for 3 years at a time. Although it is expected that the Council will adopt new catch limits every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. This action adopts OFLs and ABCs for FYs 2013–2015 for most groundfish stocks, which are presented in Table 2, with a few exceptions that are described below. For GB cod, haddock, and yellowtail flounder, the Canadian share is deducted from the total ABC (see Table 1 for the Canadian share of these stocks). The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

FYs 2013–2014 catch limits for GB and GOM winter flounder and pollock were adopted in Framework 47 and are restated here. Also, as mentioned above, GB yellowtail flounder is managed jointly with Canada, and a TRAC assessment is conducted each year for the stock. As a result, catch limits are set annually for this stock, and this action only adopts catch limits for FY 2013. As described earlier in this rule, NMFS is disapproving the FY 2013 ABC for GB yellowtail flounder adopted by the Council in Framework 50 (1,150 mt). This action instead implements an OFL of 882 mt and an ABC of 500 mt through emergency rulemaking, based on the most recent assessment information, as more fully discussed later in this section.

Framework 50 adopted an FY 2013 ABC for white hake based on the 2008 benchmark assessment for this stock, which was the best scientific information available to the Council when it developed and took final action on Framework 50. National Standard 2 guidelines (50 CFR 600.315) require that each FMP (and by extension amendment and framework) must take into account the best scientific information available at the time, or preparation, of an action. The guidelines recognize that new information often becomes available between the initial drafting of an action and its submission to NMFS for final review. As a result, and based on established policy, this action approves the FY 2013 ABC for white hake that was adopted by the Council in Framework. However, a new stock assessment for white hake was completed in February 2013, and the final results of this assessment became available in April 2013. The assessment results support a higher FY 2013 ABC than what was adopted by the Council in Framework 50. Therefore, although this action technically approves the FY 2013 ABC for white hake specified in Framework 50, NMFS is simultaneously implementing an emergency rule, as requested by the Council at its April 2013 meeting, to increase the FY 2013 ABC for white hake based on the recent assessment. This emergency rule is described in detail later in this section.

TABLE 2—FYS 2013–2015 OFLS AND U.S. ABCS

[Live weight, mt]

| Stock | 2013 | | 2014 | | 2015 | |
|---|---|---|---|---|---|---|
| | OFL | U.S. ABC | OFL | U.S. ABC | OFL | U.S. ABC |
| GB Cod | 3,279 | 2,002 | 3,570 | 2,002 | 4,191 | 2,002 |
| GOM Cod | 1,635 | 1,550 | 1,917 | 1,550 | 2,639 | 1,550 |
| GB Haddock | 46,185 | 29,335 | 46,268 | 35,699 | 56,293 | 43,606 |
| GOM Haddock | 371 | 290 | 440 | 341 | 561 | 435 |
| GB Yellowtail Flounder Emergency Action | 882 | 215 | ..... | ..... | ..... | ..... |
| SNE/MA Yellowtail Flounder | 1,021 | 700 | 1,042 | 700 | 1,056 | 700 |
| Cape Cod (CC)/GOM Yellowtail Flounder | 713 | 548 | 936 | 548 | 1,194 | 548 |
| American Plaice | 2,035 | 1,557 | 1,981 | 1,515 | 2,021 | 1,544 |
| Witch Flounder | 1,196 | 783 | 1,512 | 783 | 1,846 | 783 |
| GB Winter Flounder | 4,819 | 3,750 | 4,626 | 3,598 | ..... | ..... |
| GOM Winter Flounder | 1,458 | 1,078 | 1,458 | 1,078 | ..... | ..... |
| SNE/MA Winter Flounder | 2,732 | 1,676 | 3,372 | 1,676 | 4,439 | 1,676 |
| Redfish | 15,468 | 10,995 | 16,130 | 11,465 | 16,845 | 11,974 |
| White Hake Emergency Action | 5,462 | 4,177 | ..... | ..... | ..... | ..... |
| White Hake Proposed in Framework 50 | 5,306 | 3,638 | ..... | ..... | ..... | ..... |
| Pollock | 20,060 | 15,600 | 20,554 | 16,000 | ..... | ..... |
| Northern Windowpane Flounder | 202 | 151 | 202 | 151 | 202 | 151 |
| Southern Windowpane Flounder | 730 | 548 | 730 | 548 | 730 | 548 |
| Ocean Pout | 313 | 235 | 313 | 235 | 313 | 235 |
| Atlantic Halibut | 164 | 99 | 180 | 109 | 198 | 119 |
| Atlantic Wolffish | 94 | 70 | 94 | 70 | 94 | 70 |

**Note:** An empty cell indicates that no catch limit is adopted for these years. These catch limits will be specified in a future action.

FYs 2013–2015 Catch Limits for GOM Cod

A benchmark assessment was completed for GOM cod in December 2012, and the 55th Stock Assessment Review Committee (SARC 55) approved two different assessment models. One assessment model (base case model) assumes M = 0.2. The second assessment model ($M_{ramp}$ model) assumes that M has increased from 0.2 to 0.4 in recent years, though the SARC did not conclude that M would remain 0.4 indefinitely. As a result, fishing mortality targets used in the catch projections from both models are based on biological reference points that assume M = 0.2. A detailed summary of the benchmark assessment is available from the Northeast Fisheries Science Center (NEFSC) at: *http://www.nefsc.noaa.gov/saw/saw55/crd1301.pdf*.

As more fully explained below, the SSC recommended two GOM cod constant catch ABC alternatives for FYs 2013–2015: 1,249 and 1,550 mt. The SSC noted that it preferred an ABC of 1,249 mt because it would help conserve the stock and increase the likelihood of rebuilding. Based on the two recommendations from the SSC, the Council selected a preferred alternative for a constant catch of 1,550 mt for FYs 2013–2015. Under the base case model, a constant ABC of 1,550 mt will have at least a 50-percent probability of avoiding overfishing. An ABC of 1,550 mt will be higher than 75% $F_{MSY}$ until FY 2015, which is the Council's ABC control rule adopted in Amendment 16. Under the $M_{ramp}$ model, the ABC implemented in this action is the $F_{MSY}$ catch level in FY 2015, and is above $F_{MSY}$ in FY 2013 and FY 2014. An ABC of 1,550 mt is expected to result in a dramatic reduction from current fishing mortality estimates and would also allow stock growth, but is a departure from the ABC control rule adopted by the Council in Amendment 16.

Amendment 16 specified that the ABC control rule should be used in the absence of information that allows a more explicit determination of scientific uncertainty for a stock. Amendment 16 also stated that, if information was available to more accurately characterize scientific uncertainty, it could be used by the SSC to set the ABC. Furthermore, National Standard 1 gives deference to SSCs to recommend ABCs to Fishery Management Councils that are departures from established control rules. In such situations, SSCs are expected to make use of the best scientific information available, and to provide ample justification on why the control rule is not the best approach for the particular circumstances.

The SSC determined that having two assessment models for GOM cod allowed for a better understanding of the nature and extent of the scientific uncertainty. As a result, the SSC concluded that both ABC alternatives appropriately use the assessment outcomes and account for scientific uncertainty. In addition, although multiple catch projections are available for GOM cod, the assessment did not evaluate an averaged output and did not recommend using an average of the two assessment models. Thus, in this case, NMFS has determined it is not appropriate to average the catch projections for GOM cod, and that all of the information must be considered. Lower catch limits will always increase the likelihood that stock growth will occur, and under this rationale, an ABC of 1,249 mt would have greater, and more immediate, increases in biomass than an ABC of 1,550 mt. However, in considering the assessment results and catch projections for both ABC alternatives, a constant catch ABC of 1,550 mt for FYs 2013–2015 will likely end overfishing and result in some stock rebuilding. This constant catch scenario also accounts for the uncertainty in the assessment and the SARC's conclusion that although M may have increased in recent years, it will likely return to 0.2 in the future.

Emergency Rule To Set FY 2013 GB Yellowtail Flounder Catch Limits

As noted earlier in this preamble, NMFS is disapproving the FY 2013 ABC for GB yellowtail flounder that the Council adopted in Framework 50 (1,150 mt), and is instead implementing a FY 2013 OFL of 882 mt and an ABC of 500 mt through emergency rulemaking. This situation meets the criteria for emergency action because it is necessary to address serious

conservation and management concerns resulting from recent, unexpected events. As noted earlier, the Council typically sets specifications for groundfish stocks for multiple years at a time. Although catch limits are set annually for GB yellowtail flounder because the stock is managed jointly with Canada, Framework 47 adopted ABCs for FYs 2012–2013 for the stock. The SSC recommended, and the Council adopted, a FY 2013 ABC of 1,150 mt in Framework 47 as a default catch limit with the intention that this ABC would be updated in a future management action based on the 2012 TRAC assessment. The ABCs adopted for GB yellowtail flounder in Framework 47 were based on the 2011 TRAC assessments and were consistent with the best scientific information available to the Council when it developed and took final action on Framework 47.

The proposed rule for this emergency action incorrectly described that if NMFS disapproved the ABC for GB yellowtail flounder proposed by the Council in Framework 50, there would be no catch limit specified for the fishery. Rather, since NMFS is disapproving the FY 2013 ABC for GB yellowtail flounder in Framework 50, the FY 2013 ABC previously specified in Framework 47 would go into effect on May 1, 2013. This ABC is identical to the ABC that NMFS is disapproving in Framework 50. As a result, based on the 2012 TRAC assessment, the default ABC would likely result in overfishing, which poses a serious conservation concern for the stock, and has the potential to cause harm to the resource. This would undermine the joint management of this stock with Canada under the Understanding, fail to end overfishing for the stock, and may not allow for any stock rebuilding.

In addition, this issue was controversial during the development of Framework 50, and both an ABC of 500 and 1,150 mt were considered by the Council based on the SSC's recommendations. The Council selected an FY 2013 ABC of 1,150 mt as the preferred alternative in Framework 50 at its November meeting. However, the Council delayed final action on Framework 50 until its January 2013 meeting. Due to the controversial nature of this issue, until the Council took final action on Framework 50, it was unclear whether the Council would select a different preferred alternative for GB yellowtail flounder. Although initial review by NMFS suggested that the Council's preferred alternative of 1,150 mt did not appear to be consistent with the best scientific information available, the SSC's recommendation was difficult to interpret, and NMFS requested specific public comment on this determination, and other factors that should be considered in setting the FY 2013 ABC for GB yellowtail flounder. NMFS proactively proposed an emergency rulemaking for concern that, in the event the FY 2013 ABC of 1,150 mt was disapproved, the Council would not have sufficient time to complete a management action and adopt a FY 2013 ABC for GB yellowtail flounder by May 1, 2013. Normally, the Council takes final action on a framework in November, and the action is submitted to NMFS in December for approval for the upcoming fishing year beginning on May 1. However, the Council did not take final action on Framework 50 until January 2013, and did not submit the document to NMFS for review and approval until March 22, 2013, which is nearly 3 months after NMFS typically receives the document. Thus, the lateness of the Council's decision, and the difficulty in interpreting the SSC's recommendation for GB yellowtail flounder, resulted in unforeseen events.

As a result of the default FY 2013ABC adopted in Framework 47 that would pose serious conservation concerns, and the unforeseen events described above, NMFS, on behalf of the Secretary, finds that a fishery-related emergency exists, and has determined that this situation meets the emergency criteria set forth by NMFS for emergency rulemaking (62 FR 44421; August 21, 1997).

This final rule implements a FY 2013 OFL of 882 mt and ABC of 500 mt. This ABC results in a U.S. quota of 215 mt after accounting for the Canadian share (see Table 1). The SSC determined that the OFL was unknown. However, the SSC's recommendation for FY 2013 was not based on the 2012 TRAC assessment, and the SSC noted that its ABC recommendation was qualitative. Based on the 2012 TRAC results, which NMFS has determined is the best scientific information available, and using the approved benchmark model that is used to determine stock status, NMFS has calculated the OFL using the standard methodology as defined by Amendment 16. As noted earlier in this section, and defined in Amendment 16, the OFL is calculated by applying $F_{MSY}$ to a biomass estimate. The current assessment for GB yellowtail flounder uses the Split Series model to estimate current stock size and fishing mortality, and this model was approved at the last benchmark assessment for the stock. Using the split series model, the FY 2013 catches at $F_{MSY}$ are 882 mt. Thus, NMFS is implementing a FY 2013 OFL of 882 mt through this final rule. However, as noted earlier in the summary of the 2012 assessment results, the 2012 TRAC recommended that 2013 catches should be considerably below this level to help ensure that overfishing does not occur.

A FY 2013 ABC of 500 mt is consistent with both the TMGC and SSC's recommendations, and is within the range of 2013 catch levels suggested by the sensitivity analyses conducted at the 2012 TRAC assessment. A 2013 catch level of 500 mt would allow some stock rebuilding, and is less than the 2013 catch level based on the unadjusted model results (882 mt) that the TRAC recommended should not be used as the basis for 2013 catch advice. The lower quota of 200 mt included in the 2012 TRAC results has a higher probability of not exceeding $F_{ref}$. But, a 2013 catch of 500 mt would have only a 4-percent chance of exceeding $F_{ref}$ (0.25) in one of the sensitivity analyses performed by the TRAC. This catch level would also result in some stock rebuilding in the other four sensitivity analyses. The 2012 TRAC assessment did not calculate an average output for the models presented, and did not recommend averaging the sensitivity analyses as a basis for catch advice. Thus, NMFS has determined that it is not appropriate to average the five sensitivity analyses, and that all of the analyses should be considered in setting the 2013 ABC. A catch limit of 500 mt would balance the need to account for the retrospective bias in the assessment and allow some stock rebuilding, and would be substantially below the OFL for the stock.

The total ACL and the sub-ACLs for each component of the fishery that are implemented in this final rule under emergency authority based on a FY 2013 ABC of 500 mt are presented in Table 3 (Item 5 of this preamble). The common pool's sub-ACL is further divided into Trimester TACs (Table 7) and Incidental Catch TACs for the special management programs (Tables 6 and 8). The resultant ACLs implemented under Secretarial emergency authority are consistent with the Council's ACL derivation process adopted in Framework 50, and allocations of GB yellowtail flounder to the scallop and small-mesh fisheries adopted in Framework 48, and are based on the best scientific information available.

Emergency Rule To Set FY 2013 White Hake Catch Limits

A white hake benchmark stock assessment (SARC 56) was completed in February 2013. The results of the assessment just recently became available and were published in April

2013. The results of the assessment can be found on the NEFSC's Web site at: *http://www.nefsc.noaa.gov/publications/crd/crd1304/*. This new assessment indicates the white hake stock is no longer overfished and not subject to overfishing. The current projection indicates the stock should achieve its rebuilding target in 2014. In addition, the results of the assessment indicate that the FY 2013 ABC can be increased to 4,177 mt from the ABC that was proposed by the Council in Framework 50 (3,638 mt).

During the development of Framework 50, the Council and NMFS were aware that the new assessment could result in different status determination criteria, status, and catch advice for white hake. However, it was expected that a final report from the 56th SARC would not be available until late spring 2013. This is well after the Council took final action on Framework 50 in January 2013. Thus, as previously discussed, based on National Standard 2 guidelines and established policy, the Council proposed a FY 2013 ABC for white hake based on the 2008 benchmark assessment, which was the best scientific information available to the Council during the development of Framework 50.

The recently completed assessment for white hake is new information that was previously unavailable to either the Council, when it developed and took final action on Framework 50, or NMFS. Although the Council and NMFS anticipated the new assessment would be completed in February 2013, the final results of the assessment could not be predicted. In addition, because the final results of the assessment just recently became available in April 2013, there was no way for the Council to incorporate this new information and submit a management action to NMFS for consideration and implementation by the start of FY 2013 on May 1, 2013. The stock status change and higher catch available for FY 2013 are recently discovered and unforeseen circumstances and events.

NMFS has determined that the current situation is justified as an emergency action resulting from recent, unforeseen events because, by quickly implementing a quota increase for white hake based on the new assessment, economic opportunity that might otherwise be foregone can be avoided. An emergency action to increase the FY 2013 quota for white hake addresses a serious management concern regarding the severe negative impacts caused by low catch limits for many groundfish stocks, and, as explained in this section, the benefits of providing prior public comment on this action are outweighed by the immediate benefits accruing to fishermen. If the normal regulatory process were undertaken to implement the higher white hake catch limit, the increase would not be available until well after the start of FY 2013. White hake is a ubiquitous species in NE waters and, in recent fishing years, the utilization of the white hake catch limit has been high. The FMP requires that fishing effort be reduced, or stopped, if catch of a single stock is projected to reach an ACL, and that AMs be implemented if an ACL is exceeded, to payback an overage and to prevent the ACL from being exceeded again. In addition, some sectors have very small white hake ACE. By ensuring timely implementation of the higher catch limit, the likelihood that fishing operations will be constrained in some way by available white hake quota is reduced. Furthermore, the catch limit reductions for many key groundfish stocks will have substantial economic impacts on fishing operations in FY 2013. Thus, the timely implementation of the higher white hake quota may provide much needed and immediate economic benefits both as directed catch and on the sector lease market. At the request of the Council, NMFS is taking emergency action under section 305(c) of the Magnuson-Stevens Act to increase the FY 2013 catch limit from levels proposed in Framework 50 (78 FR 19368; March 29, 2013).

This final rule implements a FY 2013 ABC of 4,177 mt, in place of the FY 2013 ABC of 3,638 mt that was adopted by the Council in Framework 50, based on the recent assessment completed in February 2013. This ABC is based on 75 percent of $F_{MSY}$, which is the Council's ABC control rule. The FY 2013 ABC for white hake implemented through this emergency rule is 539 mt higher than the ABC proposed in Framework 50, which is a 15-percent increase. The ABC is further divided among the various components of the fishery based on the ACL derivation adopted by the Council in Framework 50. The total ACL and the sub-ACLs for each component of the fishery that are implemented through this emergency rule are presented in Table 3 (see Item 5). The common pool fishery's sub-ACL for white hake is further divided into Trimester TACs, which are presented in Table 7 (see Item 6).

The ABC and resultant ACLs implemented under Secretarial emergency authority are consistent with the Council's ABC control rule and ACL derivation process, and are based on the best scientific information available. In anticipation of potential changes to the status determination criteria (SDC) for white hake as a result of the new assessment, the Council included a preferred alternative in Framework 48 that would allow NMFS to implement updated white hake SDC for FY 2013 if the results were available prior to final rulemaking. As a result, and based on the final assessment report, NMFS published new white hake SDC in the final rule for Framework 48.

*5. Annual Catch Limits*

Unless otherwise noted below, the U.S. ABC for each stock (for each fishing year) is divided into the following fishery components to account for all sources of fishing mortality: State waters (portion of ABC expected to be caught from state waters by vessels that are not subject to the FMP); other sub-components (expected catch by non-groundfish fisheries); Atlantic sea scallop fishery; mid-water trawl fishery; small-mesh fisheries; commercial groundfish fishery; and recreational groundfish fishery. Expected catch from state waters and other sub-components is deducted from the ABC first, and the remaining portion of the ABC is the amount available to the fishery components that receive an allocation for the stock and that are subject to AMs. The scallop fishery receives an allocation for GB and SNE/MA yellowtail flounder and SNE/MA windowpane flounder. The mid-water trawl fishery receives an allocation for GB and GOM haddock, the recreational groundfish fishery receives an allocation for GOM cod and haddock, and the small-mesh fisheries receive an allocation for GB yellowtail flounder.

Once the ABC is divided, sub-annual catch limits (sub-ACLs) are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability, monitoring adequacy, precision of management tools, latent effort, and catch of groundfish in non-groundfish fisheries. Appendix III of the Framework 50 EA provides a detailed description of the process used to estimate management uncertainty and calculate ACLs for this action (see **ADDRESSES** for information on how to get this document).

The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings

and discards from all fisheries (commercial and recreational groundfish fishery, state waters, and non-groundfish fisheries) are counted against the catch limit for each stock. Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. The state waters and other sub-components are not considered ACLs, and represent the expected catch by components of the fishery outside of the FMP that are not subject to AMs.

This action implements ACLs for each groundfish stock based on the ABCs implemented in Item 4 of this preamble. The ACLs for FYs 2013–2015 are listed in Tables 3 through 5. For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative PSCs associated with those sectors. The distribution of the groundfish sub-ACL between the common pool and sectors shown in Tables 3 through 5 are based on FY 2013 PSCs and FY 2012 sector rosters. FY 2013 sector rosters will not be finalized until May 1, 2013, because owners of individual permits signed up to participate in sectors have until the end of FY 2012, or April 30, 2013, to drop out of a sector and fish in the common pool for FY 2013. Therefore, it is possible that the sector and common pool sub-ACLs listed in the tables below may change due to changes in the sector rosters. Updated sub-ACLs will be published in early May, if necessary, to reflect the final FY 2013 sector rosters as of May 1, 2013.

This action also adds SNE/MA yellowtail flounder to the annual process that re-estimates the expected scallop fishery catch in the fishing year. This process was originally adopted by the Council for GB yellowtail flounder in Framework 47. In Framework 50, as part of the specifications for the scallop fishery, the Council expanded this annual process to include SNE/MA yellowtail flounder. This measure was inadvertently omitted from the proposed rule, and as a result, is implemented in this action as an interim final rule. NMFS is accepting public comments on this measure for 45 days. The regulations implementing this measure have been deemed by the Council to be necessary and appropriate. A description of the method, consistent with the measure adopted in Framework 47, is below.

By January 15 of each fishing year, NMFS will re-estimate the scallop fishery's catch of SNE/MA yellowtail flounder. If projected catch by the scallop fishery is less than 90 percent of the scallop fishery's sub-ACL for SNE/MA yellowtail flounder, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the groundfish fishery sub-ACL for SNE/MA yellowtail flounder up to the difference between the original and revised estimates of the scallop fishery's catch. Any increase to the groundfish fishery sub-ACL will be distributed to sectors and the common pool. NMFS will not make any changes to the SNE/MA yellowtail flounder sub-ACL for the scallop fishery if the revised estimate indicates that the scallop fishery will catch 90 percent or more of its sub-ACL. Consistent with the Administrative Procedure Act (APA), NMFS will notify the public of any changes to the SNE/MA yellowtail flounder sub-ACLs. This measure is expected to prevent any loss of SNE/MA yellowtail flounder yield that may occur if the initial catch estimate of this stock by the scallop fishery is too high. Re-estimating the expected SNE/MA yellowtail flounder catch by the scallop fishery mid-season could allow additional SNE/MA yellowtail flounder yield by the commercial groundfish fishery, and will help achieve OY for this stock.

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Table 3 — FY 2013 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

| Stock | Total ACL | Groundfish sub-ACL | Preliminary Sector sub-ACL | Common Pool sub-ACL | Recreational Fishery sub-ACL | Midwater Trawl Fishery sub-ACL | Scallop Fishery sub-ACL | Small-Mesh Fisheries sub-ACL | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|
| | A to H | A+B+C | A | B | C | D | E | F | G | H |
| GB Cod | 1,907 | 1,807 | 1,777 | 30 | | | | | 20 | 80 |
| GOM Cod | 1,470 | 1,316 | 814 | 16 | 486 | | | | 103 | 51 |
| GB Haddock | 27,936 | 26,196 | 26,124 | 72 | | 273 | | | 293 | 1,173 |
| GOM Haddock | 274 | 261 | 186 | 1 | 74 | 3 | | | 4 | 6 |
| GB Yellowtail Flounder Emergency Action | 208.5 | 116.8 | 115.4 | 1.3 | | | 83.4 | 4.0 | | 4.3 |
| SNE/MA Yellowtail Flounder | 665 | 570 | 456 | 114 | | | 61 | | 7 | 28 |
| CC/GOM Yellowtail Flounder | 523 | 479 | 467 | 12 | | | | | 33 | 11 |
| American Plaice | 1,482 | 1,420 | 1,396 | 24 | | | | | 31 | 31 |
| Witch Flounder | 751 | 610 | 601 | 9 | | | | | 23 | 117 |
| GB Winter Flounder | 3,641 | 3,528 | 3,508 | 20 | | | | | | 113 |
| GOM Winter Flounder | 1,040 | 715 | 690 | 24 | | | | | 272 | 54 |
| SNE/MA Winter Flounder | 1,612 | 1,210 | 1,068 | 142 | | | | | 235 | 168 |
| Redfish | 10,462 | 10,132 | 10,091 | 41 | | | | | 110 | 220 |
| White Hake Emergency Action | 3,974 | 3,849 | 3,818 | 31 | | | | | 42 | 84 |
| White Hake Proposed in Framework 50 | 3,462 | 3,352 | 3,326 | 27 | | | | | 36 | 73 |
| Pollock | 14,921 | 12,893 | 12,810 | 83 | | | | | 936 | 1,092 |
| Northern Windowpane Flounder | 144 | 98 | | 98 | | | | | 2 | 44 |
| Southern Windowpane Flounder | 527 | 102 | | 102 | | | 183 | | 55 | 186 |
| Ocean Pout | 220 | 197 | | 197 | | | | | 2 | 21 |
| Atlantic Halibut | 96 | 52 | | 52 | | | | | 40 | 5 |
| Atlantic Wolffish | 65 | 62 | | 62 | | | | | 1 | 3 |

Table 4 — FY 2014 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

| Stock | Total ACL | Groundfish sub-ACL | Preliminary Sector sub-ACL | Preliminary Common Pool sub-ACL | Recreational sub-ACL | Midwater Trawl Fishery sub-ACL | Scallop Fishery sub-ACL | Small-Mesh Fisheries sub-ACL | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|
| | A to H | A+B+C | A | B | C | D | E | F | G | H |
| GB Cod | 1,907 | 1,807 | 1,777 | 30 | | | | | 20 | 80 |
| GOM Cod | 1,470 | 1,316 | 814 | 16 | 486 | | | | 103 | 51 |
| GB Haddock | 33,996 | 31,879 | 31,792 | 87 | | 332 | | | 357 | 1,428 |
| GOM Haddock | 323 | 307 | 218 | 2 | 87 | 3 | | | 5 | 7 |
| GB Yellowtail Flounder | | | | | | | | | | |
| SNE/MA Yellowtail Flounder | 665 | 564 | 451 | 113 | | | 66 | | 7 | 28 |
| CC/GOM Yellowtail Flounder | 523 | 479 | 467 | 12 | | | | | 33 | 11 |
| American Plaice | 1,442 | 1,382 | 1,359 | 23 | | | | | 30 | 30 |
| Witch Flounder | 751 | 610 | 601 | 9 | | | | | 23 | 117 |
| GB Winter Flounder | 3,493 | 3,385 | 3,366 | 20 | | | | | | 108 |
| GOM Winter Flounder | 1,040 | 715 | 690 | 24 | | | | | 272 | 54 |
| SNE/MA Winter Flounder | 1,612 | 1,210 | 1,068 | 142 | | | | | 235 | 168 |
| Redfish | 10,909 | 10,565 | 10,522 | 43 | | | | | 115 | 229 |
| White Hake | | | | | | | | | | |
| Pollock | 15,304 | 13,224 | 13,139 | 85 | | | | | 960 | 1,120 |
| Northern Windowpane Flounder | 144 | 98 | | 98 | | | | | 2 | 44 |
| Southern Windowpane Flounder | 527 | 102 | | 102 | | | 183 | | 55 | 186 |
| Ocean Pout | 220 | 197 | | 197 | | | | | 2 | 21 |
| Atlantic Halibut | 106 | 57 | | 57 | | | | | 44 | 5 |
| Atlantic Wolffish | 65 | 62 | | 62 | | | | | 1 | 3 |

Table 5 — FY 2015 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

| Stock | Total ACL | Groundfish sub-ACL | Preliminary Sector sub-ACL | Preliminary Common Pool sub-ACL | Recreational sub-ACL | Midwater Trawl Fishery sub-ACL | Scallop Fishery sub-ACL | Small-Mesh Fisheries sub-ACL | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|
| | A to H | A+B+C | A | B | C | D | E | F | G | H |
| GB Cod | 1,907 | 1,807 | 1,777 | 30 | | | | | 20 | 80 |
| GOM Cod | 1,470 | 1,316 | 814 | 16 | 486 | | | | 103 | 51 |
| GB Haddock | 41,526 | 38,940 | 38,833 | 107 | | 406 | | | 436 | 1,744 |
| GOM Haddock | 412 | 392 | 279 | 2 | 111 | 4 | | | 6 | 9 |
| GB Yellowtail Flounder | | | | | | | | | | |
| SNE/MA Yellowtail Flounder | 665 | 566 | 453 | 113 | | | 64 | | 7 | 28 |
| CC/GOM Yellowtail Flounder | 523 | 479 | 467 | 12 | | | | | 33 | 11 |
| American Plaice | 1,470 | 1,408 | 1,385 | 24 | | | | | 31 | 31 |
| Witch Flounder | 751 | 610 | 601 | 9 | | | | | 23 | 117 |
| GB Winter Flounder | | | | | | | | | | |
| GOM Winter Flounder | | | | | | | | | | |
| SNE/MA Winter Flounder | 1,612 | 1,210 | 1,068 | 142 | | | | | 235 | 168 |
| Redfish | 11,393 | 11,034 | 10,989 | 45 | | | | | 120 | 239 |
| White Hake | | | | | | | | | | |
| Pollock | | | | | | | | | | |
| Northern Windowpane Flounder | 144 | 98 | | 98 | | | | | 2 | 44 |
| Southern Windowpane Flounder | 527 | 102 | | 102 | | | 183 | | 55 | 186 |
| Ocean Pout | 220 | 197 | | 197 | | | | | 2 | 21 |
| Atlantic Halibut | 116 | 62 | | 62 | | | | | 48 | 6 |
| Atlantic Wolffish | 65 | 62 | | 62 | | | | | 1 | 3 |

*6. Common Pool Trimester Total Allowable Catches*

The common pool sub-ACL for each stock (except for SNE/MA winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) is divided into trimester TACs. Table 6 shows the percentage of the common pool sub-ACL that is allocated to each trimester for each stock. The distribution of the common pool sub-ACLs into trimesters was adopted by Amendment 16 and is based on recent landing patterns. Once NMFS projects that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock is closed for the remainder of the trimester. The area closure applies to all common pool vessels fishing with gear capable of catching the pertinent stock. The trimester TAC areas for each stock, as well as the applicable gear types, are defined at § 648.82(n)(2). This information can also be obtained from NERO (see **FOR FURTHER INFORMATION CONTACT**). Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Overages of the trimester TAC in Trimester 1 or Trimester 2 will be deducted from the Trimester 3 TAC. Any overages of the total sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

The FYs 2013–2015 common pool trimester TACs are listed in Table 7 based on the ACLs and sub-ACLs implemented in this action (see Item 5 of this preamble). As described earlier, vessels have until April 30, 2013, to drop out of a sector, and common pool vessels may join a sector through April 30, 2013. If the sub-ACLs included in this rule change as a result of changes to FY 2013 sector rosters, the trimester TACs will also change. Based on the final sector rosters, NMFS will publish a rule in early May 2013, if necessary, to update the common pool trimester TACs, and notify the public of these changes.

TABLE 6—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER

| Stock | Percentage of common pool sub-ACL | | |
|---|---|---|---|
| | Trimester 1 | Trimester 2 | Trimester 3 |
| GB Cod | 25 | 37 | 38 |
| GOM Cod | 27 | 36 | 37 |
| GB Haddock | 27 | 33 | 40 |
| GOM Haddock | 27 | 26 | 47 |
| GB Yellowtail Flounder | 19 | 30 | 52 |
| SNE/MA Yellowtail Flounder | 21 | 37 | 42 |
| CC/GOM Yellowtail Flounder | 35 | 35 | 30 |
| American Plaice | 24 | 36 | 40 |
| Witch Flounder | 27 | 31 | 42 |
| GB Winter Flounder | 8 | 24 | 69 |
| GOM Winter Flounder | 37 | 38 | 25 |
| Redfish | 25 | 31 | 44 |
| White Hake | 38 | 31 | 31 |
| Pollock | 28 | 35 | 37 |

Table 7—FYs 2013-2015 Common Pool Trimester TACs (mt, live weight)

| Stock | 2013 | | | 2014 | | | 2015 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Trimester 1 | Trimester 2 | Trimester 3 | Trimester 1 | Trimester 2 | Trimester 3 | Trimester 1 | Trimester 2 | Trimester 3 |
| GB Cod | 7.4 | 10.9 | 11.2 | 7.4 | 10.9 | 11.2 | 7.4 | 10.9 | 11.2 |
| GOM Cod | 4.21 | 5.62 | 5.77 | 4.2 | 5.6 | 5.8 | 4.2 | 5.6 | 5.8 |
| GB Haddock | 19.4 | 23.7 | 28.7 | 23.6 | 28.9 | 35.0 | 28.8 | 35.2 | 42.7 |
| GOM Haddock | 0.4 | 0.3 | 0.6 | 0.4 | 0.4 | 0.7 | 0.5 | 0.5 | 0.9 |
| GB Yellowtail Flounder Emergency Action | 0.3 | 0.4 | 0.7 | | | | | | |
| SNE/MA Yellowtail Flounder | 23.9 | 42.2 | 47.9 | 23.7 | 41.8 | 47.4 | 23.8 | 41.9 | 47.6 |
| CC/GOM Yellowtail Flounder | 4.1 | 4.1 | 3.5 | 4.1 | 4.1 | 3.5 | 4.1 | 4.1 | 3.5 |
| American Plaice | 5.7 | 8.5 | 9.5 | 5.5 | 8.3 | 9.2 | 5.6 | 8.5 | 9.4 |
| Witch Flounder | 2.5 | 2.9 | 3.9 | 2.5 | 2.9 | 3.9 | 2.5 | 2.9 | 3.9 |
| GB Winter Flounder | 1.6 | 4.9 | 14.1 | 1.6 | 4.7 | 13.6 | | | |
| GOM Winter Flounder | 9.0 | 9.3 | 6.1 | 9.0 | 9.3 | 6.1 | | | |
| Redfish | 10.3 | 12.7 | 18.1 | 10.7 | 13.3 | 18.8 | 11.2 | 13.9 | 19.7 |
| White Hake Emergency Action | 11.8 | 9.6 | 9.6 | | | | | | |
| White Hake Proposed in Framework 50 | 10.2 | 8.3 | 8.3 | | | | | | |
| Pollock | 23.3 | 29.1 | 30.8 | 23.9 | 29.9 | 31.6 | | | |

*7. Common Pool Incidental Catch Total Allowable Catches and Allocations to Special Management Programs*

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B DAS Program), in order to limit the catch of these stocks under each program. Table 8 shows the percentage of the common pool sub-ACL allocated to the special management programs and the FYs 2013–2015 Incidental Catch TACs for each stock. Beginning in FY 2013, GB winter flounder and SNE/MA yellowtail flounder are removed from the list of stocks of concern because the stocks are no longer overfished and overfishing is not occurring. In addition, the emergency rulemaking to increase the FY 2013 ABC for white hake removes white hake from the list of stocks of concern because the stock is no longer overfished and overfishing is not occurring. GB winter flounder and white hake are projected to be rebuilt by 2014, and SNE/MA yellowtail flounder was declared rebuilt in November 2012. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is not counted against the Incidental Catch TACs. Any catch from these trips would be counted against the common pool sub-ACL.

The Incidental Catch TAC is further divided among each special management program based on the percentages listed in Table 9. The FYs 2013–2015 Incidental Catch TACs for each special management program are listed in Table 10. The FY 2013 sector rosters will not be finalized until May 1, 2013, for the reasons mentioned earlier in this preamble. Therefore, the common pool sub-ACL may change due to changes to the FY 2013 sector rosters. Updated incidental catch TACs will be published in a future adjustment rule, if necessary, based on the final sector rosters as of May 1, 2013.

TABLE 8—FYS 2013–2015 COMMON POOL INCIDENTAL CATCH TACS

[Mt, live weight]

| Stock | Percentage of common pool sub-ACL | 2013 | 2014 | 2015 |
|---|---|---|---|---|
| GB Cod | 2 | 0.6 | 0.6 | 0.6 |
| GOM Cod | 1 | 0.2 | 0.2 | 0.2 |
| GB Yellowtail Flounder Emergency Action | 2 | 0.03 | | |
| CC/GOM Yellowtail Flounder | 1 | 0.1 | 0.1 | 0.1 |
| American Plaice | 5 | 1.2 | 1.2 | 1.2 |
| Witch Flounder | 5 | 0.5 | 0.5 | 0.5 |
| SNE/MA Winter Flounder | 1 | 1.4 | 1.4 | 1.4 |

TABLE 9—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

| Stock | Regular B DAS program (percent) | Closed area I hook gear haddock SAP (percent) | Eastern US/CA haddock SAP (percent) |
|---|---|---|---|
| GB Cod | 50 | 16 | 34 |
| GOM Cod | 100 | | |
| GB Yellowtail Flounder | 50 | 50 | |
| CC/GOM Yellowtail Flounder | 100 | | |
| American Plaice | 100 | | |
| Witch Flounder | 100 | | |
| SNE/MA Winter Flounder | 100 | | |

TABLE 10—FYS 2013–2015 INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM

[Mt, live weight]

| Stock | Regular B DAS program | | | Closed area I hook gear haddock SAP | | | Eastern U.S./Canada haddock SAP | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 | 2013 | 2014 | 2015 |
| GB Cod | 0.3 | 0.3 | 0.3 | 0.1 | 0.1 | 0.1 | 0.2 | 0.2 | 0.2 |
| GOM Cod | 0.2 | 0.2 | 0.2 | ..... | ..... | ..... | ..... | ..... | ..... |
| GB Yellowtail Flounder Emergency Action | 0.01 | ..... | ..... | ..... | ..... | ..... | 0.01 | ..... | ..... |
| CC/GOM Yellowtail Flounder | 0.1 | 0.1 | 0.1 | ..... | ..... | ..... | ..... | ..... | ..... |
| American Plaice | 1.2 | 1.2 | 1.2 | ..... | ..... | ..... | ..... | ..... | ..... |
| Witch Flounder | 0.5 | 0.5 | 0.5 | ..... | ..... | ..... | ..... | ..... | ..... |
| SNE/MA Winter Flounder | 1.4 | 1.4 | 1.4 | ..... | ..... | ..... | ..... | ..... | ..... |

*8. Annual Measures for FY 2013 Under RA Authority*

The FMP provides authority for the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. These measures are not part of Framework 50, and were not specifically proposed by the Council, but are implemented in conjunction with Framework 50 for expediency purposes and because they relate to the specifications adopted in Framework 50. The RA can modify these measures if current information indicates changes are necessary. Any inseason adjustments to these measures will be implemented through an inseason action consistent with the APA.

The RA has the authority to modify common pool trip limits in order to prevent exceeding the common pool sub-ACLs and facilitate harvest so total catch approaches the common pool sub-ACLs. Table 11 provides the initial FY 2013 trip limits for common pool vessels. Table 12 provides the initial FY 2013 cod trip limits for vessels fishing with a Handgear A, Handgear B, or Small Vessel Category permit. These FY 2013 trip limits were developed after considering changes to the FY 2013 common pool sub-ACLs and sector rosters, trimester TACs for FY 2013, catch rates of each stock during FY 2012, public comments received, and other available information. NMFS will monitor common pool catch using dealer-reported landings, VMS catch reports, and other available information, and if necessary, will adjust the common pool management measures to help ensure the common pool fishery catches, but does not exceeds its sub-ACLs.

The default cod trip limit is 300 lb (136.1 kg) per trip for Handgear A vessels, unless either the GOM or GB cod trip limit applicable to vessels fishing under a NE multispecies DAS is adjusted below 300 lb (136.1 kg). If the trip limit for NE multispecies DAS vessels drops below 300 lb (136.1 kg), the Handgear A trip limit must be adjusted to be the same. The regulations also require that the Handgear B vessel trip limit for GOM and GB cod be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)) to the default cod trip limits applicable to NE multispecies DAS vessels. The default cod trip limit for NE multispecies common pool vessels fishing under a Category A DAS is 800 lb (362.9 kg) per DAS for GOM cod and 2,000 lb (907.2 kg) per DAS for GB cod. For vessels fishing under a Category A DAS, the initial FY 2013 trip limit for GOM cod is 88 percent lower than the default limit specified in the regulations. Therefore, the initial FY 2013 GOM cod trip limits for Handgear A and B vessels are adjusted downwards, as required, from the default cod trip limit for these vessels. The default cod trip limits for GB cod for Handgear A and B vessels are implemented for FY 2013.

Vessels with a Small Vessel category permit can possess up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined per trip. For FY 2013, the maximum amount of cod and haddock (within the 300-lb (136.1-kg) trip limit) is adjusted proportionally to the trip limits applicable to NE multispecies DAS vessels (see Table 12). Vessels with a Small Vessel category permit can possess a maximum of 100 lb (45.4 kg) of GOM cod and 100 lb (45.4 kg) of GOM haddock within their 300-lb (136.1-kg) trip limit of cod, haddock, and yellowtail flounder, combined.

TABLE 11—INITIAL FY 2013 COMMON POOL TRIP LIMITS

| Stock | Initial FY 2013 trip limit |
|---|---|
| GOM cod | 100 lb (45.4 kg) per DAS, up to 300 lb (136.1 kg) per trip. |
| GB cod | 2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip. |
| GOM haddock | 100 lb (45.4 kg) per trip. |
| GB haddock | 10,000 lb (4,536 kg) per trip. |
| GOM winter flounder | 500 lb (226.8 kg) per trip. |
| SNE/MA winter flounder | 5,000 lb (2,268 kg) per DAS up to 15,000 lb (6,804 kg) per trip. |
| GB winter flounder | 1,000 lb (453.6 kg) per trip. |
| CC/GOM yellowtail flounder | 500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip. |
| GB yellowtail flounder | 100 lb (45.4 kg) per trip. |
| SNE/MA yellowtail flounder | 2,000 lb (907.2 kg) per DAS, up to 6,000 lb (2,722 kg) per trip. |
| American plaice | unrestricted. |
| Pollock | 10,000 lb (4,536 kg) per trip. |
| Witch flounder | 500 lb (226.8 kg) per trip. |
| White hake | 500 lb (226.8 kg) per trip. |
| Redfish | unrestricted. |

TABLE 12—INITIAL FY 2013 COD TRIPS LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS

| Permit | FY 2013 GOM cod trip limit | FY 2013 GB cod trip limit |
|---|---|---|
| Handgear A | 100 lb (45.4 kg) per trip | 300 lb (136.1 kg) per trip. |
| Handgear B | 25 lb (11.3 kg) per trip | 75 lb (34.0 kg) per trip. |
| Small Vessel Category | 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; Maximum of 100 lb (45.4 kg) of GOM cod and 100 lb (45.4 kg) of GOM haddock within the 300-lb combined trip limit. | |

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B to the FMP (70 FR 31323; June 1, 2005) implemented a provision that no trips should be allocated to the Closed Area II

Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,583 kg). This calculation accounts for the projected catch from the area outside of the SAP. Based on the GB yellowtail flounder sub-ACL implemented in this action through emergency rulemaking (257,500 lb (116,800 kg)), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action allocates zero trips to the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2013. Vessels could still fish in this SAP in FY 2013 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels may not fish in this SAP using flounder nets.

*9. FY 2013 Recreational Fishing Measures*

Framework 48 modified the recreational fishery AM and gave the RA authority to adjust recreational management measures for the upcoming fishing year to ensure the recreational fishery catches, but does not exceed, its sub-ACL. These measures are not part of Framework 50, but are implemented in conjunction with Framework 50 for expediency purposes and because they relate to the specifications adopted in Framework 50. The Council convened its Recreational Advisory Panel (RAP) on February 15, 2013, in order to provide NMFS guidance on FY 2013 management measures. For GOM cod, the RAP recommended a 9-fish possession limit and a minimum fish size of 19 in (48.3 cm). These are status quo management measures from FY 2012. For GOM haddock, the RAP recommended an unlimited possession limit (status quo from FY 2012) and an increase to the minimum fish size from 18 in (45.7 cm) to 21 in (53.3 cm).

Consistent with the RAP's recommendation, this action implements a 9-fish possession limit and a minimum fish size of 19 in (48.3 cm) for GOM cod in FY 2013. For GOM haddock, this action implements an unlimited possession limit and a minimum fish size of 21 in (53.3 cm) for FY 2013. The FY 2013 recreational management measures are presented in Table 13. These measures were developed using the Bio-economic Length-Structured Angler Simulation Tool, which was developed by the NEFSC. This model was peer-reviewed by a panel that consisted of members of the New England Fishery Management Council and Mid-Atlantic Fishery Management Council's SSCs, as well as an outside expert in recreational fisheries economics.

Analysis shows that recreational removals would likely decline in FY 2013, primarily due to changing stock conditions. As a result, FY 2013 recreational measures are not drastically different than the FY 2012 measures, even though the reductions in the FY 2013 catch limits are relatively large. This action increases the minimum fish size from 18 in (45.7 cm) to 21 in (53.3 cm), for GOM haddock, with no bag limit. The bag limit for GOM haddock does not affect recreational haddock mortality very much because analysis shows that there would be fewer trips encountering legal-sized haddock in FY 2013. This translates into lower expected fishing effort and landings. The minimum fish size for GOM haddock has a greater impact on recreational haddock and cod catch, as well as the total number of recreational trips. Analysis shows that the FY 2013 recreational measures in this action would have more than a 50-percent probability of preventing overages of the recreational sub-ACLs for GOM cod and haddock.

TABLE 13—FY 2013 RECREATIONAL MANAGEMENT MEASURES FOR GOM COD AND HADDOCK

| Stock | Bag limit | Minimum size |
|---|---|---|
| GOM Cod ..... | 9 ..... | 19 in (48.3 cm). |
| GOM Haddock. | Unlimited ..... | 21 in (53.3 cm). |

*10. Carryover of Unused Sector Annual Catch Entitlement*

*Overview of measures for FY 2013.* NMFS is taking the carryover-related actions described in the Framework 50 proposed rule (78 FR 19368; March 29, 2013). Specifically, NMFS is using emergency rulemaking authority to reduce the amount of unused FY 2012 GOM cod sector ACE that may be carried over for use in FY 2013. This is necessary to ensure the total potential catch (i.e., ACL + potential carryover catch) does not exceed the stock's overfishing limit. Consistent with the approach outlined in the proposed rule, NMFS is not modifying the status quo carryover amounts specified at § 648.87(a)(1)(i)(C) for all other carryover-eligible stocks. In addition, under its rulemaking authority at section 305(d) of the Magnuson-Stevens Act, NMFS clarifies that it will account for any carryover used by sectors in FY 2013 consistent with the past two fishing years (2011 and 2012) by not attributing the 2012 carryover to the sector sub-ACL in determining if an overage has occurred and AMs triggered. NMFS also clarifies how it will account for carryover catch for FY 2014 and beyond.

The emergency action and carryover accounting practice for FY 2013, as more fully explained in the proposed rule and Comments and Responses, are a 1-year bridge to FY 2014 accounting practices to ensure stability and predictability for sectors in transitioning from FY 2012 to FY 2013. As explained below, NMFS is using its 305(d) authority to ensure that carryover provisions are fully consistent with National Standard 1 guidance, other National Standards and the Magnuson-Stevens Act in the context of the unusual circumstances presented this fishing year.

*GOM cod emergency measures.* Pursuant to NMFS emergency rulemaking authority at section 305(c) of the Magnuson-Stevens Act, this action reduces the 10-percent maximum carryover allowance from FY 2012 to FY 2013. The carryover provided under § 648.87(a)(1)(i)(C) for GOM cod ACE is reduced from 10 percent to 1.85 percent. This action is necessary to better ensure that the GOM cod stock is no longer subject to overfishing in FY 2013.

To utilize Magnuson-Stevens Act section 305(c) emergency rulemaking, NMFS, on behalf of the Secretary, must make determinations that a situation satisfies the emergency criteria set forth in statute and NMFS policy guidance. NMFS guidance (62 FR 44421; August 21, 1997) for defining an emergency establishes than an emergency situation exists as situations that result from recent, unforeseen event(s), poses a serious conservation or management problem in the fishery in question, and can be addressed through emergency rulemaking whose benefits outweigh the value of the normal Administrative Procedure Act (APA) notice-and-comment rulemaking process if the emergency is implemented without prior public comment. Because this emergency is being implemented after the opportunity for public comment, it is not necessary to show the benefits of the emergency action outweigh the value of the normal APA process.

Analysis indicates that providing up to 10 percent of the FY 2012 GOM cod sector ACE as carryover in FY 2013 would result in a total potential catch that is 12 percent above the OFL of 1,635 mt. Though the potential catch may not be fully caught in FY 2013, NMFS considers that allowing a potential catch in excess of OFL poses

a serious conservation and management threat to the GOM cod fishery that results from recent, unforeseen events. The updated stock status and catch advice resulting from the December 2012 SARC 55 GOM cod stock assessment was not finalized and presented until January 2013 just before the January 29–31 Council meeting. Consequently, the potential impact of a full 10-percent carryover was not fully evaluated until March 22, 2013, when the Council formally submitted Framework 50. The submitted analysis contained the critical examination of the potential impact of not only the Council's recommended catch limits, but also the potential impact of allowing up to 10 percent carryover for all stocks. By this time it was clearly too late for the Council to act before the beginning of FY 2013 and the only recourse to address the very real potential of overfishing of GOM cod due to the carryover provision was this emergency action. Accordingly, NMFS finds that all the necessary criteria set forth in statute and guidance concerning emergency actions under section 305(c) have been met. Therefore, to prevent potential overfishing the GOM cod stock in FY 2013, NMFS is compelled, and authorized, to take action to reduce GOM cod maximum carryover to 1.85 percent.

*Carryover for other stocks in FY 2013.* Current regulatory provisions based on Amendment 16, allow up to 10 percent of unused FY 2012 ACE for all stocks except GB yellowtail flounder to be carried over for use in FY 2013. GB yellowtail flounder ACE is not eligible to be carried over because no such provision exists in the Understanding, under which the stock is jointly managed. Neither Amendment 16, nor the implementing regulations, however, clarified how allowed carryover was to be accounted for in light of ACEs and ACLs and AMs. Without such clarification, as NMFS has recently advised on several occasions, carryover may result in sectors exceeding their ACEs and ACLs without triggering AMs thus potentially jeopardizing conservation objectives. Further, if all catch, including carryover is attributed to ACLs the potential catch would often exceed ACLs and in some circumstances like FY 2013 exceed ABC. NMFS has determined that allowing a carryover system that provides a potential catch level greater than ACL or ABC is not consistent with National Standard 1. More extensive discussion of why the Amendment 16 carryover program is inconsistent with National Standard 1 can be found in the preamble of the proposed rule and in the Comments and Responses section of this rule.

This action provides clarification for 2013 on a transitional basis, and for 2014 and beyond if the Council fails to take action to address carryover concerns to address the apparent conflict between the implementation of the carryover provision and the National Standard 1 Guidelines.

As more fully explained and justified in the proposed rule, and taking into account comments on the proposed rule, NMFS will continue in FY 2013 to account for any carryover catch used independent of the sector sub-ACL as it has in the last 2 years. This means that for carryover amounts for FY 2013 only, up to 1.85 percent for GOM cod and up to 10 percent of the FY 2012 sector ACE for all other carryover-eligible stocks, NMFS will first attribute FY 2013 catches to the available carryover for each stock but not against the FY 2013 ACEs and ACLs for accountability purposes. For example, if a sector harvests 97 percent of a carryover-eligible stock other than GOM cod, the sector would be permitted to use 3 percent of its FY 2012 ACE in FY 2013. NMFS would count this 3 percent first and, once the 3 percent is fully utilized, begin counting any catch thereafter against the sector's FY 2013 ACE. AMs would not be triggered using catches attributed to carryover amounts in FY 2013.

This approach has not been problematic for the last two years as the total catch, inclusive of carryover utilized, has not caused any fishery-level ACLs to be exceeded. The use of carryover caused the total sector catch of white hake to exceed the sector sub-ACL in 2011; however, given NMFS' carryover accounting practice and that the total white hake ACL was not exceeded, no AM was required. Additional information and discussion on the FYs 2010 and 2011 carryover accounting is provided in the proposed rule preamble and Appendix V to the Framework 50 EA and is not repeated here.

As more fully explained and justified in the proposed rule and the responses to comments, NMFS found the timing complications previously outlined in this section, at-sea safety concerns, and the need to provide a reasonable and fair transition from the current carryover accounting method to that for 2014 and beyond compelling reasons to not change for FY 2013 how carryover has been accounted for in FYs 2011 and 2012.

NMFS is confident that continuing the past carryover accounting practice on a transitional 1-year basis only will not result in overfishing in FY 2013 and will not undermine longer term conservation objectives. More extensive discussion and rationale for this conclusion is provided in Appendix V to the Framework 50 EA, and is not repeated here. NMFS acknowledges that this approach for FY 2013 does not precisely meet all provisions of the National Standard 1 guidelines or previously provided NMFS guidance. National Standard 1 guidelines specify at 50 CFR 600.310(h)(3) that there are limited circumstances that may not fit standard approaches to management measures set forth in the guidelines, and, that alternative approaches may be used if they are consistent with the Magnuson-Stevens Act. Although NMFS recognizes that varying from the standard approach to management measures specified in National Standard 1 Guidelines is not favored and should be undertaken very sparingly, the unusual and intractable circumstances presented for FY 2013 clearly qualify as the limited circumstances contemplated by the guidelines for flexibility in complying with the standard approach. NMFS finds, therefore, that it has authority and justification for accounting for carryover catch in FY 2013 as proposed and that this approach is consistent with the Magnuson-Stevens Act.

**Carryover From FY 2013 to FY 2014 and Beyond**

NMFS proposed new regulatory text under its Magnuson-Stevens Act section 305(d) authority to clarify how to account for carryover for purposes or ACE and ACLs beginning in FY 2014 and beyond in the March 29, 2013, proposed rule (62 FR 44421). Neither Amendment 16, nor its implementing regulations, provided any type of implementation provisions with respect to carryover, leaving it to NMFS to fill in the regulatory gaps. As more fully explained in the proposed rule and in response to comments, NMFS concludes that the application of the current carryover provision, without this clarification, could lead to inconsistencies with overarching provisions of the Magnuson-Stevens Act and National Standard 1 concerning overfishing and appropriate catch limits. The clarification provided by this action, therefore, is not only justified, but compelled, by section 305(d) of the Magnuson-Stevens Act, which authorizes NMFS, by delegation from the Secretary, to promulgate regulations to ensure that carrying out Council recommended measures are consistent with the Magnuson-Stevens Act and other applicable law.

To be clear, the new regulatory text does not change the allowance of up to 10 percent carryover of uncaught allocations from the previous year as contended by the Council and others in comments on the proposed rule. Rather, the regulatory text specifies how carryover accounting is to be approached for purposes of ACE and ACL. The new text specifies that an automatic *de minimus* amount of carryover will not be counted against ACE or ACL in order to provide some incentive for vessels not to risk safety at sea in the last part of the fishing year. The *de minimus* amount has not yet been determined and NMFS is seeking additional comment on this before deciding the amount. The final rule specifies that changes to the *de minimus* amount shall be specified and announced at least 6 months before the end of a FY consistent with the APA.

For carryover used above this *de minimus* amount, NMFS would count any used carryover catch against the sector sub-ACL for the purposes of determining the appropriate AMs, but not against the sector's ACE. If the overall ACL for a stock is not exceeded, carryover would not be counted toward the AM determination even if a particular sub-ACL was exceeded. In a change from the proposed rule, to ensure that this new text is a clarification and not a change to existing carryover provisions, it provides that the amount of permissible carryover could be reduced, on an annual basis, if requested by the Council. Such a reduction may be warranted, for example, in years where the catch limit is substantially reduced from one year to the next (e.g., FY 2012 to FY 2013 catch reductions).

Based on the public comments received and in acknowledgement that there is sufficient time for carryover to be further discussed and revised through the Council process, NMFS is implementing the proposed measures as an interim final rule to become effective at the start of FY 2014 on May 1, 2014. Additional public comment will be solicited on NMFS's proposed measures for an additional 45 days. NMFS views this as an appropriate approach to foster additional public discussion and allow for possible Council development of carryover provisions that are consistent with applicable legal requirements while ensuring approvable carryover provisions act as a backstop should the Council elect not to develop a new carryover approach for FY 2014 and beyond.

NMFS views the proposed *post hoc* clarification text as an appropriate balance between the intent of the Council-developed Amendment 16 program and the need to have in place compliant measures. It preserves some amount of year-to-year carryover that can be counted on by industry to promote at-sea safety and to better plan end-of-year fishing operations, while ensuring that carryover does not interfere with the ACL–ACE–AM system designed by Amendment 16. Specifically, NMFS believes the proposed approach satisfies the requirements to attribute all sources of fishing mortality to an annual catch component with associated AMs, as outlined by the Magnuson-Stevens Act. The approach allows for potential carryover but ensures that, if ACL overages occur as a result of its use, accountability is maintained.

Because the measures are being implemented as an interim final rule and have a 1-year delay in effectiveness, NMFS may conduct additional rulemaking to make final these measures or to propose alternate NMFS or Council-recommended measures before the start of FY 2014. NMFS will further consider the comments received on Framework 50 as well as any submitted on the interim final rule when either making final the section 305(d) clarification or implementing Council-recommended measures for FY 2014.

## Comments and Responses on Measures Proposed in the Framework 50 Proposed Rule

NMFS received 486 comments during the comment period on the Framework 50 proposed rule. Public comments were submitted by the Council, two state marine fishery agencies, three non-governmental organization (NGOs), six industry groups, 28 recreational fishermen, including one charter boat organization, and 446 individuals. NMFS requested specific comment on the FY 2013 ABC for GB yellowtail flounder, including the economic impacts of the FY 2013 catch limit, NMFS's proposed carryover accounting approach for FY 2014 and beyond, and the proposed common pool trip limits for FY 2013. Responses to these comments are below, and when possible, responses to similar comments on the proposed measures have been consolidated. Only comments that directly addressed the proposed measures, or the analyses used to support these measures, are addressed.

### SNE/MA Winter Flounder Rebuilding Program

*Comment 1:* Two industry groups supported the revised rebuilding program for SNE/MA winter flounder.

*Response:* NMFS agrees with these commenters. In May 2012, NMFS notified the Council that SNE/MA winter flounder was not making adequate rebuilding progress, and as a result, the Council was required to revise the rebuilding program for this stock within 2 years, or by May 1, 2014. The revised rebuilding program implemented in this action is consistent with the Council's mandate to devise a new rebuilding strategy for the stock while continuing to prevent overfishing. As stated in Item 1 of this preamble, projections indicate that SNE/MA winter flounder can rebuild by 2019 in the absence of all fishing mortality. As a result, the maximum rebuilding period is 10 years. Taking into account the needs of fishing communities, as provided in section 304(e)(4) of the Magnuson-Stevens Act, the rebuilding strategy adopted in this action would rebuild the stock by 2023 with a median probability of success. In addition, the revised rebuilding program appropriately accounts for scientific uncertainty associated with long-term projections by providing that short-term catch advice can be reduced from $F_{rebuild}$.

*Comment 2:* One industry group commented that the biological reference points for SNE/MA winter flounder are based on long-term projections that are highly uncertain. The commenter stated that, as a result, fishing mortality targets have been set below $F_{rebuild}$ to account for this uncertainty, which will result in forfeiting near-term yields.

*Response:* The revised rebuilding strategy implemented in this action is based on the best scientific information available. NMFS agrees that the long-term projections are uncertain. Considerable evidence has demonstrated that many groundfish stock projections in recent years have overestimated stock growth. Given the relative infrequency of groundfish stock assessments, there is often a considerable lag between the terminal year on an assessment and the year of the catch advice. As a result, when catches are based on only $F_{rebuild}$, they are often based on assumptions used in the projection, rather than any real evidence that the stock biomass has increased. The rebuilding strategy implemented in this action explicitly acknowledges this issue and allows short-term catch advice to be less than $F_{rebuild}$ in order to account for uncertainty. If an assessment indicates the stock is rebuilding more rapidly than originally predicted, $F_{rebuild}$ will be recalculated, and catches could be increased. An assessment update is preliminarily scheduled for 2014,

although this schedule may change depending on assessment needs and priorities. This action implements ABCs for FYs 2013–2015, so presumably, if any update is completed in 2014, $F_{rebuild}$ would be recalculated, and if the stock is rebuilding faster than predicted, catches could be increased.

The SSC noted in its ABC recommendation for this stock that a constant catch of 1,676 mt for FYs 2013–2015 is based on the long-term yield expected if recruitment of the stock follows more recent trends, as opposed to the longer term trend used in the assessment. The SSC also stated that recent recruitment has been consistently below the recruitment predicted in the assessment, which could be indicative of an environmental change, or a poor model fit. Due to the uncertainty in the projections, and recruitment that is consistently less than expected, NMFS thinks it is appropriate to reduce catches below $F_{rebuild}$ to account for these uncertainties even though this may result in forfeiting near-term yields. This will help ensure that the stock rebuilds on time, and will also help ensure that overfishing does not occur.

*Comment 3:* One NGO stated that increasing fishing mortality on a stock that is not making adequate rebuilding progress is inappropriate.

*Response:* Amendment 16 adopted a rebuilding strategy for SNE/MA winter flounder that would keep fishing mortality as close to zero as possible and rebuild the stock by 2014. NMFS notified the Council in May 2012 that SNE/MA winter flounder was not making adequate rebuilding progress, and as a result, was required to revise the rebuilding program for this stock within 2 years, or by May 1, 2014. Framework 50 responds to this requirement consistent with Magnuson-Stevens Act and National Standards. The Council calculated the maximum rebuilding time period for this stock appropriately. Further, a rebuilding end date of 2023 has a median probability of success, which is consistent with the relevant case law. Fishing mortality may increase compared to recent years because the rebuilding strategy no longer aims to keep fishing morality as close to zero as possible. However, the FYs 2013–2015 ABCs are consistent with the revised rebuilding program, and are actually lower than $F_{rebuild}$ in order to account for scientific uncertainty in the projections. Reducing catches from $F_{rebuild}$ will help increase the chances that rebuilding will occur on schedule because the realized recruitment, which is less than the recruitment predicated in the assessment, was used to inform catch advice.

**Southern New England/Mid-Atlantic Winter Flounder Management Measures**

*Comment 4:* One NGO opposed reopening a directed fishery on SNE/MA winter flounder to mitigate economic impacts of catch limit reductions for other groundfish stocks. The commenter proposed that, if economic mitigation was critical, the groundfish fleet could have been allowed to land its bycatch of SNE/MA winter flounder that is caught while prosecuting other fisheries.

*Response:* The new rebuilding plan and management strategy for SNE/MA winter flounder is not being done only to mitigate economic impacts, but rather to implement a new rebuilding strategy as allowed by the Magnuson-Stevens Act when a management plan is not making adequate progress. The revised management plan takes into account all National Standards, including the requirement to mitigate negative impacts on the fishing community, to the extent practicable, in light of conservation requirements. The Groundfish Plan Development Team presented the idea to the Council's Groundfish Committee that, if the catches under the revised rebuilding strategy were too low to allocate the stock to sectors, a trip limit could be used for sector and common pool vessels. This trip limit would have allowed vessels to land a small amount of SNE/MA winter flounder, which may have provided a small economic benefit to the fishery. In this case, the reactive area-based AM that was initially proposed in Framework 48 would have been implemented. If vessels are allowed to land the stock, regardless of whether trip limits were implemented, or the stock was allocated to sectors, the FYs 2013–2015 ABCs were developed first, consistent with the revised rebuilding program. Allocating the stock to sectors provides a greater amount of catch accountability in the fishery, and if a sector catches its entire ACE, it must stop fishing in the SNE/MA winter flounder stock area, unless it leases additional ACE for this stock. This helps prevent overages of the ACLs, and better ensures that overfishing will not occur. Allocating the stock to sectors also provides the greatest amount of flexibility for groundfish vessels.

*Comment 5:* One individual, one state, and two industry groups supported the allocation of SNE/MA winter flounder to sectors and stated that this will ensure accountability and would provide a small amount of economic relief for groundfish vessels.

*Response:* NMFS agrees that allocating the stock to sectors ensures the greatest amount of catch accountability. As noted earlier, because sectors are prohibited from fishing in a stock area if they do not have any ACE for the pertinent stock, this helps ensure that ACLs are not exceeded, and helps ensure that overfishing does not occur. Based on analysis completed by the Council for Framework 50, although other stocks will still be limiting for groundfish vessels, it appears that this measure could provide additional fishing opportunities, and potentially provide an additional $5.4 million in ex-vessel revenues in FY 2013.

**FY 2013 GB Yellowtail Flounder Catch Limits**

*Comment 6:* Two industry groups and one state marine fisheries agency supported the Council's preferred alternative for GB yellowtail flounder (a FY 2013 ABC of 1,150 mt), and stated that this ABC proposed by the Council in Framework 50 was based on the SSC's recommendation. Two of these commenters were disappointed that a stronger effort was not made to reconvene the TMGC in order to renegotiate the 2013 quota for GB yellowtail flounder after the Council adopted a higher quota than what was recommended by the TMGC, and that the industry should not suffer because the Council did not reconcile the higher quota with the TMGC. The state also noted that the TRAC assessment for GB yellowtail flounder was at odds with a yellowtail flounder tagging study completed by the University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST).

*Response:* This final rule disapproves the FY 2013 ABC for GB yellowtail flounder that the Council proposed in Framework 50 because it would likely not end overfishing for the stock and would not be based on the best scientific information available, not because the ABC recommended by the Council is inconsistent with the TMGC's recommendation. These reasons are more fully discussed earlier in this preamble, and are not repeated here (see Disapproved Measures and Item 4 of this preamble).

With respect to the comment regarding reconvening the TMGC, the Council did not pass any motion to reconvene the TMGC and renegotiate the TMGC's recommendation for 2013 catches of GB yellowtail flounder. But, in addition, based on preliminary information during the development of

Framework 50, the Council's ABC recommendation of 1,150 mt did not appear to be based on the 2012 TRAC assessment, which Canada had supported as the best scientific information available. Moreover, Canada expressed concern for the SSC's recommendation of 1,150 mt in that it appeared to be arbitrary, and not based on the 2012 assessment. For all of these reasons, NMFS does not believe it would have been appropriate, or warranted, to request that the TMGC re-negotiate the 2013 quota for GB yellowtail flounder.

There have been multiple instances in recent years where the TMGC has reconvened, at the request of the Council and NMFS, in order to re-negotiate the TMGC's recommendations. In one of these cases, for FY 2011, reconvening the TMGC resulted in the TMGC recommending a higher GB yellowtail flounder quota than initially agreed upon in order to respond to new U.S. law that had recently been enacted (the International Fisheries Agreement Clarification Act). In this case, the renegotiated quota was consistent with the best scientific information available and other applicable law. NMFS agrees that, under special circumstances, the TMGC should be reconvened if the respective U.S. or Canadian management bodies have quota recommendations that differ from the TMGC. However, the TMGC provides catch recommendations based on the annual TRAC assessments that are conducted annually for each stock. Therefore, special circumstances that would warrant reconvening the TMGC would likely be the result of new, recently discovered information that becomes available after the TMGC meets, or if the TMGC's recommendations are determined to be inconsistent with the conservation objectives of the FMP or Magnuson-Stevens Act requirements. Moreover, as discussed in more detail earlier in this preamble, NMFS has made a final determination that a 2013 ABC of 1,150 mt is not consistent with the best scientific information available, would likely fail to end overfishing for the stock, and would undermine the conservation objectives of the FMP. NMFS voiced these concerns during the development of Framework 50, and does not agree with the commenter that NMFS did not provide guidance and advice on how best to approach the ABC recommendation of 1,150 mt with Canada. For all of these reasons mentioned above, NMFS does not agree that the TMGC should have been reconvened given the results of the 2012 TRAC assessment, and the inconsistencies in the SSC's recommendation with these assessment results.

The SMAST yellowtail flounder tagging study was not submitted, or presented, at the 2012 TRAC meeting, and as a result, was not able to be considered as part of the 2012 assessment. However, since this issue has been raised, the NEFSC has met with SMAST scientists to discuss the results of the tagging study. NEFSC and SMAST scientists identified additional analyses that should be conducted to address some concerns with the initial results of the tagging study. These additional analyses are scheduled to be presented at the June 2013 TRAC assessment for GB yellowtail flounder. NMFS supports the continued discussions of this tagging study in order to incorporate these results into the next assessment, and agrees that additional information like this could better inform the assessment.

*Comment 7:* Two industry groups and one state marine fisheries agency opposed the proposed emergency rulemaking to implement a FY 2013 ABC of 500 mt for GB yellowtail flounder and stated that NMFS does not have the authority to do this. The state marine fishery agency also commented that the proposed emergency rulemaking is not consistent with the SSC's recommendation.

*Response:* NMFS disagrees that it does not have the authority to disapprove the Council's recommended ABC of 1,150 mt, and instead, implement an ABC of 500 mt. As specified in the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, must ensure that any FMP (and by extension framework and amendment) be carried out in accordance with provisions in the Magnuson-Stevens Act. Thus, once a plan is submitted to NMFS for review and approval, NMFS must make the final determination that the plan, along with its corresponding measures, is consistent with the Magnuson-Stevens Act and the National Standards. As discussed at length earlier in this preamble (see Disapproved Measures), NMFS is disapproving the ABC of 1,150 mt that was adopted by the Council in Framework 50 because it would likely fail to prevent overfishing, and is not based on the best scientific information available, which violates National Standards 1 and 2 of the Magnuson-Stevens Act. Through emergency authority, this final rule implements a FY 2013 ABC of 500 mt that is consistent with the best scientific information available and the SSC and TMGC's recommendation, as well as NMFS guidance on emergency rules. This action is discussed at length in a previous section of this preamble, and so is not repeated here (see Item 4 of this preamble).

NMFS disagrees with the comment that a FY 2013 ABC of 500 mt is not consistent with the SSC's recommendation. The SSC's final report on 2013 catch limits for GB yellowtail flounder recommended a range of ABCs from 200–1,150 mt. The Council selected the highest possible ABC from this range, which NMFS has determined would likely not end overfishing for this stock and is not consistent with the best scientific information. The details of the SSC's recommendations have been discussed in detail in previous sections of this preamble, and are not repeated here. However, the SSC recommended a FY 2013 ABC of 1,150 mt as a backstop measure only for a bycatch-only fishery, and also recommended a range of FY 2013 ABCs consistent with the range of catch advice provided by the 2012 TRAC assessment (200–500 mt). Thus, although the statutory requirement to abide by the SSC's recommendation only applies to the Council, the emergency rulemaking is consistent with the SSC's recommendations. Moreover, even if 1,150 mt was not determined to violate Magnuson-Stevens Act requirements, selecting an ABC that is below the highest catch level recommended by the SSC does not make an ABC inconsistent with the SSC's recommendations. The SSC's ABC recommendation is a limit, which the Council cannot go above. However, this does not, and should not, preclude the Council from selecting an ABC that is lower than the SSC's catch advice.

*Comment 8:* Two industry groups and one state marine fishery agency commented that a FY 2013 ABC of 500 mt will result in economic disaster and fishery closures.

*Response:* Available analysis does show that a FY 2013 ABC of 500 mt (U.S. quota 215 mt) will have economic impacts on groundfish and scallop vessels, and coupled with reductions in catch limits for other key groundfish stocks, this action could have severe, negative impacts on the fishery. These reductions are necessary in order to meet conservation objectives and satisfy applicable Magnuson-Stevens Act requirements that require conservation measures even if it results in severe negative economic impacts. Nevertheless, there are numerous mitigation measures that are already in place, or are being implemented in connection with this action, to help mitigate negative impacts of low catch limits in FY 2013. In addition, NMFS is

seeking other ways to reduce these impacts. Most directly related to the availability of GB yellowtail flounder quota, the TMGC began developing a quota trading mechanism to be used to trade quota between the U.S. and Canada. In February 2013, the TMGC drafted a series of guiding principles that should be used by both countries in developing and implementing trades. In April 2013, the TMGC recommended these guiding principles to the U.S./Canada Steering Committee, and also recommended that a pilot project be developed with candidate stocks (GB yellowtail flounder and eastern GB haddock). The U.S./Canada Steering Committee agreed to move forward with development of a trading mechanism. The next step for the Council and NMFS will be to outline how a trading mechanism would be implemented in U.S., and what modifications would be required to the FMP. NMFS is committed to developing a trading mechanism that can provide for additional fishing opportunities for U.S. vessels, and will support the Council in moving this issue forward. Trading quota with Canada would provide additional fishing opportunities for U.S. vessels faced with a dramatic reduction in the GB yellowtail flounder quota, and if possible, NMFS supports any potential trade that could occur in FY 2013.

This final rule provides additional fishing opportunities by allocating SNE/MA winter flounder to sectors and allowing commercial and recreational vessels to land this stock. This is expected to provide additional fishing opportunities and has the potential to provide an additional $5.4 million in ex-vessel revenue than if possession of the stock continued to be prohibited in FY 2013. This final rule also implements an emergency rulemaking to increase the FY 2013 ABC for white hake based on the new assessment that was completed in February 2013. Additional white hake quota may provide additional fishing opportunities as it reduces the likelihood that groundfish vessels would be constrained by available white hake quota. In addition, Framework 48 reduces the minimum fish size for yellowtail flounder, cod, haddock, and other groundfish stocks. This measure is expected to reduce regulatory discards for these stocks, which analysis shows may increase trip revenues and help achieve the economic benefits of OY. Framework 48 also adopts a measure that allows sector vessels to request access to the year-round groundfish closed areas in order to provide additional opportunity for vessels to target healthy stocks that may be more abundant in these areas. NMFS is considering and analyzing sector requests through a separate rulemaking in FY 2013 as a potential way to increase the likelihood of achieving OY and mitigating economic impacts of the FY 2013 catch limits. NMFS has also approved 23 regulatory exemptions requested by sectors in the final rule for FY 2013 Sector Operations Plans and Contracts, and Allocation of ACE. These exemptions are meant to provide sector vessels the greatest amount of flexibility possible to make business plans and harvest available ACE in FY 2013.

More importantly, NMFS intends to pay for at-sea monitoring costs for the groundfish fishery in FY 2013 to help provide some economic relief to vessels. NMFS has also implemented emergency measures to temporarily suspend monkfish trip limits for some groundfish vessels and provide additional fishing opportunities that could increase landings and revenues. Cumulatively, all of these measures are expected to help mitigate the anticipated impacts of the catch limit reductions for many key groundfish stocks in FY 2013. The Council, and NMFS, will continue to develop measures that can provide some economic relief to the fishery and help vessels target healthy groundfish stocks.

*Comment 9:* Three NGOs supported disapproval of the FY 2013 ABC of 1,150 for GB yellowtail flounder that was proposed by the Council in Framework 50. Two of these organizations support the proposed emergency rule to implement a FY 2013 ABC of 500 mt; however one NGO opposed this action, and stated that this situation does not meet the required emergency criteria.

*Response:* NMFS agrees with the comments that the FY 2013 ABC of 1,150 mt for GB yellowtail flounder should be disapproved. NMFS is disapproving this ABC in Framework 50, and through this final rule, is implementing a FY 2013 ABC of 500 mt through an emergency rule. This issue is discussed in detail earlier in this preamble (see Disapproved Measures and Item 4 of this preamble), and is not repeated here.

NMFS disagrees that this situation does not meet the required emergency criteria. The commenter stated that the FY 2013 ABC of 1,150 mt proposed in Framework 50 should be disapproved and the issue be remanded back to the Council for action. NMFS finds this suggestion irresponsible and impractical, as it would pose harm to the resource, cause severe disruption to the fishery, and undermine the joint management of this stock with Canada under the Understanding. As described at length in Item 4 of this preamble, setting an ABC of 500 mt for this stock meets emergency rule guidance provided by the NMFS. The need for this emergency is based on recent, unforeseen events given that the Council did not take final action on Framework 50 until January 2013. This is nearly 2 months after the Council typically takes final action on groundfish management actions in order to submit the action to NMFS for review and implementation by the start of the groundfish fishing year on May 1. As previously outlined in this rule, there were a number of factors that contributed to the recent, and unforeseen, events that justified an emergency action in this situation. The commenter did not provide any realistic alternative to the emergency rule to implement a FY 2013 ABC of 500 mt for GB yellowtail flounder. In addition, the proposal to remand the issue back to the Council for action ignores the negative biological, social, and economic impacts that no action would have on the resource and the fishery. As outlined here, and previously in the preamble of this rule, this situation does meet the necessary emergency rulemaking criteria and is consistent with the applicable Magnuson-Stevens Act requirements, as well as the policy guidelines for the use of emergency rules previously published by NMFS (62 FR 44421; August 21, 1997).

*Comment 10:* One industry group commented that the scallop fishery's allocation of GB yellowtail flounder under a FY 2013 ABC of 1,150 mt would probably prevent overages, but does not provide 100 percent of the scallop fishery's need.

*Response:* Framework 48 adopts a fixed allocation of the U.S. ABC for GB yellowtail flounder. In FY 2013, Framework 48 implements an allocation of 40 percent of the U.S. ABC, and in FY 2014 and beyond, the scallop fishery will receive 16 percent of the U.S. ABC. The emergency rule implemented in this action implements a FY 2013 ABC of 500 mt for GB yellowtail flounder, which results in a scallop fishery sub-ACL of 83.4 mt (40 percent of the U.S. ABC of 215 mt). Framework 24 to the Atlantic Sea Scallop FMP (Framework 24) adopted management measures for the scallop fishery for FY 2013. The amount of GB yellowtail flounder expected to be caught by the scallop fishery under the preferred alternative in Framework 24 was estimated between 40.7 mt at the low end, to 152.8 mt at the high end. The medium

estimate of GB yellowtail flounder expected to be caught by scallop vessels in FY 2013 is 83.4 mt. These estimates do have some uncertainty. If the realized catch of the scallop fishery is between the low and medium estimates, then it is unlikely that the FY 2013 sub-ACL will be constraining for the scallop fishery, and that the scallop fishery's AM would be triggered. If scallop fishery catches of GB yellowtail flounder in FY 2013 are closer to the high end, the FY 2013 allocation could be constraining, and may trigger the scallop fishery's AM. However, there are some measures that may help mitigate this, and a bycatch avoidance program that will help ensure scallop vessels avoid GB yellowtail flounder hotspots. These measures are discussed in more detail below.

Due to the declining status of GB yellowtail flounder, and the low U.S. ABC for the stock in FY 2013, it is possible that scallop vessels could be constrained by their allocation. However, Framework 47 adopted a measure that provides flexibility for the scallop fishery, and can help mitigate low GB yellowtail flounder quotas. This measure specifies that the scallop fishery's AM for GB yellowtail flounder is only triggered if the scallop fishery exceeds its sub-ACL by 50 percent or more, or if the scallop fishery exceeds its sub-ACL and the total ACL is also exceeded. This measure functions as a ''pseudo'' quota transfer from the groundfish fishery to the scallop fishery in order to balance the need to achieve OY in the fishery, prevent loss of scallop yield, and prevent overfishing for the stock.

In addition, the scallop fishery has used a bycatch avoidance program developed by the SMAST. This program has been successful in recent years to help scallop vessels target areas with high scallop yield, while avoiding hotspots of yellowtail flounder. SMAST has announced that it is expanding this program for the 2013 fishing year to help mitigate the low quotas for GB yellowtail flounder. NMFS expects that this program will continue to reduce the bycatch of GB yellowtail flounder in the scallop fishery, and supports the expansion of this program to maximize benefits to the scallop fishery.

**FYs 2013–2015 GOM Cod Catch Limits**

*Comment 11:* One industry group and one state marine fishery agency opposed the GOM cod catch limits proposed in Framework 50 and stated that these catch limits are too low. These commenters supported the Council's request to NMFS to implement interim measures in FY 2013 to further reduce but not end overfishing for GOM cod.

*Response:* NMFS disagrees that the FYs 2013–2015 catch limits for GOM cod are too low in light of best available scientific information. The catch limits adopted in Framework 50 are necessary to end overfishing for GOM cod and allow some stock rebuilding. These catch limits are based on the December 2012 benchmark assessment, which was completed at the request of the Council and industry to address outstanding issues from the December 2011 benchmark assessment for this stock (i.e., discard mortality rates, fishery selectivity, etc.).

In May 2012, NMFS notified the Council that based on the results from the December 2011 assessment for GOM cod, the stock was overfished and overfishing was occurring. In addition, the results of the assessment indicated that the stock was not making adequate rebuilding progress. These assessment results resulted in a significantly revised scientific understanding of the status of this stock. As a result, NMFS notified the Council that it must implement a revised rebuilding program for GOM cod within 2 years, or by May 1, 2014, and that it must end overfishing within 1 year, or by May 1, 2013. For FY 2012, NMFS implemented interim measures to reduce but not end overfishing for GOM cod while the Council responded to the new assessment information and developed appropriate management measures to end overfishing for the stock.

The interim measures implemented by NMFS were only a 1-year temporary exception to the Magnuson-Stevens Act requirement to end overfishing immediately. Section 304(e)(6) of the Magnuson-Stevens Act allows a temporary exception to the requirement to end overfishing immediately in certain narrow circumstances during the development or revision of a rebuilding plan. When NMFS implemented the interim measures for FY 2012, it determined that the application of this exception was limited to 1 year, as constrained by the limited authority provided in 305(c). The Council and others have argued that the Secretary may issue back-to-back interim actions to span the full 2 years the Council may take to revise the rebuilding program for GOM cod. To be consistent with relevant provisions of the Magnuson-Stevens Act, and in light of its clear mandate to end overfishing, a second year of interim measures for GOM cod is not justified unless a change in circumstances has created a new emergency situation that would permit such action. There are no new circumstances that would give rise to a new set of interim measures for FY 2013. Also, as noted by one of the commenters, GOM cod abundance is low. NMFS has repeatedly said, because of the status of the stock, allowing overfishing for another year on this stock would not be prudent. Framework 50 adopts FYs 2013–2015 specifications consistent with the best scientific information available that will end overfishing for the stock. Thus, this final rule appropriately responds to the Council's requirement that it must end overfishing for GOM cod by May 1, 2013.

*Comment 12:* Three NGOs opposed the FYs 2013–2015 catch limits for GOM cod and stated that these specifications are too high, and deviate from the Council's ABC control rule. These comments also noted that the preferred alternative for GOM cod is not consistent with the SSC's recommendation.

*Response:* NMFS disagrees. The FYs 2013–2015 catch limits for GOM cod are not too high because they are consistent with best scientific information available. The GOM cod specifications implemented in this action were developed using the results of the December 2012 benchmark assessment for the stock and are consistent with the SSC's recommendation. As discussed in detail in Item 4 of this preamble, the SSC recommended two constant ABCs for FYs 2013–2015: 1,249 and 1,550 mt. Although the SSC preferred a constant catch ABC of 1,249 mt because it increases the likelihood of stock rebuilding, the SSC also recommended a constant catch ABC of 1,550 mt for reasons that are summarized below and discussed more fully in Item 4 of this preamble.

The December 2012 benchmark assessment for GOM cod provided a unique situation because two assessment models were approved. NMFS discussed the details of these two models, which resulted in the two ABC alternatives recommended by the SSC, as well as the SSC's rationale for recommending an ABC for GOM cod that deviates from the Council's ABC control rule, in Item 4 of this preamble. This discussion is not repeated here. However, NMFS has determined that the SSC's recommendation for a FY 2013–2015 ABC of 1,550 mt is consistent with the relevant sections of the Magnuson-Stevens Act and Amendment 16, and that the SSC adequately justified why the available information provided a better understanding of the scientific uncertainty in the assessment.

Moreover, both ABC alternatives are substantially lower than the FY 2012 catch limits, and will result in significant reductions in commercial catches compared to FY 2012. Both ABCs would also result in similar projected stock increases. Because both ABC alternatives are consistent with the relevant provisions of Magnuson-Stevens Act and would likely end overfishing in FY 2013, it is important to consider the needs of fishing communities. Although the differences in revenue between a FY 2013 ABC of 1,249 and 1,550 mt are relatively small, these differences are not insignificant given the dramatic reductions the groundfish fishery is facing in FY 2013. To ignore an alternative that meets the conservation objectives of the FMP and the Magnuson-Stevens Act and that could help mitigate some of the economic impacts of this action would not be consistent with National Standard 8.

**FYs 2013–2015 Catch Limits**

*Comment 13:* A NGO commented that the FYs 2013–2015 specifications are not precautionary enough given the uncertainties in the assessments. One individual opposed the catch limits stating that they are too high, but did not provide any specific rationale. The NGO, in addition to 438 individuals, commented that there should be no directed fishing for cod.

*Response:* NMFS disagrees that the FYs 2013–2015 specifications are not precautionary enough in light of best scientific information available. As discussed in detail in Item 4 of this preamble, and Appendix I of the EA (see **ADDRESSES**), there are a number of stocks for which constant catch ABCs are adopted for FYs 2013–2015 specifically to account for the scientific uncertainty in the assessments and catch projections. In these cases, ABC is set at 75% $F_{MSY}$ for FY 2013, consistent with the ABC control rule, but is held constant for FY 2014 and 2015. This results in a larger buffer between the OFL and ABC in FYs 2014–2015 than the ABC control rule would, if applied, and as a result is actually more precautionary to address uncertainties in the assessments. A full description of the analyses completed to develop the ABC recommendations is not repeated here.

Moreover, the commenter took an excerpt of the proposed rule to this action out of context. The commenter cited language from the proposed rule that explained the Council recommended the ABCs provided by the SSC, which are the highest allowed, for all stocks except GB yellowtail flounder as evidence that the specifications are not sufficiently precautionary. However, this rationale in the proposed rule was provided to explain why, under the Initial Regulatory Flexibility Act (IRFA), there were no other alternatives to the FYs 2013–2015 ABCs proposed in Framework 50 that would mitigate the economic impacts of this action. This comment was taken out of context, and is not indicative that the catch limits in this action are not precautionary enough. As already noted, the specifications implemented in this action are based on the best scientific information available, and are consistent with conservation objectives of the FMP and applicable law. Also, as discussed in Items 1 and 4, for many stocks, specific action has been taken to attempt to account for uncertainty in catch projections (e.g., constant catch ABCs, catches lower than $F_{rebuild}$, etc.). NMFS believes that this increases the likelihood that overfishing will not occur, and that stock rebuilding occurs on schedule.

NMFS disagrees with the commenters' proposal that the fishery should be closed to directed fishing for cod. Given the low quotas for both cod stocks beginning in FY 2013, it is unlikely that cod will be a primary directed species. Rather, most groundfish vessels will likely use their available cod quota to prosecute other fisheries. The initial FY 2013 cod trip limits for common pool vessels are so low that they will likely preempt these vessels from any directed fishing on cod. However, it is unclear whether the commenter intended that trip limits should be extended for sector vessels in order to prevent directed fishing, or whether possession of the stock should be prohibited. Regardless, both the commercial and recreational groundfish fisheries receive allocations of cod, which, in addition to other management measures and AMs, help prevent catches from exceeding these sub-ACLs. In addition, sector vessels have the flexibility to make business plans and fish as efficiently as possible in order to maximize revenues with available allocations. NMFS disagrees that trip limits would be appropriate for sector vessels, and believes this is contrary to the intent of Amendment 16 and the sector management program. The Council is required to revise the rebuilding program for GOM cod by May 1, 2014, and the Council could consider a rebuilding strategy that would keep fishing mortality as close to zero as possible, or that would necessarily prevent directed fishing on GOM cod. Similarly, the Council could adopt management measures in its next action that would necessarily prevent directed fishing for GB cod.

*Comment 14:* One industry group opposed the FYs 2013–2015 catch limits for GOM haddock that were adopted in Framework 50 and stated that the management of GOM and GB haddock ignores known spillover of GB haddock into the GOM.

*Response:* The FYs 2013–2015 ABCs for GOM haddock are based on the best scientific information available, and are necessary to end overfishing for the stock. The issue of GB haddock spillover into the GOM was recently raised in early 2013. As a result, the Council tasked the Groundfish Plan Development Team (PDT) and the SSC to examine the potential spillover. The Groundfish PDT continues to analyze the potential mixing of these two stocks. However, to date, no analysis is conclusive, and it appears than even if mixing can be demonstrated, it would be difficult to quantify mixing rates sufficient to adjust catch advice. At its April 16, 2013, meeting, the Council's Groundfish Committee passed a motion requesting that NMFS implement an emergency action to allow 10 percent of the GB and GOM haddock catch limits to be used interchangeably to address potential stock mixing.

Currently, there is no conclusive analysis on potential mixing of GB and GOM haddock, and as a result, it does not appear that there is any peer-reviewed scientific information available that would support any management action at this time. NMFS supports the ongoing analysis of this issue by the Groundfish PDT and SSC. Once the analysis is complete, NMFS will continue to work with the Council on this issue.

*Comment 15:* One NGO generally supported the proposed catch limits, with the exception of GOM cod and GB yellowtail flounder, but noted concerns for the methods used to evaluate management uncertainty. The NGO requested that NMFS and the Council should develop a more rigorous analysis of the various components of management uncertainty.

*Response:* Appendix II to Framework 44 to the FMP (Framework 44) discusses the elements of management uncertainty that are taken into account to reduce the ABC to the ACL. This appendix can be accessed here: *http://www.nefmc.org/nemulti/index.html*. Framework 44 set the default management uncertainty buffer for the groundfish fishery at 5 percent for most stocks. For stocks with less management uncertainty, the ACL is set at 97 percent of the ABC (e.g., stocks with no state waters catch), for

stocks with more management uncertainty (e.g., zero possession stocks), the ACL is set at 93 percent of the ACL. These buffers are more fully discussed in Appendix II to Framework 44 and Appendix II to Framework 50, and are not repeated here. However, the management uncertainty buffers are revisited each time the Council sets specifications. Since the adoption of the ''default'' management uncertainty buffers in Framework 44, the Council has reviewed and modified the management uncertainty buffers multiple times.

During the development of Framework 50, the Groundfish PDT reviewed the management uncertainty buffers and recommended a number of changes to the Council, which the Council adopted in this action. The Council did discuss increasing the management uncertainty buffer for all stocks because of evidence that fishing behavior may differ on observed and unobserved trips, which could underestimate discards. However, the Groundfish PDT was unable to estimate the amount of suspected bias of observed trips in order to establish the correct buffer, and the management uncertainty buffer was not increased. Because total catches of most allocated stocks has been below 90 percent of the total ACL in recent years, it was determined that this would likely reduce the risk that actual catches would exceed the ACL if there was any potential bias in discard estimates.

NMFS agrees that it would be beneficial to complete additional analysis to attempt to quantify various components of management uncertainty. However, it is often difficult to quantify these components, or make definitive conclusions on these types of analyses, since data must be used to infer activity that may not be observed or documented. NMFS supports the continued improvement of available analyses, and expects that as additional data become available, these types of analyses will improve. NMFS will continue to urge the Council to routinely review the management uncertainty buffers for their appropriateness.

*Comment 16:* One state marine fisheries agency commented that the amount of the ABC set aside for state waters catch is guesswork, and does not reflect past history of what was caught from state waters by state-only vessels.

*Response:* NMFS disagrees. The amount of the ABC set aside for states waters is not ''guesswork.'' The Groundfish PDT provides analysis to the Council that looks at recent years' catch of groundfish stocks in state waters. This review is done each time specifications are set for groundfish stocks. As additional years of catch data become available, NMFS expects that the amount estimated for state waters catch will become increasingly more accurate. However, it is often difficult to anticipate how catch in state waters will change in response to a Federal management action, state waters trip limits, or variability in the catch limits for groundfish stocks. As the commenter accurately points out, the amount of the ABC set aside for state waters is not an allocation, and is not considered an ACL, because there is no associated AM should state waters catch exceed the allotted amount. NMFS also notes that the Council can adopt different percentages for the amount of ABC set aside for state waters. The ABC distribution implemented in this final rule is consistent with the Council's preferred alternative for FYs 2013–2015 catch limits.

**FY 2013 Common Pool Management Measures**

*Comment 17:* One industry group supported the concept of the GOM cod trip limit for Handgear A vessels to be no lower than 100 lb (45.4 kg), and up to the maximum 300 lb (136.2 kg) allowed, and stated that trip limits should be charged in 100-lb (45.4-kg) increments to make it easier to quantify when the trip limit is increased. The commenter also noted that the GOM cod trip limit should be low enough to prevent shutting down the common pool fishery before the end of the first trimester.

*Response:* NMFS agrees. This final rule implements an initial FY 2013 GOM cod trip limit of 100 lb (45.4 kg) for Handgear A vessels. The initial GOM cod trip limit is reduced from the 300 lb (136.2 kg) maximum, as required, to be the same as the trip limit applicable to common pool vessels fishing under a Category A DAS. This low initial trip limit is to ensure that the common pool fishery does not exceed its Trimester TACs, or its sub-ACL. In addition, if catch information indicates that the common pool fishery will prematurely catch its trimester TAC for any stock, NMFS does have the ability to adjust the applicable trip limits for common pool vessels and will do so to help ensure that the trimester TAC is not exceeded. NMFS agrees that trip limits, and any other applicable management measures, should be aimed to allow the common pool fishery to approach, but not exceed its TAC each trimester.

*Comment 18:* One individual commented that the trip limit for SNE/MA winter flounder should be 500 lb (226.8 kg) per DAS, though it was not clear whether the commenter supported this trip limit for common pool vessels or the entire commercial groundfish fishery (sector and common pool vessels). This individual commented that there should be no differential DAS counting in SNE.

*Response:* Available information and analysis based on recent common pool effort, indicates that the common pool fishery will likely only catch approximately 18 to 65 percent of its sub-ACL for SNE/MA winter flounder even with a possession limit of 5,000 lb (2,268 kg) per DAS up to 15,000 lb (6,803.9 kg) per trip. As a result, NMFS implements this initial trip limit for FY 2013 for common pool vessels. The RA may adjust the trip limit inseason, so if available catch information shows that the common pool fishery will exceed its sub-ACL, the RA would reduce the trip limit for common pool vessels to prevent an overage.

The RA is not implementing any differential DAS counting in any area for FY 2013 for common pool vessels.

*Comment 19:* One industry group opposes the Trimester TAC management system for the common pool fishery especially given the extremely low quotas for the common pool fishery. The commenter suggested eliminating this regulation in the next framework or amendment to the FMP.

*Response:* The Trimester TAC AM provision was adopted in Amendment 16 in 2010. Indeed, this AM is only one type of reactive AM that the Council may use, and the Council could develop a different AM for the common pool fishery if it chooses. As the commenter correctly stated, any changes to the Trimester TAC provision would have to be developed through the Council process in a future management action. However, if trip limits continue to be an effective proactive AM that keeps common pool catch within allowable levels, the Trimester TAC AM will likely not be triggered.

**FY 2013 Recreational Management Measures**

*Comment 20:* Twenty eight commenters (27 individuals and the one charter boat organization) supported the FY 2013 recreational management measures for FY 2013. The commenters stated that the bag limits are reasonable and allow charter/party and recreational vessels to make a worthwhile trip.

*Response:* NMFS agrees. The FY 2013 recreational measures implemented in this final rule will balance the need for a reasonable bag limit, and help ensure that the recreational fishery does not exceed its sub-ACL for GOM cod or

haddock. Item 9 of this preamble more fully discusses these measures, and detailed analysis is provided in the EA prepared for this action (see **ADDRESSES**). These discussions are not repeated here.

*Comment 21:* One industry group and two individuals opposed the proposed FY 2013 recreational management measures and stated that the bag limits for GOM cod and haddock should be lower.

*Response:* NMFS disagrees. Analysis shows that the FY 2013 recreational measures implemented in this action would have more than a 50-percent probability of preventing overages of the recreational sub-ACLs for GOM cod and haddock. As the preamble to this rule discusses (Item 9 of this preamble), given the large reductions in the GOM cod and haddock quotas, it would seem that the recreational measures should be drastically different than the FY 2012 measures. The minimum size for GOM haddock for recreational vessels will increase from 18 in (45.7 cm) to 21 in (53.3 cm). Due to changing stock conditions, the analysis shows that recreational angler encounters of haddock that are 18 in (45.7 cm) or larger will decline in FY 2013. For GOM cod, though recreational anglers can keep up to nine fish that are 19 in (48.3 cm), FY 2012 data shows that only a small fraction of trips encountered 9 or more fish. Less than 15 percent of party/charter trips encountered 9 or more fish in FY 2012, and only 25 percent of private boat anglers encountered 5 or more fish. These low encounter rates of legal-sized fish are based on the current assessment. In addition, FY 2012 recreational catch is expected to be well below the GOM cod sub-ACL, and the relatively low effort is expected to continue in FY 2013. This expected low effort is based on available analysis of what drives people to fish, how much they are willing to pay for specific bag limits, etc.

The commenter stated that considering the discard mortality estimates for haddock, there must be a GOM haddock bag limit for recreational vessels to prevent increased mortality by recreational vessels. However, a key factor in the model results is that all haddock discards are assumed to survive, consistent with the most recent GOM haddock assessment. Thus, because fewer trips will encounter legal-sized haddock, recreational landings for GOM haddock are expected to decline, and therefore, only an increase in the minimum fish size was required to ensure the recreational fishery does not exceed its sub-ACL in FY 2013. In addition, there was no data to suggest that a bag limit for GOM haddock would be effective. With respect to the bag limit for GOM cod, as mentioned above, analysis shows that recreational removals of this stock will also decline, primarily due to changing stock conditions.

**Economic Analysis**

*Comment 22:* One individual commented that the socio-economic impacts of the proposed measures lack clarity. The commenter also requested that the socio-economic assessments need to be part of the main document because they may not always be technologically available to the public.

*Response:* NMFS disagrees. The analysis prepared for this action meets all of the requirements of the relevant law and guidelines available, and was actually expanded to provide a more meaningful and informative analysis. There were only two alternatives for the FYs 2013–2015 specifications (No Action and the preferred alternative). Under the No Action alternative, no catch limits would be specified, and as a result, sector vessels would be unable to fish with ACE for most groundfish stocks. Thus, comparing the impacts of the preferred alternative to No Action (i.e., no fishing) would not provide a meaningful or informative analysis for the public. This analysis would have made it difficult for the public to understand the impacts of the catch limit reductions in FY 2013. Therefore, in order to provide a more meaningful analysis, the impacts of the proposed measures were also compared to FY 2011. This comparison provides a more clear understanding of the anticipated impacts of FY 2013 relative to the most recent fishing year in which complete data are available.

NMFS assumes that the commenter meant that the socio-economic assessments should be published as part of the proposed rule. NMFS disagrees. The socio-economic impacts of the proposed measures are contained in the EA/RIR/IRFA for this action. Publishing this analysis as part of the proposed rule would result in an unwieldy document that would likely be difficult and confusing for the public to read. Further, in the proposed rule, the public was provided with multiple options for accessing the EA/RIR/IRFA. The document is available on both the Council and NERO Web site and *http://www.regulations.gov/*, which is the same rulemaking portal that the public could use to submit comments on the proposed measures. Further, the public was provided with instructions on how to obtain a hard copy of the analysis completed for this rulemaking. The proposed rule also provided the public with a NERO staff contact, in the event that any assistance was needed in: (1) Understanding the proposed measures and the associated analyses; (2) accessing the proposed rule or associated analyses; and (3) submitting public comments.

**Sector Carryover**

*Comment 23:* Three commercial fishery organizations, one state marine fisheries agency, and the Council commented that NMFS cannot adjust the Amendment 16-provided carryover of up to 10 percent of previous fishing year unused ACE. These commenters assert that only a Council action and/or Council recommendation to NMFS can modify the previously implemented Amendment 16 carryover program. They object to NMFS's use of Magnuson-Stevens Act 305(c) emergency rulemaking authority to reduce the GOM cod FY 2012 to FY 2013 carryover from a maximum of 10 to 1.85 percent.

*Response:* NMFS disagrees that it cannot modify carryover measures through emergency rulemaking. One of the key objectives of the Magnuson-Stevens Act, and mandates to NMFS, is the prevention of overfishing. National Standard 1, as stated in section 301 of the Magnuson-Stevens Act states:

> Conservation and management measures shall prevent overfishing while, achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

Additionally, section 304(e)(3)(A) requires that management measures for overfished fisheries ''end overfishing immediately.''

NMFS's use of the emergency GOM cod measures implemented by this rule pursuant to 305(c) are necessary to ensure that the total potential GOM cod catch in FY 2013 does not exceed the overfishing limit. Analysis of the total potential catch (i.e., the fishery level ACL + available carried over catch), if the full 10 percent of FY 2012 ACE provided under the Amendment 16 implemented regulations is carried over, would exceed the overfishing limit by 12 percent. NMFS has reduced by emergency measures the available GOM cod carryover to ensure the total potential catch is approximately 6 percent below the overfishing limit.

Amendment 16 briefly contemplated the potential for carryover to increase the overfishing risk in situations where large reductions in available catch occurred from one year to the next. However, the amendment was silent on how to account for carryover catch as it

relates to National Standard 1 regarding preventing overfishing and how to adjust carryover where carryover would result in potential catch higher than the overfishing limit in clear violation of statutory provisions of the Magnuson-Stevens Act.

As stated in the preamble, because the Council did not recommend measures to address the GOM cod carryover issue in Framework 50, NMFS is obligated to take action to reduce the total potential catch to a level below the overfishing limit, to ensure that overfishing of GOM cod does not occur. The only available option for so in a timely fashion before the beginning of the 2013 FY is through use of emergency rulemaking under section 305(c) of Magnuson-Stevens Act. As explained in response to the next comment and elsewhere in this rule and the proposed rule, emergency rulemaking to reduce the amount of carryover of GOM cod is consistent with NMFS guidelines.

*Comment 24:* Some NGOs stated that the Magnuson-Stevens Act and NMFS criteria for emergency rulemaking have not been met with respect to carryover of GOM cod. The commenters indicate that the substantial reduction in GOM cod catch and the potential for carryover when paired with the long-anticipated low FY 2013 catch limit does not meet the necessary emergency rulemaking criteria as the situation was not unforeseen. These commenters cite in support of their argument several letters between the Council and NMFS with respect to carryover concerns. They also state that there is no evidence in the record that the reduced carryover amount is needed to meet a serious conservation or management problem. The commenters assert that the emergency action should not be taken and the carryover issue addressed through the deliberative and participatory Council process.

*Response:* NMFS disagrees that it is inappropriate to use Magnuson-Stevens Act section 305(c) emergency regulation authority to reduce the amount of available GOM cod ACE carried over from FY 2012. As stated in the NMFS guidelines for emergency rulemaking (62 FR 44421; August 21, 1997), and as explained in the preamble, NMFS is authorized to implement emergency measure to address serious conservation and management concerns resulting from recent, unforeseen events. Analysis indicates that providing up to 10 percent of the FY 2012 GOM cod sector ACE as carryover in FY 2013 would result in a total potential catch that is 12 percent above the OFL of 1,635 mt. Though the potential catch may not be fully caught in FY 2013, NMFS considers that allowing a potential catch in excess of OFL poses a serious conservation and management threat to the GOM cod fishery that results from recent, unforeseen events. Overfishing, therefore, could occur for GOM cod without the measures contained in NMFS's emergency rulemaking.

Regarding the criterion for the need for the emergency to be based on recent, unforeseen events, the commenters mischaracterize the nature and timing of events which NMFS considers both recent and unforeseen for both emergency actions. The updated stock status and catch advice resulting from the December 2012 GOM cod stock assessment, which the Council relied on, in part, to make its ABC recommendation, was not finalized and presented until January 2013, just before the January 29–31 Council meeting. It was not until March 22, 2013, that the Council formally submitted Framework 50 which contained the critical examination of the potential impact of not only the Council's recommended catch limits, but also the potential impact of allowing up to 10 percent carryover for all stocks. By this time it was clearly too late for the Council to act before the beginning of FY 2013 and the only recourse to address the very real potential of overfishing of GOM cod due to the carryover provision was this emergency action.

The commenters assert that the GOM cod situation was predictable and, therefore, foreseen based on the assumption that the stock assessment for GOM cod conducted in December 2012 would produce stock status and catch advice similar to the assessment conducted in December 2011. It would have been inappropriate to presuppose the results of the 2012 updated assessment and how the Council's SSC and ultimately the Council would use the 2012 GOM cod assessment stock information to recommend catch advice to NMFS at the Council's January 29–31 meeting. In any event, because the Council did not address the carryover concern—which NMFS did bring to their attention on several occasions—without NMFS action, the full 10 percent carryover for GOM cod would be allowed, thereby risking overfishing on this stock. Appendix V to the Framework 50 EA has a detailed timeline and description of events in the post-Amendment 16 carryover discussion spanning from late 2011 through the development of Framework 50 over 2012 and early 2013. This includes description of two guidance letters sent by NMFS to the Council on May 25, 2012, and July 26, 2012. To send this issue again back to the Council, without any assurance that the Council would reduce the carryover amount in a timely way, would leave the potential that the full carryover for GOM cod could be fished in the meantime, in excess of the overfishing limit.

With no possibility of the Council addressing the GOM cod carryover concern in a timely way, NMFS's only available mechanism for so doing is emergency rulemaking as provided for by section 305(c) of the Magnuson-Stevens Act. For these reasons, NMFS contends there is a clear fulfillment of the emergency rulemaking criteria.

*Comment 25:* One comment stated the emergency rule implemented GOM cod unused ACE carryover amount should not be touted as ''mitigating adverse impacts to the extent possible,'' stating that such statements were disingenuous because the carryover amount would provide approximately $50,000 to the groundfish fleet. The commenter seemed to infer that the reduced carryover does not sufficiently mitigate the universe of negative impacts resulting from reduced catch limits across the board.

*Response:* The comment pertains to information conveyed in the Framework 50 proposed rule classification section IRFA summary pertaining to carryover (78 FR 19389; March 29, 2013). The commenter did not accurately cite the information. NMFS believes the commenter misinterpreted the statement to suggest that the relatively minor carryover and economic contribution in the context of the entire groundfish fishery would somehow provide mitigation for the suite of reduced catch limits for FY 2013. This is not the statement's intent. To clarify, the IRFA summary conclusion in the specific carryover discussion section states,

> The proposed carryover amounts mitigate adverse economic impact to the maximum extent possible while ensuring NMFS meets its statutory obligation to propose catch limits, in this case FY 2013 ACLs plus the potential carryover that do not result in overfishing stocks.

This statement refers to the NMFS clarification that allowing full carryovers, except for GOM cod, help mitigate reduced catch limits across the board. The reduced carryover amount for GOM cod, while mitigating negative impacts to a lesser degree, is still the maximum possible mitigation in light of legal requirement of the Magnuson-Stevens Act. 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.

With respect to the carryover analysis quoted here, the alternatives under consideration were status quo wherein 10 percent of the unused FY 2012 GOM cod ACE could be carried over or the NMFS emergency action 1.85 percent of the unused FY 2012 ACE. An alternative of no carryover was considered, and rejected by the agency. Because the status quo would permit catches that exceed the overfishing limit, it is inconsistent with NMFS's statutory obligation to prevent overfishing and cannot be adopted by NMFS. The only remaining alternative, the 1.85 percent GOM carryover alternative, is the only alternative that best meets the statutory requirements in light of conservation requirements and mitigation of negative impacts. As such, it is the alternative selected by NMFS and is the alternative that mitigates impacts to small business entities to the extent possible, with respect to that particular carryover measures, under law and within the scope and purpose of this action. The IRFA and FRFA statements convey this. Overall impacts of the suite of alternatives proposed by NMFS were also analyzed in the IRFA summary contained in the proposed rule and are not repeated here. In addition, as referred to in the IRFA and FRFA, numerous other alternatives for mitigating negative impacts are already included in the FMP, and in the recently announced emergency monkfish action, Framework 48, and other measures included in Framework 50. See response to comments 5 and 8 for a description of measures expected to provide some level of small business impact mitigation in FY 2013.

*Comment 26:* One commenter objected to carryover of up to 10 percent unused FY 2012 GB cod ACE because it increases the risk that overfishing will occur. The commenter stated the stock is in bad shape, in need of extreme protection, and the FY 2012 quota will go uncaught because the assessment indicates fish available for harvest that simply don't exist.

*Response:* NMFS agrees that that overfishing should be avoided on GB cod. NMFS asserts that the Amendment 16 carryover amount of 10 percent maintains a low risk of overfishing, even if fully utilized in FY 2013. Analysis conducted in support of the continuation of 10 percent carryover of unused ACE from FY 2012 to FY 2013 indicates that the total potential catch (i.e., total ACL + maximum carryover) if realized would be roughly 72 percent of the overall overfishing limit. Analysis of projected FY 2013, performed as part of the Framework 50 impact analysis, indicates projected GB cod utilization inclusive of carryover would be 85 percent of the available sector sub-ACL. These data suggest the likelihood of overfishing remains low in FY 2013, particularly as a 1-year transitional measure. NMFS is cognizant of the accuracy of past stock projections and the propensity for fishing mortality to be greater and stock size smaller than indicated by the most recent assessment. However, even in considering this possibility, NMFS concludes that the projected catch for FY 2013 presents a low risk of overfishing even with 10 percent of unused catch carried over from FY 2012.

NMFS also notes a logical flaw in the commenter's arguments: They state that ''. . .the fish are not there and they can't be caught. . .'' when explaining why the FY 2012 GB cod quota will be substantially underutilized. Current catch through early April was roughly 33 percent of the FY 2012 sector sub-ACL and 15 percent below the FY 2013 sector sub-ACL implemented by this rule. If the fish are not there and cannot be caught, it is unlikely that catch will meet or exceed the potential catch level in FY 2013 which, in turn, would mean the likelihood of overfishing would be low.

*Comment 27:* Three NGOs submitted the most substantive carryover-related comments. All three provided extensive comments, legal opinion, and supporting documentation in opposition to carryover, both the emergency action to reduce the GOM cod carryover amount and the continuation of the Amendment 16 provision that provides up to 10 percent of unused FY 2012 ACE to be used in FY 2013.

The overarching general points raised in the comments in opposition to NMFS's approach are: NMFS may not establish an ACL that exceeds the SSC-recommended ABCs; it is not appropriate to use the overfishing limit as the level total ACL may not exceed; permitting carryover threatens the recovery of recovering groundfish stocks; and the NMFS approach is inconsistent with the Magnuson-Stevens Act, National Standard 1, and carryover-related advice provide to the Council by NMFS.

*Response:* As discussed in the preamble, NMFS acknowledges that permitting carryover in FY 2013 such that ACLs and ABCs could be exceeded by the total catch deviates from the standard guidance. NMFS finds that the alternative approach for dealing with carryovers for 2013 as a 1-year transitional measure is consistent with the Magnuson-Stevens Act and authorized under the flexibility provision of the National Standard 1 guidelines at 50 CFR 600.310 (h)(3). This response elaborates on the rationale justifying this alternative approach.

As more fully explained and justified in the proposed and final rule preambles, the continuation of accounting for carryover consistent with the prior 2 years is intended as a 1-year transitional approach resulting from the exceptional and intractable circumstances of the 2012 and 2013 FYs. This approach is intended to balance the need to preserving consistency with the overarching statutory requirement to prevent overfishing with the expectations concerning the specific carryover intentions between FY 2012 and 2013 which have safety and management consequences. NMFS believes it could not sufficiently overcome reliance on carryover for the groundfish fleet to provide end-of-year safety and business planning by taking a course of action late in the fishing year that was completely different than the first two years of sector ACE carryover.

As stated in the proposed rule, to do so would have raised conflict with National Standard 10 by potentially compelling fishermen to make additional trips before the end of the year to more fully harvest available ACE on short notice. Neither the Council nor NMFS took a positive action or alerted industry with sufficient advanced notice that carryover might be modified or prohibited in FY 2013 in light of the precipitous drops in 2012 catch limits. Indeed, none of the commenters raised concerns about the potential for allowing full carryover from year to year with respect to either Amendment 16 or last year's specifications of catch limits in Framework 47. Faced with these unusual circumstances, NMFS finds that it has the authority under the National Standard 1 guidelines to propose this alternative approach for carryover of 1-year only provided it is consistent with statutory requirements to prevent overfishing.

In addition, through this action, NMFS is taking the proactive step of clarifying the carryover accounting by proposing a system of carryover accounting that is consistent with the standard provisions of the National Standard 1 guidelines for FY 2014 and

into the future (see responses to Comment 24 for additional information on FY 2014 carryover). As discussed in the preamble, NMFS will continue to solicit and consider additional public comment on the proposed clarification in order to foster additional public discussion and possible Council development of legally consistent carryover provisions prior to the start of FY 2014.

To be clear, the actions of this rule do not change Amendment 16's carryover provision nor do they increase ABCs or ACLs above ABCs as specified by the SSC. Commenters incorrectly equate NMFS's characterization of the total potential catch (total ACL + available carryover catch) as a new ''ACL.'' NMFS has made no such distinction and taken no such action. This action merely adjusts how, for the purposes of AMs, to account for carryover amounts. The difference is important. NMFS has provided rationale and analysis indicating that despite the total potential catch exceeding the ACL and ABC, it can be reasonably demonstrated that stocks will not be subject to overfishing. Appendix V to the Framework 50 EA outlines these analyses and is not repeated here. NMFS finds that in light of the flexibility afforded under National Standard 1 guidelines, the limited temporal scope of these actions, and the aforementioned overfishing analysis, the allowance of carryover in the manner described in this final rule is consistent with the Magnuson-Stevens Act.

*Comment 28:* Many of the same commenters mentioned in the previous Comment made very specific points about the carryover approach of this action, which are enumerated and responded to point by point as follows:

1. *The approach NMFS is using is illegal and violates both the Magnuson-Stevens Act and National Standard 1 because ACL cannot exceed ABC.*

*Response:* As explained in the previous response, NMFS concedes that continuing to allow carryover following the approach undertaken in FY 2011 and FY 2012, including the emergency rule modified GOM cod amount, is not wholly consistent with the standard approach specified in the National Standard 1 guidelines; but, the alternative approach is authorized by the National Standard 1 flexibility provision at 50 CFR 600.310(h)(3). Moreover, it is consistent with the statutory requirement to prevent overfishing because the approach is designed to prevent overfishing while maintaining consistency with other provisions of the Magnuson-Stevens Act.

2. *The commenters object to NMFS's FY 2013 carryover approach stating that risk of overfishing should be tightly limited consistent with National Standard 1 and the approach taken does not minimize such risk.*

*Response:* As outlined in NMFS's analysis, the risk of overfishing, given the buffers between allowed mortality and overfishing levels and the 1-year duration of this carryover approach, is low based on both recent historic catch utilization information and model-predicted FY 2013 catch. NMFS believes the level of risk is acceptable for FY 2013 only as a clearly identified transition year to a revised, consistent carryover system to be implemented in FY 2014.

3. *The commenters state it is inappropriate to identify the OFL as the level ACL cannot exceed, as NMFS has done in attempting to justify the FY 2013 carryover approach.*

*Response:* NMFS believes the 1-off reduction in the full scientific and management uncertainty buffers is an acceptable risk for the FY 2013 transitional period. Although reduced, the remaining buffers between the overfishing level and the catch level at which AMs will be triggered are adequate for this 1-year transitional period and consistent with the flexibility provision in National Standard 1 guidelines. This approach ultimately satisfies the statutory requirement to prevent overfishing.

4. *The commenters state that the requirement to set catch that does not exceed the SSC-recommended ABC found at section 302(h)(6) of the Magnuson-Stevens Act outlines the specific functions applicable to Regional Fishery Management Councils.*

*Response:* NMFS has specifically not modified or increased ACLs for FY 2013 such that they are established above the SSC-recommended ABCs. As previously explained, the total potential catch (i.e., ACL + available carryover catch) is greater than the ABC for all stocks. NMFS has outlined in this section why it believes this to be an acceptable approach and risk for FY 2013.

5. *The commenters state that the impact of allowing carryover was never analyzed by the SSC. Carryover will hamper recovery of stocks.*

*Response:* The FY 2012 catch projections for some stocks did consider the expected utilization for the fishing year. For FY 2013 projections, the catch assumption is typically the ABC. The additional fishing mortality above ABC but below OFL that would result if the amount of carryover catch exceeds the ABC level would not have been considered by the SSC. However, Council staff conducted analyses of the potential biological impact of carryover utilization in FY 2013 (EA, pp 188–192). These analyses concluded that full utilization of carryover (i.e., 10 percent of FY 2012 ACE) in FY 2013 is projected to have minor and small impacts on fishing mortality (i.e., increased) and spawning stock size (i.e., decreased) in comparison to the baseline catch evaluation that did not consider carryover. This analysis indicted that the 10 percent carryover for GOM cod would result in overfishing. This is why NMFS has reduced the GOM carryover from 10 to 1.85 percent of the FY 2012 ACE. Overfishing is not projected to occur at this reduced level.

Carryover cannot be said to have absolutely no impact on stocks, particularly those in rebuilding plans. However, from a biological impact perspective, carryover can be demonstrated through analysis like that contained in Framework 50 to have only minor impact to stocks, particularly considering the carryover accounting approach is for 1-year only. These impacts could be easily accounted for in catch projections and stock analyses to ensure that rebuilding objectives are not compromised. The more substantive issue with carryover is not the biological impact but rather the regulatory requirements established for annual catch limits through the National Standard 1 guidelines. As outlined by the commenters and NMFS, going forward, carryover should be accounted for in setting annual catch limits such that its use does not cause catch in excess of ACLs or ABCs.

6. *The commenters cite and provide correspondence from NMFS to the Council that contradicts the carryover approach being permitted in FY 2013.*

*Response:* NMFS acknowledges that previously provided guidance on carryover contradicts the approach being used in FY 2013. However, NMFS believes there is sufficient justification for this approach as a limited, 1-year transitional approach.

7. *Several objections were raised pertaining to the analysis and rationale use by NMFS to support the determination that up to 10 percent of unused FY 2012 ACE can be carried over to FY 2013 for all eligible stocks except GOM cod, which is reduced by emergency measures to no more than 1.85 percent of the FY 2012 ACE.*

*Response:* NMFS is relying heavily on the analysis as an important component justifying the FY 2013 transitional approach. As outlined in the Framework 50 Appendix V analysis, there is sufficient reason to believe based on recent past catch limit utilization and

model predicted FY 2013 catches, that the OFLs will not be exceeded. This analysis was necessarily conducted *post hoc* because the Council took no carryover-related action in either Framework 48 or Framework 50.

In summary, NMFS asserts that the culmination of events leading into FY 2013—Inaction by the Council to address carryover; protracted discussions on carryover guidance that were not fully resolved until late in the development cycle; late arriving stock assessment results; later than usual catch limit recommendations from the Council; and potential late season notice of a change to an already approved and implemented program that would have potential safety and business impacts—all coincided to create a challenging situation with no clear solution.

*Comment 29:* The Council and some NGOs raised concerns with NMFS's proposed Magnuson-Stevens Act section 305(d) clarification for carryover accounting beginning in FY 2014. The Council specifically objected to the use of section 305(d), stating that by doing so, NMFS was subjectively evaluating the Council's Amendment 16 intent with respect to carryover. The NGOs had specific objections with some components of the proposed measures and offered various suggestions on other ways carryover could be approached. These suggestions ranged from ensuring that carryovers are counted against ACLs for AM determinations to constraining carryover use only for stocks that are not overfished, have recently been assessed, and have similar year-to-year ABCs.

*Response:* NMFS is not interpreting Council intent as to allowing for carryover because this action does not change that provision. Except for the emergency action reducing temporarily the amount of carryover allowed for GOM cod, all of the carryover provisions remain intact in the groundfish FMP. As explained several times, NMFS is merely clarifying how carryover will be accounted for purposes of AMs in order to ensure that NMFS can discharge its responsibility to implement the carryover provisions in a manner consistent with the Magnuson-Stevens Act, particularly provisions requiring the prevention of overfishing.

NMFS believes that the proposed approach for FY 2013, as a transitional measure, and a long-term approach for 2014 and beyond best balances the Council's intent to allow for carryover and its benefits and the need to prevent overfishing. The 2014 approach still allows fishermen to rely on some guarantee of a *de minimus* amount of carryover without consequences so as to promote safety at sea and management predictability. In addition, this approach allows fishermen to manage their carryover accountability measures by deciding whether to fish their carryover on top of their ACE and defer accountability measure until the next fishing year or to preserve their carryover from year to year so as to maximize their catch level in any given year.

NMFS believes that it is in the public interest to allow for additional public comment on the carryover provisions for 2014 and beyond. As a result, to ensure sufficient dialog, NMFS will implement the 305(d) clarification as an interim final rule and accept additional public comment for 45 days. This will also allow additional time for discussion and potentially the development of alternative carryover approaches through the Council process. As a result, NMFS will respond in full to the comments submitted on Framework 50 regarding the FY 2014 interim final carryover approach as well as additional comments submitted during the interim final comment period.

NMFS believes this is the best possible approach to take at this time. This approach provides, and encourages, more thorough public review and comment, opportunity for Council review and deliberation, as well as a default provision for FY 2014 in case the Council does not develop additional measures to address the accounting for carryover from year to year consistent with other Magnuson-Stevens Act provisions. Allowing additional public comment will also better allow NMFS to modify and refine the interim final measures based on additional public comment, should the Council not take independent action.

**Other Comments**

*Comment 30:* One NGO commented that Framework 48, Framework 50, and the FY 2013 Sector Operations Plans and Contracts and Allocation of ACE constitute segmentation of the environmental review process. The NGO also commented that the management actions are a patchwork and burden the public with multiple, overlapping public comment periods, which is confusing to the public.

*Response:* The NGO's comment in this regard is based on the presumption that the various actions at issue are either interdependent or interrelated, connected actions, such that NEPA compels their consideration and evaluation within the scope of a single NEPA document prior to approval of the initial action. This is not the case. The actions identified by the NGO are neither components of a larger single action or connected. While they relate to similar issues and may have synergistic impacts, Framework 48 and Framework 50 and sector operating plans are discrete actions with independent utility, each supported by an independent rationale. One action does not compel the other or irretrievably commit resources as NMFS, through the Magnuson-Stevens Act review and approval process, retains discretion at each decision-making stage to choose to take action or not take action. While NMFS has discretion to include similar actions in a single EA or Environmental Impact Statement (EIS) in appropriate circumstances, it is not compelled to do so. Here, given the complexities and timing challenges of the fishery management scenario with which it was presented, NMFS chose to prepare the level of NEPA analysis appropriate to the decisions being made. The EA for Framework 50 takes a hard look at the direct, indirect, and cumulative impacts of this action, and properly supports a Finding of No Significant Impact. Importantly, the EA includes a robust cumulative effects analysis which identifies Framework 50 as a reasonably foreseeable future action and predicts its synergistic effects. NMFS has prepared a separate NEPA analysis for Framework 48, which takes into account the pre-existing effects of Framework 50, as it evaluates the direct, indirect, and cumulative effects of Framework 48. Using this approach, NMFS will avoid the perils of segmentation by ensuring that all effects of the related actions are evaluated at the appropriate time and holding open the option of preparing an EIS should any environmental impact prove to be significant.

NMFS understands that there are multiple management actions under review for implementation by the start of the 2013 fishing year on May 1, 2013. However, this year has presented a number of unusual circumstances that has led to three separate management actions. NMFS completes an annual rulemaking to implement sector operations plans and allocate ACE to sectors. In addition, the Council typically completes a framework action to respond to updated or new stock information and implement the necessary specifications or management measures. However, as described more fully in the background section of this preamble, Framework 48 and 50 are parallel actions, and the specifications adopted in Framework 50 were initially proposed in Framework 48. Due to the drastic reductions in catch limits for FY

2013, the Council needed additional time to complete the specifications portion of the action, and as a result, the specifications were removed from Framework 48.

Although there were three ongoing rulemakings, and three public comments periods with some overlap, NMFS does not believe this impeded the opportunity for individuals to comment on the proposed rules. Many individuals submitted one letter with comments that spanned multiple actions. In addition, opportunity for public participation has extended over 1 year, as development of Framework 48 began in spring 2012. There were extensive public comment periods at the various Groundfish Committee and Council meetings associated with the development of these actions. Also, because of the unusual circumstances, the Council did not take final action on Framework 50 until January 2013, which provided additional opportunities for public comment and participation on the development of this action. NMFS is also publishing the carryover measures for FY 2014 and beyond as interim final measures and is also implementing multiple emergency rules in this action, which allow for additional public comment on these measures.

*Comment 31:* The Council and one state marine fisheries agency opposed NMFS's modification of the Council's formally submitted management action, and that this action confounds the statutory roles of the Council and NMFS.

*Response:* To clarify, the alternatives, analyses, and recommendations that support the Council recommendations were not, and have not been, modified in analytical documents that the Council provided to NMFS. NMFS clearly delineates measures, or additional analyses, that were added by NMFS. NEPA is a process that requires Federal agencies to consider the effects of their actions on the quality of the human environment prior to making decisions. The current NMFS guidance for NEPA compliance acknowledges that due to the close relationship between NMFS and the regional fishery management councils, compliance with NEPA is most effective if NMFS and the councils coordinate. However, NMFS is responsible for the scope, objectivity, and content of the NEPA document, and for ensuring overall NEPA compliance. Although the Council prepares relevant sections of the NEPA document, upon submission by the Council, NMFS adopts this document and retains legal responsibility for NEPA compliance. Therefore, if NMFS determines that additional analysis or supplementary information is necessary to bring the document into full NEPA compliance, it is the agency's responsibility to incorporate this information into the NEPA document.

NMFS understands that, for multiple reasons, FY 2013 presented a series of unusual circumstances. The Council did not take final action on Frameworks 48 and 50 until December 20, 2012, and January 30, 2013, respectively. This is well after the time that the Council typically completes, and submits, management actions to NMFS for review and implementation by May 1. Framework 48 also includes a measure that gives the RA authority to adjust recreational management measures prior to the fishing year, and NMFS was required to adjust these measures for FY 2013 to ensure the recreational fishery does not exceed its sub-ACLs in FY 2013. In support of this measure, the Council convened its RAP in February 2013. All of this leaves an inordinately short amount of time for NMFS to analyze and review the Council's recommendations and complete the rulemaking process consistent with APA. Also, with no possibility of the Council addressing the GOM cod carryover concern, or the FY 2013 ABC for GB yellowtail flounder if it was disapproved, in a timely way, NMFS' only available mechanism for addressing these concerns was through emergency rulemaking, as provided for by section 305(c) of the Magnuson-Stevens Act.

Thus, for all of these reasons, and due to the unforeseen events, adding additional analysis to the Framework 50 document was the only way to ensure necessary management measures were in place by May 1, 2013. Incorporating the necessary analyses into the Framework 50 document also provides ease of public review due to the relatedness to the specifications adopted by the Council in Framework 50. NMFS is committed to working with the Council to avoid the issue raised by the Council. This issue has been added to the Northeast Region Coordination Council (NRCC) agenda to with the intent of resolving differences between the Council and NFMS concerning document timing and preparation The NRCC is an executive level committee of the New England and Mid-Atlantic Councils, the Atlantic States Marine Fisheries Commission, NERO, and NEFSC.

NMFS realizes there was some confusion on the availability of Appendix V, which was prepared by NMFS to analyze carryover provisions. This Appendix was not provided to the Council for posting on the Council Web site until well into the public comment period. However, this appendix was posted on the NERO Web site and *http://www.regulations.gov*, and links to both of these Web sites were provided in the proposed rule. Further, a NERO staff contact was provided in the proposed rule, and members of the public could have contacted this staff member for assistance in accessing the document, or any of the analyses supporting the proposed measures. As a result, the lateness in which the Appendix was posted to the Council's Web site likely did not impede access to the document.

**Changes From the Proposed Rule**

NMFS has made four changes to the proposed rule. First, this final rule disapproves the Council preferred FY 2013 ABC for GB yellowtail flounder, and implements an emergency rule to set a FY 2013 ABC of 500 mt. In the proposed rule, NMFS highlighted concerns with the ABC of 1,150 mt proposed in Framework 50, and requested specific comment on this measure, and its consistency with the Magnuson-Stevens Act and National Standards. In the event this ABC was disapproved, NMFS proposed an emergency rule to implement an ABC of 500 mt. Based on public comments received, and additional review, NMFS has determined that a FY 2013 ABC of 1,150 mt for GB yellowtail flounder is not consistent with the necessary provisions of the Magnuson-Stevens Act, and is disapproved this measure in Framework 50. This rule implements a FY 2013 ABC of 500 mt instead under emergency authority as further discussed in Item 4 of this preamble.

Second, although NMFS is approving the FY 2013 ABC of white hake that was proposed (3,638 mt), new information became available after the Council took final action on Framework 50, and after the proposed rule for this action published, that justifies a higher ABC for FY 2013. As discussed in more detail in Item 4 of this preamble, the FY 2013 ABC that was proposed in this action was based on the 2008 stock assessment for white hake, which was the best scientific information available to the Council when it developed and took final action on Framework 50. A new benchmark assessment for white hake was completed in February 2013, and the final results of this assessment became available in April 2013. In the proposed rule for this action, NMFS indicated that new assessment results were expected to become available soon, and that, should this new information indicate a change to the FY 2013 catch

limit for white hake, the Council or NMFS could consider a separate action to change the white hake catch limit for FY 2013. Thus, through emergency authority, and based on the best scientific information available, this final rule implements an increased FY 2013 ABC for white hake (4,177 mt) in place of the ABC proposed in this action (3,638 mt). This is a 15-percent increase.

In § 648.85, white hake is removed from the list of stocks of concern. The recent stock assessment for white hake indicates the stock is not overfishing, overfishing is not occurring, and the stock is projected to be rebuilt in 2014.

In § 648.90(a)(1)(4), SNE/MA yellowtail flounder is added to the re-estimation of expected scallop catch of yellowtail flounder for the purposes of adjusting the scallop and groundfish fisheries sub-ACL should expected scallop catch be less than 90 percent of the scallop fishery sub-ACL. Currently, the regulations state that the re-estimation will be completed for GB yellowtail flounder. This rule adds SNE/MA yellowtail flounder to the re-estimation process as adopted by the Council in Framework 50. As explained in Item 5 of this preamble, this revision was inadvertently omitted from the proposed rule. As a result, this measure is implemented in this action through an interim final rule, and NMFS is accepting public comment on this measure for 45 days (see **DATES**).

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the NE multispecies fishery and consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be significant for 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.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. Further, under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive the general notice of proposed rulemaking for the emergency action to implement a higher FY 2013 ABC for white hake. As described more fully earlier in this preamble, and below, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment, or a delay in effectiveness, contrary to the public interest. The effective date of this action affects a parallel rulemaking approving sector operations plans for the start of FY 2013 on May 1, 2013. In addition, this action sets FY 2013 catch limits, allocates SNE/MA winter flounder to sectors, and implements three parallel emergency actions. Therefore, these actions must be in effect at the beginning of FY 2013 to fully capture the conservation and economic benefits of Framework 50 measures, emergency rulemakings, and the FY 2013 sector operations plans. Due to unforeseen circumstances related to FY 2013 catch levels, and the drastic quota reductions necessary for many key groundfish stocks, the Council did not take final action on Framework 50 until January 2013, and the Council's submission of Framework 50 to NMFS was delayed until March 2013. Due to this time constraint, this rulemaking could not be completed further in advance of May 1, 2013. Therefore, in order to have this action effective at the beginning of FY 2013, it is necessary to waive the 30-day delayed effectiveness of this rule.

Failure to waive the 30-day delayed effectiveness would result in no catch limits being specified for FY 2013 for many groundfish stocks. Without ACE for most groundfish stocks, sector vessels would be unable to fish beginning on May 1, 2013. This would severely disrupt the fishery, and could result in foregone yield and revenue reductions. The groundfish fishery is already facing drastic cuts in the catch limits for many key groundfish stocks. A delay in implementation of this action would prevent groundfish vessels from fishing, which could worsen the severe economic impacts groundfish vessels, and associated fishing communities are facing in FY 2013. This action also allocates SNE/MA winter flounder to sectors and allows commercial and recreational vessels to land the stock. So, a delay in this action could prevent vessels from maximizing the benefit of this measure. Further, because recreational vessels would not be prevented from fishing on May 1, 2013, if this action is delayed, there could be significant confusion for recreational vessels and enforcement on whether it is legal to land SNE/MA winter flounder. Thus, a delay in this action could severely disrupt the fishery. Further, this action implements FY 2013 recreational measures to help ensure the recreational fishery does not exceed its GOM cod and haddock sub-ACLs. If this action is delayed, recreational vessels could fish under the old, less restrictive measures, which increases the likelihood that the recreational fishery would exceed its sub-ACLs and trigger an AM. Also, because the ACLs for GOM cod and haddock are so small in FY 2013, a delay in implementing revised recreational measures could increase the likelihood that overfishing would occur. For all of these reasons, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

A FRFA was prepared for this action, as required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604. The FRFA includes the summary and responses to comments in this rule, the analyses contained in Framework 50 and its accompanying EA/RIR/IRFA, and the IRFA summary in the proposed rule. The FRFA describes the economic impact of this action on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 50 and in the preamble to the proposed rule, as well as this final rule, and are not repeated here. A copy of the full analysis is available from the NMFS (see **ADDRESSES**).

NMFS's response to all comments received on the proposed rule, including those that raised significant issues with the proposed action, 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 revised SNE/MA winter flounder rebuilding program;
- FYs 2013–2015 ABCs for GOM cod;
- the FY 2013 ABC for GB yellowtail flounder;
- FY 2013 GOM cod carryover;
- the FY 2014 and beyond carryover measures; and
- the FY 2013 recreational management measures.

Comments 4, 5, 8, 10, and 25 discussed the economic impacts of this action, or the IRFA prepared for the proposed rule. In addition, public comments received on alternatives to the proposed ABCs that would result in higher catch limits (e.g., 2013 interim action for GOM cod) were considered to be indirectly related to the IRFA with respect to alternatives to the proposed action that would help mitigate economic impacts. Detailed responses are provided to the specific significant issues raised by public comment, and are not repeated here.

As a result of the public comment received, the proposed FY 2013 ABC of

1,150 mt for GB yellowtail flounder was disapproved, and NMFS is instead implementing an ABC of 500 mt, No other changes to the proposed rule measures were required to be made as a result of public comments.

*Description and Estimate of the Number of Small Entities to Which the Final Rule Would Apply*

The Small Business Administration (SBA) defines a small business as one that:

(1) Is independently-owned and operated;

(2) Is not dominant in its field of operation; and

(3) Has annual gross revenues that do not exceed—

○ $4.0 million in the case of commercial harvesting entities, or

○ $7.0 million in the case of for-hire fishing entities; or

(4) Has fewer than—

○ 500 employees in the case of fish processors, or

○ 100 employees in the case of fish dealers.

This action would mainly impact commercial harvesting entities engaged in the limited access groundfish fishery, as well as both the limited access general category and limited access scallop fisheries. The limited-access groundfish fishery is further classified as vessels enrolled in the sector program and those in the common pool. In general, sector-enrolled businesses rely more heavily on sales of groundfish species than common pool-enrolled vessels. At the beginning of the 2012 groundfish fishing year on May 1, 2012, there were 1,382 individual limited access permits. Each of these permits was eligible to join a sector or enroll in the common pool. Alternatively, they could allow their permit to expire by failing to renew it. There were 827 permits enrolled in the sector program and 584 enrolled in the common pool. The limited access (LA) scallop fisheries can be further classified as limited access and limited access general category (LAGC) scallop permits. At the beginning of the 2012 scallop fishing year on March 1, 2012, there were 342 active LA scallop and 603 active LGC permits.

Individually permitted vessels may hold permits for several fisheries, and may harvest species of fish that are regulated by several different fishery management plans, even beyond those impacted by this action. In addition, multiple permitted-vessels, and/or permits, may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Ownership data are available from 2010 onward for the four primary sub-fisheries potentially impacted by this action. These are the sector and common pool segments in the groundfish fishery, and the LA and LAGC scallop fisheries. Due to data limitations, only 1 year's gross receipts are reported, and calendar year 2011 serves as the baseline year for this analysis. Calendar year 2012 data are not yet available in a fully audited form.

In 2011, there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small entities, and 58 are large entities, based on SBA guidelines. These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios and obtain gross sales from many fisheries, and are not dependent on any one fishery. However, not all are equally diversified. The entities that depend most heavily on sales from harvesting species that are impacted by this action are most likely to be affected. So, for this analysis, we identified ownership groups that are most likely to be impacted by the measures implemented in this action. We identified these groups as those that derive greater than 50 percent of their gross sales from sales of either regulated groundfish or scallops. Using this threshold, 135 entities are groundfish-dependent, of which 131 are small entities, and four are large entities. There are 47 entities that are scallop-dependent, of which 39 are small entities, and 8 are large entities.

This action also regulates the Atlantic herring fishery. The herring fishery receives an allocation of GB and GOM haddock as a result of bycatch of these stocks that occurs in the fishery. In 2012, there were 3 large entities and 86 small entities that had limited access herring permits. There were 1,984 small entities that had an open access herring permit. Open access permits make up a very small proportion of the landings in the herring fishery, and derive little revenue from this fishery. Some entities that hold a limited access herring permit have gross revenues greater than $4 million. However, none of these entities reported any herring revenues during 2010–2012, and as a result, these entities are unlikely to be affected by this action. In addition, analysis predicts that it is unlikely that the midwater trawl herring fleet would exceed its sub-ACLs for GOM or GB haddock. As a result, the small regulated entities that derive revenues from the herring fishery are not expected to be impacted by this action.

In addition to the commercial harvesting entities, this action would also impact the recreational harvesting entities that participate in the groundfish fishery. Party/charter permits for the groundfish fishery are open access. All party/charter fishing businesses that catch cod or haddock may be affected by this action. During FY 2010, 762 party/charter permits were issued. Of these 762 permits, 332 permit holders reported taking and retaining any species on at least one for-hire trip. In FY 2010, 285 of these permit holders reported catching at least one cod or haddock. Of the 285 permit holders that reported catching at least one cod or haddock in FY 2010, 148 reported fishing in the GOM stock area (the recreational fishery only has a quota for GOM cod and haddock). In 2011, 170 party/charter vessels reported landings of GOM cod or haddock. All regulated party/charter operators are small entities. The median value of gross revenues from passengers was just over $9,000, and did not exceed $500,000 in any year from 2001 to 2010.

*Economic Impacts of the Approved Measures and Steps Taken To Mitigate Adverse Economic Impacts of the Action*

The economic impacts of the measures implemented in this action are summarized below and are discussed in more detail in sections 7.4 and 8.11 of the Framework 50 EA. All of the measures are expected to have impacts on a substantial number of small entities. The economic impacts of this action on the groundfish fishery are expected to be severe and negative. This action may also place small entities at a significant competitive disadvantage relative to large entities, particularly those small entities engaged in the commercial groundfish fishery. Analysis shows that smaller entities, those generating less than $500K in annual gross sales, will likely be the most

impacted. Total gross sales losses for these entities are estimated to be approximately 20–25 percent. Gross sales losses from groundfish are estimated to be 50–80 percent. Profitability of many small entities will also likely be significantly reduced under the groundfish catch limits.

**Southern New England/Mid-Atlantic Winter Flounder Management Measures**

The revision to the SNE/MA winter flounder rebuilding strategy is expected avoid a loss of an estimated $40.2 million in net present value compared to the no action. Five rebuilding scenarios were analyzed in addition to the no action alternative. Two of these scenarios failed to rebuild the stock within 10 years, and thus, would violate rebuilding requirements of the Magnuson-Stevens Act. The other rebuilding strategies would meet Magnuson-Stevens Act requirements, but would rebuild in a shorter timeframe than 10 years, and as a result would have lower net economic benefits than the revised rebuilding program implemented in this action. As a result, the revised rebuilding program implemented in this action help mitigate the economic impacts of this action to the maximum extent practicable compared to the other rebuilding scenarios analyzed, and results in the largest net economic benefit.

In FY 2013, landings of SNE/MA winter flounder are estimated to be worth $5.4 million in ex-vessel gross revenues. Approximately $4.3 million of these estimated revenues will likely accrue to sector vessels, and the rest to common pool vessels. Landing of this stock has been prohibited since FY 2009. As a result, it is difficult to anticipate the economic impacts of the revised ABC/ACL for this stock because there are not enough trips to help characterize future fishing activity. If the Council did not take any action, possession of SNE/MA winter flounder would be prohibited, and fishing vessel revenues would have been lower than those expected from this action. In addition, if possession of the stock remained prohibited, revenues of other groundfish stocks would have also been reduced since there would have been fewer groundfish trips as a result of the inability to land SNE/MA winter flounder.

This action also modifies the commercial fishery AM for SNE/MA winter flounder in conjunction with allocating the stock to sectors. There is a risk that sectors could catch their ACE prematurely within the fishing year and no longer be able to fish in the SNE/MA winter flounder stock area. This would be expected to have negative economic impacts due to lost revenue from the catch of other species, or increased costs as a result of having to fish outside of the area. However, analysis shows that it is unlikely that sector vessels will catch their entire allocation of SNE/MA winter flounder. As a result, this action provides sector vessels greater flexibility and will likely result in higher revenues and lower costs, which is expected to help mitigate some of the negative impacts anticipated in FY 2013.

**Annual Catch Limit Specifications**

This action also sets specifications for FYs 2013–2015 for most groundfish stocks. The new ABCs are based on the latest benchmark stock assessment information, which is considered the best scientific information available and consistent with the Magnuson-Stevens Act requirements, and other applicable law. Because NFMS can only approve or disapprove measures recommended in Framework 50, the only other possible alternatives to the ABCs implemented in this action that would mitigate negative impacts would be higher catch limits. Alternative higher catch limits are not viable or permissible under the law because they would not be consistent with the goals, objectives, and requirements of the Magnuson-Stevens Act and the FMP, particularly the requirement to end overfishing immediately. The Magnuson-Stevens Act and case law prevent implementation of measures that conflict with conservation requirements even if it means negative impacts are not mitigated. For all stocks, except GB yellowtail flounder, the Council recommended the highest ABCs allowed given the best available science, the SSC's recommendations, and Magnuson-Stevens Act and FMP requirements to end overfishing and rebuild fish stocks. The only other legally available alternatives to the catch limits in this action would be lower limits, which would not mitigate the economic impacts of this action to the fishery. Further information on the GOM cod specifications adopted in this action, and why higher ABCs for this stock would not be consistent with the Magnuson-Stevens Act, is provided in the response to Comment 11. Also, this action disapproves the Council's recommendation for GB yellowtail flounder because it is not consistent with the Magnuson-Stevens Act, and this is described in more detail in the response to Comment 6. The ABC implemented in this action through emergency rulemaking is the highest ABC possible to avoid overfishing based on the best scientific information available.

For the reasons mentioned above, the specifications implemented in this action are the only reasonable and legal alternatives for catch limits that would mitigate the economic impacts of this action to the extent possible. Although there are no other viable alternatives to mitigate negative impacts in the narrow scope and context of Framework 50 regarding catch limits per se, there are numerous mitigation measures that have been extensively discussed, considered, and implemented in Amendment 16, and parallel measures that are being implemented for implementation in FY 2013. All of these mitigating measures are discussed previously in this preamble, and are not repeated here. All of these existing and new measures can be found at: *http://www.nero.noaa.gov/sfd/sfdmulti.html.*

The analysis to estimate the economic impacts of this action considered three different scenarios using a low (Scenario 1) and high (Scenario 2) ACL for both GOM cod and GB yellowtail flounder, as well as the increased ACL for white hake implemented in this action through emergency rulemaking (Scenario 3). All of these scenarios have similar estimated groundfish gross revenues for FY 2013. Compared to FY 2011, groundfish gross revenues are expected to be approximately 28–30 percent lower. Gross groundfish revenues are expected to be 18 to 20 percent lower than those predicated for FY 2012. Under this action, gross revenues for all species on groundfish trips are expected to be 23 to 25 percent less in FY 2013 when compared to FY 2011, and 11 to 13 percent lower compared to the predicated FY 2012 revenues. However, the emergency action to increase the FY 2013 white hake quota is expected to increase gross revenues by approximately $400K compared to the lower white hake quota that was proposed in Framework 50. This is expected to help mitigate some of the economic impacts of this action.

Net revenues are expected to decline much less substantially than gross revenues. Gross revenues on sector trips in FY 2013 are expected to decline by approximately $26 million to $27 million from FY 2011, which is a 23 to 25-percent decrease. Net revenues are expected to decline by a range of only $2 to $3 million, or approximately 4 to 6 percent, from FY 2011. This is due in part to limitations of the analysis, which underestimates actual trip costs, and in part to efficiency gains that are predicted to occur. Maintaining net revenues would most likely occur at the

expense of smaller vessels operating at a low profit margin that would be forced to lease their quota, or sell their permits. Crew-days, days absent, and total sector trips are also be expected to decline substantially compared to FY 2011, since only the most efficient trips are expected to occur under such highly restrictive quota allocations. Fewer operating vessels and days absent would translate into a reduction in earning opportunities for crew members.

The home port states of Connecticut, New Hampshire, and New Jersey are expected to have the largest percentage declines in landings value compared to FY 2011. Massachusetts would likely see the largest overall decline in gross revenue since FY 2011, with an expected decrease of approximately $21 million. All ports are expected to be negatively affected by this action. Chatham, MA, is expected to have the largest percentage decline in landings value since FY 2011.

The impacts of this action are expected to be non-uniformly distributed across vessel length classes. The economic impact is expected to fall heaviest on the smallest vessel length class (less than 30 feet (9.1 m)), and is expected to taper off as vessel length increases up to the largest vessel length class (greater than 75 feet (22.9 m)). This result is not surprising; relative to larger vessels, small vessels have less scalability in terms of landings, and have a smaller geographic range.

This ABCs implemented in this action will reduce the scallop fishery allocation for GB and SNE/MA yellowtail flounder by 47 and 52 percent, respectively, compared to FY 2012. If the scallop fishery exceeds its GB yellowtail flounder allocation by more than 56 percent in FY 2013, scallop vessels would not have access to Closed Area II the following fishing year, and revenues would decline by $16.2 million. If an overage occurs, and is less than 56 percent, the AM areas for the scallop fishery would be open to fishing part of the year, and fishing effort could likely be moved to other months. Shorter scallop fishing windows could increase operating costs and have potential negative price impacts from short-term supply increases. If effort was shifted to other seasons when the meat weights are highest, there could be some positive impacts on the long-term revenues, which could offset some negative economic effects. The response to comment 10 discusses some mitigating measures available to the scallop fishery.

**Carryover**

This action continues to allow up to 10 percent of unused FY 2012 sector ACE to be used in FY 2013 in conjunction with the catch limits implemented by this action, except for GOM cod. This action reduces the allowable GOM cod unused ACE from a maximum of 10 percent down to a maximum of 1.85 percent to better ensure overfishing does not occur. The actual amount of carryover to FY 2013 depends on the amount of ACE not harvested in FY 2012.

The economic impact analysis conducted for Framework 50 assumed that the full 10-percent carryover amount, including GOM cod, was available and utilized for all carryover-eligible stocks. As such, carryover contributes to the projected $64.3 million gross groundfish revenues expected from the catch limits in this action. The analysis also evaluated if no carryover of GOM cod was permitted in FY 2013. This reduced projected gross groundfish revenue by $2.6–61.7 million. NMFS estimates that the 1.85-percent GOM cod carryover will likely contribute approximately $50,000 to the FY 2013 gross groundfish revenue (i.e., roughly 1.85 percent of the $2.6 million value of GOM cod carryover). Consistent with the overall findings on FY 2013 catch limit economic impacts, the reduction in GOM cod carryover implemented in this action through emergency authority is expected to have the largest impact on vessels under 30 feet (9.1 m) in length. The carryover amounts are expected to help mitigate adverse economic impacts in FY 2013 to the maximum extent possible while ensuring NMFS meets its statutory obligation to implement catch limits, in this case FY 2013 ACLs plus the potential carryover from FY 2012), that will not result in overfishing.

**FY 2013 Recreational Management Measures**

This action increases the minimum fish size for GOM haddock in the recreational fishery. Total potential losses in gross revenues for party/charter vessels operating in the GOM as a result are estimated to be approximately $974 thousand. Total potential losses in gross revenues were estimated by multiplying the projected FY 2013 decline in fishing trips (7,109 trips) by the estimated average access fee paid by party/charter anglers ($137). Assuming the number of actively participating party/charter vessels in FY 2013 is the same as in FY 2011, this action is expected to result in an average gross revenue loss of $5,729 per vessel ($974 thousand divided by 170 vessels). Actual losses may be lower than estimated, since some anglers may switch to other species besides haddock and cod (striped bass, bluefish, black sea bass, scup, etc.) not considered in this analysis. For-hire businesses that are able to offer more non-groundfish fishing trips specifically marketed towards alternative species may be able offset some of the estimated losses.

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

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This action does not duplicate, overlap, or conflict with any other Federal law.

*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 fisheries, as well as the scallop and herring fisheries that receive an allocation of some groundfish stocks. In addition, copies of this final rule and guides (i.e., information bulletins) 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, Recordkeeping and reporting 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.*

■ 2. Section 648.82 is amended by adding paragraph (n)(2)(vii) to read as follows:

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

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(n) * * *

(2) * * *

(vii) *SNE/MA winter flounder AM.* If the common pool fishery sub-ACL for SNE/MA winter flounder is exceeded, including the common pool's share of any overage of the total ACL, as specified at § 648.90(a)(5), by an amount that exceeds the management uncertainty buffer, the AM described in this paragraph would be implemented in the following fishing year. The AM would be effective for the entire fishing year. Common pool vessels fishing on a NE Multispecies DAS with trawl gear 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) in the SNE/MA Winter Flounder Trawl Gear AM Areas. The AM areas are defined below, and are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted.

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′ |

[1] Point 1 connects to Point 2 along 41°10′ N or the southern coastline of Block Island, RI, whichever is farther 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) |
| 3 ..... | (1) | 69°00′ |
| 4 ..... | 41°00′ | 69°00′ |
| 5 ..... | 41°00′ | 69°10′ |
| 6 ..... | 41°10′ | 69°10′ |
| 7 ..... | 41°10′ | 69°20′ |

(1) The southwest-facing boundary of Closed Area I.

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■ 3. Section 648.85 is amended by:

■ a. Revising paragraphs (b)(5) introductory text, (b)(5)(i), (b)(6)(iv)(D), (b)(8)(v)(F), and (b)(8)(v)(H), and

■ b. Adding paragraph (b)(5)(iii).

The added and revised text reads as follows:

**§ 648.85. Special management programs.**

* * * * *

(b) * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, CC/GOM yellowtail flounder, American plaice, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod and GB yellowtail flounder.* With the exception of GB cod and GB yellowtail flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

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(iii) *GB yellowtail flounder.* The Incidental Catch TAC for GB yellowtail flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

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(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, witch flounder, SNE/MA winter flounder, and GB yellowtail flounder; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A) of this section, or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

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(8) * * *

(v) * * *

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited. Possession limits for all other stocks are as specified in § 648.86.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod and GB yellowtail flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as

authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

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■ 4. Section 648.86 is amended by revising paragraph (l) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

* * * * *

(l) *Ocean pout, windowpane flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish.

* * * * *

■ 5. Section 648.87 is amended as follows:

■ a. Revise paragraphs (b)(1)(i)(A) and (c)(2)(ii)(A);

■ b. Suspend paragraph (b)(1)(i)(C); and

■ c. Add paragraphs (b)(1)(i)(F) and (b)(1)(i)(G).

The added and revised text reads as follows:

**§ 648.87 Sector allocation.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) *Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section.

* * * * *

(F) (*1*) *Carry-over.* For FY 2013, with the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year; except that for GOM cod, for a period of 180 days after publication of this rule, a sector may only carry over an amount of ACE equal to up to 1.85 percent of its original GOM cod ACE.

(*2*) *Eastern GB cod and haddock carryover.* Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in paragraph (b)(1)(i)(F)(*1*) of this section, but will not increase an individual sector's allocation of Eastern GB stocks during the following year.

(*3*) *Carry-over when vessels leave or change sectors.* Carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(G) *Carryover accounting.* (*1*) For FY 2013, carryover of a particular stock attributed to a sector shall not be counted against a sector's ACE or the overall ACL for groundfish stocks.

(*2*) Beginning in FY 2014, carryover of a particular stock attributed to a sector, other than the NMFS-specified *de minimus* amount, shall be counted against the sector's ACE only for purposes of determining an overage subject to the AM in paragraph (b)(4)(iii) of this section in circumstances when the overall stock-level ACL has been exceeded.

(*3*) NMFS shall determine and announce the *de minimus* amount for FY 2014 and may modify each subsequent year. *De minimus* announcements shall be made consistent with the APA on or about 6 months before the end of the fishing year.

(*4*) In instances where the overall stock-level ACL has been exceeded and sectors have utilized available carryover in excess of the NMFS specified *de minimus* amount, the sector will be subject to the AM provision, inclusive of the carryover amount in excess of the stock-level ACL, as outlined in paragraph (b)(4)(iii) of this section.

(5) The Council may request, on an annual basis, for NMFS to reduce the amount of the available eligible carryover amount to ensure the total potential catch, the stock-level ACL plus the carryover amount, does not exceed the stock overfishing limit. Any such reduction of carryover amount shall be done consistent with the APA.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish);

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**§ 648.89 [Amended]**

■ 6. Section 648.89 is amended as follows:

■ a. Remove paragraph (c)(7); and

■ b. Redesignate paragraph (c)(6) as paragraph (c)(5); paragraph (c)(8) as paragraph (c)(6) and paragraph (c)(9) as paragraph (c)(7).

■ 7. Section 648.90 is amended to read as follows:

■ a. Revise paragraphs (a)(4)(iii)(C) and (a)(5)(i)(A); and

■ b. Remove paragraph (a)(5)(i)(D)(*4*).

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

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(a) * * *

(4) * * *

(iii) * * *

(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 flounder 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 and SNE/MA 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 or SNE/MA yellowtail flounder sub-ACL, the Regional Administrator may reduce the pertinent 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 GB or SNE/MA yellowtail flounder 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.

* * * * *

(5) * * *

(i) * * *

(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, 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.

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