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Dated: August 22, 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.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120814336-3739-04]

RINs 0648-BC27, 0648-BC97, and 0648-XC240

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 48, Framework Adjustment 50; 2013 Sector Operations Plans, Contracts, and Allocation Annual Catch Entitlements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule finalizes interim measures put in place for the May 1, 2013, start of the Northeast (NE) multispecies fishing year. This action intends to do the following: Finalize interim rule measures put in place by Framework Adjustment (FW) 48, FW 50, and in the 2013 Sector Operations Plan rulemakings; respond to public comments received on the interim measures; and notify the public of changes being made to Eastern U.S./Canada Area quota monitoring and associated reporting requirements.

**DATES:** Effective September 30, 2013.

**ADDRESSES:** Copies of Frameworks 48 and 50, Sector Operations Plans, associated emergency rules, and other measures, the environmental assessments (EAs), its Regulatory Impact Reviews (RIRs), and the Final Regulatory Flexibility Act (FRFA) analyses 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 analyses consist of the FRFA, public comments and responses, and the summary of impacts and alternatives contained in the previously published interim rules. The previously listed documents are also accessible via the Internet at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>.

**FOR FURTHER INFORMATION CONTACT:** For information on this rule contact Michael Ruccio, Fishery Policy Analyst, phone: 978-281-9104.

To obtain the FW 48, FW 50, or Sector Operations Plans interim rules, associated National Environmental Policy Act EAs, FRFA Analyses, and RIRs, visit NMFS Northeast Regional Office's Web site at: <http://www.nero.noaa.gov/sfd/sfdmulti.html>, or send a written request to: Sustainable Fisheries Division, NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

NMFS published three separate interim rules containing various measures for the 2013 NE multispecies fishing year that began May 1, 2013. These rules implemented measures developed by the New England Fishery Management Council (Council) and

NMFS associated with FW 48 (78 FR 26118; May 3, 2013), FW 50 (78 FR 26172; May 3, 2013), and Sector Operations Plans (78 FR 25591; May 2, 2013). These rules contain substantial background, explanation of the measures, responses to public comments received on the associated proposed rules, and regulatory text that is not repeated here. Public comment was requested on several measures within the interim rules. Specifically,

##### *For FW 48:*

- New status determination criteria for white hake
- Monitoring/attribution system for catches from the Eastern U.S./Canada Area

##### *For FW 50:*

- Re-estimation of Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder catch by scallop vessels
- Unused Annual Catch Entitlement (ACE) carryover accounting for FY2014 and beyond.

##### *For Sector Operations Plans:*

- A revised explanation of how at-sea monitoring coverage rates are derived
- Revisions to the exemptions from the number of gillnets imposed on Day gillnet vessels

This rule finalizes the interim measures as previously published for all but the interim Eastern U.S./Canada Area catch monitoring/attribution. The next section (section 2) briefly summarizes the final measures for those items that are unchanged from the interim rules. Section 3 provides information on the final Eastern U.S./Canada Area catch monitoring/attribution being implemented through this rule. Section 4 describes minor corrections to FW 48 and 50 implementing regulatory text being made through this rule.

#### 2. Measures Unchanged From the FW 48, FW 50, and Sector Operations Plans Interim Rules

##### *White Hake Status Determination Criteria*

The criteria outlined in the May 3, 2013, FW 48 interim rule are implemented as final through this rule. The criteria are outlined in Table 1. One comment in support of the interim measures was received.

TABLE 1—STATUS DETERMINATION CRITERIA AND NUMERICAL ESTIMATES OF THE STATUS DETERMINATION CRITERIA FOR WHITE HAKE

Criteria	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold	
	SSB <sub>40%MSP</sub>	1/2 B <sub>target</sub>	F <sub>40%MSP</sub>	
Values	Biomass target (mt)	Minimum biomass threshold (mt)	Maximum fishing mortality threshold	MSY (mt)
	32,400	16,200	0.20	5,630

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

#### *Scallop Vessel Yellowtail Flounder Catch Re-Estimation*

As part of FW 50, the Council recommended that Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder be added to the annual re-estimation process of yellowtail flounder catch in the scallop fishery. This re-estimation process was originally adopted and implemented as part of FW 47 for GB yellowtail flounder beginning in FY 2012. NMFS inadvertently omitted adding the SNE/MA stock to the re-estimation process in the FW 50 proposed rule (78 FR 19368; March 29, 2013), so this addition was included in the FW 50 interim rule. This rule finalizes the addition of SNE/MA yellowtail flounder to the re-estimation process. No comments were received on this measure.

#### *Unused Sector Annual Catch Entitlement (ACE) Carryover in FY 2014 and Beyond*

This rule finalizes the carryover accounting concept as described in the FW 50 final rule and outlined in § 648.87(b)(1)(i)(G)(1) through (5). Prior to the start of FY 2014 and in subsequent years, NMFS will determine the appropriate *de minimus* amount of unused ACE carryover for the fishing year. The determination and rationale for the *de minimus* amount will be provided in subsequent notice-and-comment rulemaking prior to the start of the fishing year. In addition, sectors may continue to bring forward up to 10 percent of unused ACE to the subsequent fishing year. If the total fishery level annual catch limit (ACL) is not exceeded, the carried over ACE used will not result in accountability measures. If the total fishery level ACL is exceeded, the amount of carried over catch used above the fishery level ACL will be subject to accountability measure overage payback provisions as outlined in § 648.87(b)(1)(iii) *Sector*.

#### *Accountability Measures*

The interim measures contained substantially more detail than the

proposed rule, including clarification of components for which the public had submitted comments. Because of these changes, we sought additional comments at the time the interim measures were implemented. No comments were received on the 2014 and beyond carryover interim measures.

The Council has included how to account for unused ACE carryover in its list of potential topics being developed as part of FW 51 for FY 2014 implementation. If the Council develops and recommends an acceptable carryover approach that would replace the approach finalized by this rule, the public will have opportunity to comment on those measures as part of a rulemaking proceeding prior to the start of FY 2014.

#### *Explanation of At-Sea Monitoring Coverage Rates Derivation*

In response to comments on the explanation outlined in the FY 2013 Sector Operations Plans proposed rule (78 FR 16220; March 14, 2013), NMFS provided a revised summary of the methods used to derive at-sea monitoring levels in the interim rule, but did not change the level of ASM coverage needed for the sector fishery. NMFS published the determination of the at-sea monitoring level as an interim measure so the public could consider and comment on the expanded analysis justifying the ASM coverage level. No comments were received on the revised justification. The description and associated adequacy of the at-sea coverage rates that result from the methodology is currently the subject of litigation in *Oceana v. Blank et. al.*, 1:13-cv-00770. No comments were submitted on the interim measures.

#### *Day Gillnet Vessel Sector Exemption Revisions*

This rule finalizes the seasonal periods that Day gillnet vessels are not exempt from the maximum number of gillnets, as outlined in the FY 2013 Sector Operations Plans interim rule. These periods, designed to reduce the

potential interaction of gillnet gear with spawning aggregations of Atlantic cod, were developed in response to concerns raised on the proposed rule. NMFS had initially proposed to exempt Day vessels from the maximum number of gillnets for the entire fishing year. Some comments received on the proposed rule raised substantial concerns about the impact such an exemption could have on spawning cod. NMFS agreed with the concerns raised by the commenters and, as such, implemented the interim measures outlined. Comments were sought because the interim measures that retained gillnet limits during spawning periods differed from the proposed rule, which would have granted the exemption year-round. No comments were received on this interim measure.

#### **3. Eastern U.S./Canada Area Catch Monitoring/Attribution**

NMFS proposed changes to the Eastern U.S./Canada Area quota monitoring/attribution in the FW 48 proposed rule (78 FR 18188; March 25, 2013). Prior to FY 2013, the regulatory text for the catch monitoring/attribution program for Georges Bank (GB) cod and haddock required that all GB cod and haddock caught on a trip in which a vessel fishes in both the Western and Eastern areas be attributed to the Eastern area. In reality, NMFS attributed catch of these stocks to areas fished based on its understanding that the Amendment 16 intended this result and that the regulatory text inadvertently was left unchanged from pre-Amendment 16 measures.

In commenting on the proposed rule, the Council objected to the proposed revision stating it was inconsistent with the intent of Amendment 16 to the FMP. Because the proposed change was meant to reflect Council intent regarding Amendment 16, NMFS withdrew its proposed revision leaving the original

text in place. This change was noted as an interim measure and additional comments sought on it because it varied from the proposed rule.

NMFS received a second comment letter from the Council on the interim measure, retracting the first statement of intent, and supporting the originally proposed approach. The letter, dated May 9, 2013, clarified that the original text was inconsistent with the Council's intent for the quota monitoring/attribution program for GB cod and haddock in the Eastern U.S./Canada area established by Amendment 16 to the FMP. NMFS announced on July 10, 2013, that Eastern U.S./Canada Area catch monitoring/attribution was being changed from the interim method to a system that apportions catch based on area fished, consistent with the recommendation of the Council and the proposed rule measure. Comments were received on the interim measures (see Response to Comments).

NMFS also intends to propose, through separate rulemaking, that vessels declared to fish in the Eastern U.S./Canada Area submit daily VMS catch reports. This type of reporting requirement change is within the authority granted to the Regional Administrator. More information on why NMFS believes daily catch reports would enhance quota monitoring/attribution and enforcement will be provided in the upcoming proposed rule.

#### 4. Minor Corrections to FW 48 and 50 Final Rules

The regulatory text in the Framework 48 interim final rule contained errors that are corrected through this final rule to accurately reflect the intent of Framework 48. The regulatory text of § 648.90(a)(5)(i)(D)(2), the accountability measure (AM) for Atlantic halibut, in the proposed rule and interim final rule incorrectly omitted the prohibition on possession of Atlantic halibut when the overall annual catch limit (ACL) is exceeded. This AM was implemented by FW 47 and intended to be retained by FW 48 as part of the revised AMs for this stock. The preamble of the FW 48 proposed and interim final rules accurately reflected the intent of Framework 48. This final rule corrects the regulations to make clear that possession of Atlantic halibut is prohibited when the AM for this stock is in effect.

The remaining corrections described below were largely editorial. In § 648.86(a)(3)(ii)(A)(4) the period that was incorrectly inserted after "NE" is removed. In § 648.87(b)(1)(ii)(F), excess parentheses are removed from footnotes

2 and 3 for the Gulf of Maine (GOM) Winter Flounder Stock Area coordinates, and the N. latitude for Point 5 in the coordinate table is made a superscript. A cross reference to at-sea monitoring requirements in paragraph § 648.87(b)(5)(iii)(A) is updated. A cross reference to dockside monitoring regulations, which were removed by FW 48, is removed from § 648.87(c)(2)(i). In § 648.90(a)(4)(iii)(E), the regulations regarding a SNE/MA windowpane flounder sub-ACL for the Atlantic sea scallop fishery, an incorrect reference to GB yellowtail flounder is corrected to SNE/MA windowpane flounder. References to an AM for SNE/MA winter flounder is removed from the list of non-allocated stock AMs in § 648.90(a)(5)(i)(D), because this stock was allocated by FW 50. Although the FW 50 final regulatory text correctly removed the SNE/MA winter flounder non-allocated stock AM at § 648.90(a)(5)(i)(D)(4), this paragraph had inadvertently been left in the regulations. This final rule removes the SNE/MA winter flounder non-allocated stock AM at § 648.90(a)(5)(i)(D)(4).

#### Comments and Responses

Thirteen comments were received on the interim measures as previously described. Six comments, including the Council and the State of Maine, supported using the attribution of catch by area fished method being finalized by this rule for the Eastern U.S./Canada Area catch monitoring/attribution. Four comments supported the interim measures for Eastern U.S./Canada Area monitoring/attribution. One commenter supported the interim rule white hake status determination criteria in addition to commenting on the U.S./Canada Area monitoring/attribution. Some comments were directed at issues outside the scope of the interim measures. Only comments that directly addressed the interim measures are addressed. Comments received on the proposed FW 48 and 50 and Sector Operations Plans rules were responded to in full in the respective interim rules for these actions and are not repeated here.

*Comment 1:* Four comments supported the interim measures for Eastern U.S./Canada Area monitoring/attribution of catch for Georges Bank cod and haddock. For clarity, this is the system that attributed all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./Canada Area to the U.S./Canada TACs.

These comments stated that any system that does not attribute all subsequent catch to the Eastern U.S./Canada Area, including that caught in

other areas after a vessel exits the area, encourages misreporting of catch (i.e., Eastern Area fish reported as Western Area). Some of the commenters stated that 100 percent observer coverage should be required on all Eastern U.S./Canada Area trips; others stated that vessels declaring trips to the Eastern U.S./Canada Area should have the option to request an observer.

*Response:* The regulatory changes to the method for attributing catch in the Eastern U.S. Canada are being implemented to clarify the Council's intent for the method in Amendment 16 to the Northeast Multispecies FMP. Nevertheless, NMFS disagrees that the interim measures are necessary for continued quota monitoring/attribution of Eastern U.S./Canada Area catches and NMFS is implementing the system originally proposed in the FW 48 proposed rule (78 FR 18188). Under this system NMFS uses VMS, VTR, and interactive voice recording (IVR) data to attribute catches to the areas fished. This system is called catch attribution by area fished.

The system proposed initially was the standard practice in place since FY 2010 which, at the time, was based on NMFS' interpretation of Council intent in Amendment 16. When the Council provided a strong statement of its intent on the proposed rule, NMFS implemented the interim measures that attribute all catch to the Eastern U.S./Canada Area. As such, it was possible for a vessel's catch from nonadjacent areas to be attributed to the Eastern U.S./Canada Area. To some, this did not appear to make sense but it was stated as the Council's intent. The subsequent clarification revised the Council intent. Moreover, NMFS believes that the attribution by area fished method being finalized here makes good sense and has strong merit. Under the system being finalized here, catch is attributed to the actual areas where fishing occurs.

The commenters supporting the continuation of the interim measures raise concerns that use of any other system to monitor catches will lead to misreporting. NMFS shares concerns that catch reporting must be accurate to ensure effective quota monitoring/attribution. NMFS believes that the catch attribution by area fished and VMS catch reporting help to accurately track catch against quotas and to dissuade misreporting. To better enhance catch monitoring/attribution and enforcement, NMFS will be proposing, through separate rulemaking, to use Regional Administrator authority to require vessels declared to fish in the Eastern U.S./Canada Area to submit daily catch reports though VMS.

These commenters also expressed a desire for greater at-sea monitoring/attribution of trips to the Eastern U.S./Canada Area. NMFS is paying to provide monitoring on 22 percent of the FY 2013 sector fishing trips. The percent coverage was derived consistent with the methodology established by Amendment 16 and as outlined in the 2013 at-sea coverage level determination analytical summary ([http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013\\_Multispecies\\_Sector\\_ASM\\_Requirements\\_Summary.pdf](http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf)) which takes into account all provisions of the Magnuson-Stevens Act. Trips to the Eastern U.S./Canada Area may be randomly selected from the 22 percent available. At this time, NMFS has insufficient resources to fully fund and staff 100 percent at-sea monitoring. Similarly, the ability to request at-sea monitoring for trips to the Eastern U.S./Canada Area could bias the selection process and result in coverage shortfalls in other areas of the fishery. As previously stated, NMFS believes that the combination of catch attribution by area fished and the forthcoming proposed rule to require daily catch reporting through VMS will be sufficient to dissuade misreporting.

In addition, the Council's Groundfish Plan Development Team (PDT) was tasked by the Council to try and ascertain if misreporting was occurring and, if so, to what extent. The PDT examined the differences between VTR and VMS data, the differences in VTR and observer data, catch rates on observed trips, tow start and end locations, annual catch entitlement leasing activity, and other data to try and ascertain if misreporting has occurred or if vessels selected for observer coverage have avoided fishing in the Eastern U.S./Canada Area. The PDT concluded in an April 15, 2013, memo to the Council's Groundfish Oversight Committee:

After reviewing the analyses, the PDT concluded that there is some evidence that there are differences in fishing behavior between the Eastern and Western Georges Bank Areas, and between observed and unobserved trips. The analyses do not identify a specific cause, and while some of the results may be consistent with the hypothesis that misreporting is occurring, others are not. The PDT concluded that the analyses were inconclusive in determining if misreporting is occurring. It is not possible to quantify how these differences may affect catch estimates for Eastern Georges Bank cod.

The PDT indicated that the incentive to misreport was strong, given the low Eastern Georges Bank catch limit and provided several recommendations that might help improve reporting

compliance. NMFS updated the VTR instructions on recording within the last year. This is responsive to one of the PDT's recommendations. The upcoming rule proposing daily VMS catch reporting is also consistent with PDT recommendations to improve reporting compliance.

In summary, NMFS believes that the catch attribution by area fished methodology being implemented by this rule is consistent with Council intent in Amendment 16 and is a sound approach that is adequate for Eastern U.S./Canada Area quota monitoring/attribution. Random observer coverage, VMS, VTR, and IVR information are all used in this monitoring/attribution system and, when paired with random observer coverage and daily VMS reporting in the future, will sufficiently enhance monitoring/attribution and compliance.

*Comment 2:* Six comments supported the U.S./Canada Area quota monitoring/attribution methodology as outlined in the FW 48 proposed rule, apportionment by area fished.

*Response:* NMFS agrees with these commenters and has already implemented the use of the FW 48 proposed quota monitoring/attribution method. This rule codifies the regulatory changes necessary to effect this change permanently.

#### *Changes From the Interim Rules*

As previously outlined, this rule finalizes the Eastern U.S./Canada Area catch reporting methodology originally proposed for FY 2013: Catch attribution by area fished.

#### *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.

The measures of the FW 50 interim rule were previously determined to be significant for purposes of Executive Order (E.O.) 12866. The measures of FW 48 were previously determined to not be significant under E.O. 12866. The E.O. 12866 criteria did not apply to the Sector Operations Plans rule as it contained no implementing regulatory text. Finalization of the interim measures through this rule does not modify or otherwise change these determinations.

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.

Pursuant to the Regulatory Flexibility Act, and prior to the Small Business Administration's (SBA) June 20, 2013, final rule, Final Regulatory Flexibility Analyses (FRFAs) were prepared for these actions when implemented as interim measures, as required by section 604 of the Regulatory Flexibility Act, as part of the regulatory impact review. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective on July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. Id. at 37400 (Table 1).

The analyses for this action used SBA's former size standards. The FRFAs describe the economic impact the interim rules have on small entities. NMFS has determined that the new size standards do not affect the previously completed FRFAs. Similarly, finalization of the interim measures by this rule does not change the previously completed FRFAs. Each of the statutory requirements of section 604(b) and (c) were addressed and summarized in the Classification sections of the FW 48, FW 50, and Sector Operations Plans interim rules. As such, the FRFA analyses are not repeated here.

A small entity compliance guide for the interim measures, as required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, was issued on April 30, 2013. This rule finalizing the interim measures makes no changes except for all but the Eastern U.S./Canada Area quota monitoring/attribution system; therefore, NMFS is not re-issuing the previously distributed compliance guide. Small entities have been operating under the interim measure since May 1, 2013, and this rule changes only the interim Eastern U.S. Canada Area quota monitoring/attribution measures, as previously described in the preamble of this rule. Redistributing the previously issued compliance guide would likely result in confusion. An additional small entity compliance guide announcing the changes to the Eastern U.S./Canada Area quota monitoring/attribution was issued on July 9, 2013. These small entity compliance guides were 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: August 23, 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. In § 648.85, revise the introductory text of paragraph (a)(3)(ii)(A) to read as follows:

#### § 648.85 Special management programs.

\* \* \* \* \*

- (a) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (4) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (3) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod and haddock caught on that trip will be apportioned by area fished, as determined by all available data sources, and those portions of the catch taken inside the Eastern U.S./Canada Area shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

\* \* \* \* \*

■ 3. In § 648.86, revise paragraph (a)(3)(ii)(A)(4) to read as follows:

#### § 648.86 NE Multispecies possession restrictions.

\* \* \* \* \*

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

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

■ 4. In § 648.87, revise paragraphs (b)(1)(ii)(F) and (b)(5)(iii)(A), and the introductory text of paragraph (c)(2)(i), to read as follows:

#### § 648.87 Sector allocation.

\* \* \* \* \*

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

#### (F) GOM Winter Flounder Stock Area.

The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

#### GOM WINTER FLOUNDER STOCK AREA

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

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

- (2) U.S./Canada maritime boundary (southern intersection with 67°40' N. lat.)
- (3) U.S./Canada maritime boundary (northern intersection with 67°40' N. lat.)
- (4) U.S./Canada maritime boundary.
- (5) Intersection of the south-facing ME coastline and 67°00' W. long.

\* \* \* \* \*

- (5) \* \* \*
- (iii) \* \* \*

(A) *Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(1) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(1) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

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

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMS specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting

requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

\* \* \* \* \*

■ 5. In § 648.90, revise paragraph (a)(4)(iii)(E), paragraph (a)(5)(i)(D) introductory text, and paragraph (a)(5)(i)(D)(2), and remove and reserve paragraph (a)(5)(i)(D)(4) to read as follows:

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

\* \* \* \* \*

- (a) \* \* \*  
(4) \* \* \*  
(iii) \* \* \*

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

\* \* \* \* \*

- (5) \* \* \*  
(i) \* \* \*

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish.*

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

\* \* \* \* \*

(2) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(2), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented and any vessel issued a NE multispecies 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 Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a

Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

**ATLANTIC HALIBUT TRAWL GEAR AM AREA**

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

**ATLANTIC HALIBUT FIXED GEAR AM AREA 1**

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

**ATLANTIC HALIBUT FIXED GEAR AM AREA 2**

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

(3) \* \* \*

(4) [Reserved]

\* \* \* \* \*

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