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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149–3288–01]

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: Proposed rule; emergency action; request for comments.

SUMMARY: NMFS proposes approval of, and regulations to implement, measures in Framework Adjustment 50 (Framework 50) to the Northeast (NE) Multispecies Fishery Management Plan (FMP). Framework 50 would set specifications for fishing years (FYs) 2013–2015, including 2013 total allowable catches (TACs) for the three U.S./Canada stocks, modify the rebuilding program for Southern New England/Mid-Atlantic (SNE/MA) winter flounder, and revise management measures for this stock consistent with the proposed rebuilding strategy. This action also proposes recreational management measures for FY 2013, as well as revisions to the sector carryover program. An emergency action to implement a 2013 catch limit for Georges Bank (GB) yellowtail flounder is also proposed in this action. The proposed regulations are intended to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best available scientific information.

DATES: Comments must be received by April 15, 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, ''Comments on the Proposed Rule for NE Multispecies Framework Adjustment 50.''
- *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, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the New England Fishery Management Council are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The Framework 50 EA, RIR, and IRFA are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html or http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: 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.

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

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 ACLs and 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 to the FMP (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 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 drastic cuts in catch limits being proposed for some stocks in FY 2013, the Council decided that it 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 are expected to

help mitigate the anticipated impacts of the proposed FY 2013 catch limits. In addition, the Council wanted to wait for the results of the December 2012 benchmark assessments for Gulf of Maine (GOM) and GB cod that were not yet available when the Council took final action on Framework 48.

Proposed Measures

The measures proposed by Framework 50 are described below. The proposed regulations to implement measures in Framework 50 were deemed by the Council to be consistent with Framework 50, and necessary to implement the proposed measures as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Some of the measures included in this action are being proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, which says that the Secretary of Commerce (Secretary) may promulgate regulations necessary to ensure that fishery management plans or amendments are implemented in accordance with the Magnuson-Stevens Act. These measures, which are identified and described in this preamble, are necessary to reconcile conflicts between the sector carryover program and the conservation objectives of the FMP in a manner consistent with the National Standards of the Magnuson-Stevens Act. This proposed rule also includes management measures for the common pool and recreational fisheries for FY 2013 that are not included in Framework 50, but that may be considered by the Regional Administrator (RA) under authority provided by the FMP.

1. Southern New England/Mid-Atlantic 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 adopted management measures that would result in fishing mortality rates 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, Framework 50 proposes to revise 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 would be set based on the fishing mortality rate (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, $F_{rebuild}$ would 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 maximum sustainable yield (MSY) biomass level in the absence of any fishing mortality. For SNE/MA winter flounder, T_{min} is 6 yr (from 2013), or 2019. Because the stock can rebuild in less than 10 yr in the absence of all fishing mortality, the maximum rebuilding period for SNE/MA winter flounder is 10 yr. A rebuilding end date of 2023 rebuilds the stock as quickly as possible taking into account the needs of fishing communities. The proposed rebuilding strategy would return greater net benefits than a rebuilding strategy that targets an end date between 2019 and 2023.

2. Southern New England/Mid-Atlantic 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 fishing mortality rates 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 that would modify the management program for SNE/MA winter flounder as one way to help mitigate the anticipated impacts of the proposed reductions in the FY 2013 catch limits.

Framework 50 proposes to allocate SNE/MA winter flounder to sectors. As adopted by Amendment 16, each vessel's potential sector contribution (PSC) for SNE/MA winter flounder would be calculated using dealer landings during FYs 1996 through 2006. In addition, Framework 50 proposes to allow landings of SNE/MA winter flounder by commercial and recreational vessels. Sector vessels would be required to land all legal-sized SNE/MA winter flounder, and common pool vessels would be allowed to land legal-sized fish within the trip limit, or any other inseason restrictions, specified by the RA. The current minimum fish size for SNE/MA winter flounder is 12 in (30.5 cm). Common pool management measures for FY 2013 are proposed in Item 8 of this preamble.

These measures are proposed in conjunction with the revised rebuilding plan for the stock (see Item 1 of this preamble). Allowing landings of SNE/MA winter flounder is expected to provide additional fishing opportunities for groundfish vessels in FY 2013 to offset low quotas for some groundfish stocks and promote achieving optimum yield in the fishery. Landings of the stock would also provide the opportunity to collect biological samples from landed fish after 4 years of a prohibition on possession.

Commercial Fishery Accountability Measures

Currently, the AM for SNE/MA winter flounder is zero possession. There is 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 currently allocated to sectors. As a result, Framework 48 proposes 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 is exceeded. Framework 50 proposes to replace this area-based AM for SNE/MA winter flounder for sector vessels with the standard sector AM. All catch (landings and discards) of SNE/MA winter flounder would be attributed to a sector's annual catch entitlement (ACE). Sector vessels would be required to stop fishing in season in the SNE/MA winter flounder stock area once the entire sector's ACE is caught, unless the sector leases additional ACE. A sector may also propose a program to fish on a sector trip in fisheries that are known to have bycatch of NE multispecies, when it does not have ACE for certain stocks, if the sector can show that the limiting stock(s) would be avoided. The proposed rule for the FY 2013 Sector Operations Plans and Contracts and Allocation of the NE Multispecies ACE provides additional detail on this provision (78 FR 16220, March 14, 2013). If a sector exceeds its ACE for the fishing year, the sector's ACE would be reduced by the amount of the overage in the following fishing year. This proposed revision to the AM for sector vessels is made in conjunction with the proposed measure to allocate the stock to sectors and allow landings.

Framework 50 proposes to retain the area-based AM that was proposed in Framework 48 for common pool vessels. However, the AM proposed in this action would be triggered if the common pool sub-ACL is exceeded (not the total ACL as proposed in Framework 48) 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 AM for common pool vessels would require trawl vessels fishing on a NE multispecies day-at-sea (DAS) to use approved selective trawl gear in certain 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 would not restrict common pool vessels fishing with longline or gillnet gear. The AM would be implemented in the fishing year following the overage, and would be effective for the entire fishing year. The proposed 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 would be implemented, and this measure would be reviewed 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 would be distributed among the components of the fishery that do have a sub-ACL, and if necessary, the pertinent AM would 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 would be implemented.

3. U.S./Canada Total Allowable Catches

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 U.S. 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 U.S. 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 Transboundary Resources Assessment Committee (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 regulations specify that the Council can refer any or all of the recommended TACs back to the TMGC and request changes to the TACs. Although the Council selected a preferred alternative for GB yellowtail flounder that differed from the TMGC's recommendation, the Council did not request that the TMGC convene to reconsider its recommendation for 2013. The Council's recommendation for GB yellowtail flounder was based on its Scientific and Statistical Committee's (SSC's) recommendation that 1,150 mt could be a backstop ABC if measures were adopted to ensure there is no directed fishery, and bycatch is reduced as much as possible. NMFS raised serious concerns with the Council's recommendation for GB yellowtail flounder during the development of this action, and these concerns are outlined in further detail in Item 4 of this preamble. Due to concerns about the approvability of the Council's preferred ABC alternative of 1,150 mt, NMFS is also proposing an ABC of 500 mt, consistent with the TMGC's recommendation. If the Council's preferred ABC is disapproved in the final rule for Framework 50, NMFS would implement the TMGC-recommendation of 500 mt through a Secretarial emergency action under authority at section 305(c) of the Magnuson-Stevens Act.

The proposed 2013 U.S./Canada TACs and the percentage share for each

country are listed in Table 1. Any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. TACs would 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 would reduce the FY 2013 U.S. TAC for that stock in a future management action, as close to May 1, 2013, as possible. As proposed 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 reduction would be applied to this fishery's sub-ACL in the following fishing year.

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

TAC	Eastern GB cod	Eastern GB haddock	GB Yellowtail Flounder *	
			Council-preferred	Proposed emergency
Total Shared TAC	600	10,400	1,150	500
U.S. TAC	96 (16%)	3,952 (38%)	495 (43%)	215 (43%)
Canada TAC	504 (84%)	6,448 (62%)	656 (57%)	285 (57%)

* The GB yellowtail flounder TACs proposed by the Council and NMFS are described in more detail in Item 4 of this preamble.

4. Overfishing Levels and Acceptable Biological Catches

The overfishing level (OFL) for each stock in the FMP is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). 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. 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 account for scientific uncertainty. Appendix III to the Framework 50 EA provides additional detail on the proposed OFLs and ABCs 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 proposes the 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 of the ABC, or the expected Canadian catch, 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.

Catch limits for GB and GOM winter flounder and pollock were adopted in a previous action and are restated here. Also, as mentioned above, GB yellowtail flounder is managed jointly with Canada, and catch limits are set annually for this stock. As a result, Framework 50 only proposes catch limits for GB yellowtail flounder for FY 2013. In addition, the last stock assessment for white hake was completed in 2008. A benchmark assessment for this stock was completed in February 2013; however, the results of this assessment are not yet available at the time of this proposed rule, and were not available when the Council was developing this action. As a result, the SSC recommended that the FY 2013 OFL and ABC for white hake be kept constant to the FY 2012 OFL and ABC. Consistent with established policy, NMFS believes that the best scientific information available will be determined based on the information that is available to the Council during the development of an action. Thus, NMFS considers the FY 2013 specifications for white hake proposed in Framework 50 to be based on the best scientific information available. Should additional information become available that may 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 limits for FY 2013.

Many of the proposed FY 2013 ABCs are substantially lower than the FY 2012 ABCs. Most notably, the proposed GB cod catch level would be approximately 61 percent lower when compared to FY 2012, and the GOM cod catch level would be approximately 78 percent lower compared to FY 2012. Although the Council's recommended ABC for GB yellowtail flounder would be approximately the same as FY 2012, the proposed emergency rulemaking would result in a quota that is approximately 62 percent lower than the FY 2012 catch limit. Some proposed ABCs are status quo to FY 2012 (GB and GOM winter flounder and white hake), and some proposed ABCs are higher than FY 2012. The proposed FY 2013 SNE/MA winter flounder ABC is over 150 percent greater than FY 2012 as a result of the revised management measures for this stock, which are expected to mitigate some of the economic impacts of this proposed action.

Table 2—Proposed 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 Proposed Emergency	882	215				
GB Yellowtail Flounder Council-preferred	unknown	495				
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	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

*Shaded cells indicate that no catch limit is proposed. These catch limits will be specified in a future action.

Proposed FY 2013 Georges Bank Yellowtail Catch Limit

NMFS has serious concerns with the Council's preferred-alternative for the FY 2013 GB yellowtail flounder ABC. The 2012 TRAC assessment 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}), or increased spawning stock biomass as expected. As a result, the 2012 TRAC assessment concluded that 2013 catches should not be based on the unadjusted model results because these catches would likely fail to achieve management objectives for this stock. Catches in 2013 based on the unadjusted model would be approximately 882 mt.

The 2012 TRAC assessment showed that the retrospective pattern in the assessment has increased in magnitude. Retrospective patterns in an assessment could be caused by a number of factors, such as changes in the level of catch that is assumed in the assessment, changes in the natural mortality rate (M), and changes in the survey catchability for a stock. However, fixing a retrospective pattern is difficult because it is often hard to determine the exact cause. Due to the increased magnitude of the retrospective pattern, five sensitivity analyses were performed at the 2012 TRAC to attempt to characterize the uncertainty and risk in the 2013 catch advice. The sensitivity analyses show that a 2013 quota in the range of 200 mt to 500 mt would minimize the retrospective bias. 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.

Based on the 2012 TRAC, the TMGC recommended a shared quota of 500 mt (U.S. share 215 mt) for 2013. This recommendation considers the increasing retrospective bias in the GB yellowtail flounder assessment. The TMGC noted that a quota of 500 mt is lower than the catch level that would have less than a 50-percent chance of exceeding F_{ref} based on the unadjusted projection results (882 mt). The TMGC also noted that a quota of 500 mt would be expected to result in an increase in the stock size and falls within the range

of sensitivity analyses provided by the 2012 TRAC assessment.

The SSC met in August 2012 to recommend a FY 2013 OFL and ABC for GB yellowtail flounder. The SSC recommended a range of FY 2013 ABCs for GB yellowtail flounder from 200 mt up to 1,150 mt. 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 may have a greater probability of overfishing than 200 mt, but would allow some rebuilding. The SSC also noted that the basis for a FY 2013 ABC of 400–500 mt was similar to the basis 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. Under this ABC alternative, the SSC 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. Thus, the SSC concluded that an FY 2013 ABC of 1,150 mt is status quo to the FY 2012 ABC, and would only be appropriate when management measures have a high probability of resulting in low fishing mortality rates. At a subsequent meeting in November 2012, the SSC was unable to determine a single OFL value, given the uncertainty in the assessment, and noted that its ABC recommendation of 1,150 mt is not based on the 2012 TRAC assessment. The SSC determined that the OFL for GB yellowtail flounder is unknown.

The SSC's recommendation of 1,150 mt for FY 2013 included a number of conditions that NMFS does not believe the Council satisfied. The Council did not adopt any management measures that would prevent targeting of GB yellowtail flounder or that would result in a high probability of low fishing mortality rates under this ABC alternative. The SSC did not endorse an FY 2013 ABC of 1,150 mt as an appropriate catch level for a directed fishery, and therefore, as currently crafted, the Council's preferred ABC alternative for 2013 appears to be at odds with the SSC recommendation.

NMFS believes that the 2012 TRAC assessment for GB yellowtail flounder represents the best scientific information available. The recommendation for a FY 2013 ABC of 1,150 mt is higher than the catch levels suggested by the unadjusted 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 TRAC assessment, a FY 2013 ABC of 1,150 mt would also likely fail to prevent overfishing. Also, the SSC did not reject the 2012 TRAC assessment. Even if the Council had adopted management measures to prevent a directed fishery, as recommended by the SSC, an ABC of 1,150 mt does not appear to be consistent with the 2012 TRAC assessment. As a result, NMFS does not believe that a 2013 catch of 1,150 mt is consistent with the best scientific information available. *NMFS is requesting specific* comments on the basis of this determination, and other specific factors that should be considered in setting the FY 2013 ABC for GB yellowtail flounder at this particular level.

In the event that NMFS disapproves the FY 2013 ABC of 1,150 mt proposed in Framework 50, NMFS is proposing an emergency action to implement FY 2013 catch limits for GB yellowtail flounder under Secretarial authority provided in section 305(c) of the Magnuson-Stevens Act. The FMP does not have any rollover provisions for the FY 2012 quotas if the FY 2013 catch limits are not specified for GB yellowtail flounder. Thus, if the Council's preferred alternative is disapproved, there would be no specifications set for the stock until further action was taken. If no catch limit is specified for GB yellowtail flounder, there would be a potential to cause harm to the resource and severely disrupt the fishery. Sector vessels would be unable to fish beginning on May 1, 2013, in the GB stock area without ACE for GB yellowtail flounder. In addition, other components of the fishery would not be constrained by an ACL that, if exceeded, would trigger an AM (e.g., the scallop fishery, the small-mesh fisheries). This would undermine the joint management of this stock with Canada under the Understanding and increase the likelihood of overfishing. As a result, 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).

NMFS proposes an OFL of 882 mt and a FY 2013 ABC of 500 mt. This would result in a U.S. quota for GB yellowtail flounder of 215 mt after deducting the Canadian share of the ABC. This ABC 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, in the sensitivity analyses performed by the TRAC, 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. This catch level would also result in some stock rebuilding in all of the 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 does not believe it is appropriate to average the five sensitivity analyses, and therefore, 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 proposed OFL for the stock.

Proposed FYs 2013–2015 Catch Limits for GOM Cod

A benchmark assessment was completed for GOM cod in December 2012, and the Stock Assessment Review Committee (SARC) approved two different assessment models. One assessment model (base case model) assumes the natural mortality rate (M) is 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 reference points that assume M=0.2. A detailed summary of the benchmark assessment is available from the Northeast Fisheries Science Center at: *http://www.nefsc.noaa.gov/saw/saw55/crd1301.pdf.*

The SSC recommended two constant catch ABC alternatives for FYs 2013–2015: 1,249 mt and 1,550 mt. The SSC preferred an ABC of 1,249 mt. Their rationale for this preferred lower level was to help conserve the stock and increase the likelihood of rebuilding. Based on these 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 would end overfishing in FY 2013 and would have at least a

50-percent probability of avoiding overfishing. An ABC of 1,550 mt would be higher than 75% F_{MSY} until FY 2015, which is the Council's ABC control rule. Under the M_{ramp} model, the proposed ABC would be the F_{MSY} catch level in FY 2015, and would be above F_{MSY} in FY 2013 and FY 2014. An ABC of 1,550 mt would be 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 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 does not believe it is 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 would likely end overfishing and result in 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.

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. Currently, the scallop fishery receives an allocation for GB and SNE/MA yellowtail flounder, the mid-water trawl fishery receives an allocation for GB and GOM haddock, and the recreational groundfish fishery receives an allocation for GOM cod and haddock. Framework 48 proposes to allocate a portion of the SNE/MA windowpane flounder ABC to the scallop fishery and a portion of the GB yellowtail flounder ABC to the small-mesh fisheries. This proposed rule assumes these measures would be approved in Framework 48; however, if either of these measures is disapproved, the final ACLs for these stocks may change.

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.

Framework 50 proposes ACLs for each groundfish stock based on the ABCs proposed in Item 4 of this preamble. The proposed 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 proposed 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.

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Table 3 — Proposed 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--Proposed Emergency	208.5	116.8	115.4	1.3			83.4	4.0		4.3
GB Yellowtail Flounder--Council-preferred	480.1	268.9	265.8	3.1			192.1	9.2		9.9
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	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 — Proposed 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 — Proposed 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. 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 6 shows the percentage of the common pool sub-ACL allocated to the special management programs and the proposed FYs 2013–2015 Incidental Catch TACs for each stock. Beginning in FY 2013, NMFS proposes to remove GB winter flounder and SNE/MA yellowtail flounder from the list of species of concern because the stocks are no longer overfished, and overfishing is not occurring. GB winter flounder is 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 7. The proposed FYs 2013–2015 Incidental Catch TACs for each special management program are listed in Table 8. 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 would be published in a future adjustment rule, if necessary, based on the final sector rosters as of May 1, 2013.

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Table 6—Proposed Common Pool Incidental Catch TACs for FYs 2013-2015 (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--Proposed Emergency	2	0.03		
GB Yellowtail Flounder--Council-preferred		0.1		
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
White Hake	2	0.5		

Table 7—Percentage of Incidental Catch TACs Distributed to Each Special Management Program

Stock	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern US/CA Haddock SAP
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%		
White Hake	100%		

Table 8—Proposed 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--Proposed Emergency	0.01						0.01		
GB Yellowtail Flounder--Council-preferred	0.03						0.03		
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						
White Hake	0.5								

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7. 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 9 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). 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 proposed FYs 2013–2015 common pool trimester TACs are listed in Table 10 based on the ACLs and sub-ACLs proposed 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 proposed sub-ACLs included in this rule change as a result of changes to FY 2013 sector rosters, the trimester TACs would also change. Based on the final sector rosters, NMFS would publish a rule in early May 2013, if necessary, to update the common pool trimester TACs, and notify the public of these changes.

TABLE 9—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 10—Proposed 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 Proposed Emergency	0.3	0.4	0.7						
GB Yellowtail Flounder Council-preferred	0.6	0.9	1.6						
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	10.2	8.3	8.3						
Pollock	23.3	29.1	30.8	23.9	29.9	31.6			

8. Annual Measures for FY 2013 Under Regional Administrator 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. This proposed rule includes a description of the management measures being considered by the RA for FY 2013 in order to provide an opportunity for the public to comment on whether the proposed measures are appropriate. These measures are not part of Framework 50, and were not specifically proposed by the Council, but are proposed in conjunction with Framework 50 for expediency purposes and because they relate to the proposed specifications in Framework 50. The RA may implement measures differing from those proposed in this action based on public comments received, and if information indicates such measures are necessary to meet the requirements of the FMP. The measures implemented through RA authority for FY 2013 will be implemented through the Framework 50 final rule, or, if necessary, through a separate final rule.

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 a summary of the default trip limits that would take effect in FY 2013 if the RA takes no action, the current common pool trip limits for FY 2012, and the proposed trip limits that would be in effect for the start of FY 2013. Table 12 provides a summary of the proposed FY 2013 cod trip limits for vessels fishing with a Handgear A, Handgear B, or Small Vessel Category permit.

Proposed trip limits for FY 2013 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, bycatch, and other available information. For stocks that include a range of potential trip limits in Table 11 and 12, a final trip limit would be specified in the final rule implementing these measures based upon public comment. NMFS is requesting public input on common pool trip limits for FY 2013, particularly on the proposed trip limit for SNE/MA winter flounder since possession has been prohibited for this stock since FY 2009.

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 FY 2013, NMFS is proposing a range of GOM cod trip limits for vessels fishing under a Category A DAS that are between 38 and 88 percent lower than the default limit specified in the regulations. Therefore, the proposed 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. NMFS is proposing the default cod trip limits for GB cod for Handgear A and B vessels in FY 2013.

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

TABLE 11—PROPOSED FY 2013 COMMON POOL TRIP LIMITS

Stock	Default Limit in regulations	Current FY 2012 trip limit	Proposed FY 2013 trip limit
GOM cod	800 lb (362.9 kg) per DAS, up to 4,000 lb (1,814.3 kg) per trip.	2,000 lb (907.2 kg) per DAS, up to 6,000 lb (2,721.6 kg) per trip.	100 lb (45.4 kg)–500 lb (226.8 kg) per DAS, up to 500 lb (226.8 kg)–1,500 lb (680.4 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.	3,000 lb (1,360.8 kg) per DAS, up to 30,000 lb (13,607.8 kg) per trip.	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	unrestricted	1,000 lb (453.6 kg) per trip	50 lb (22.7 kg)–100 lb (45.4 kg) per trip.
GB haddock	unrestricted	10,000 lb (4,535.9 kg) per trip	10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	unrestricted	250 lb (113.4 kg) per trip	500 lb (226.8 kg) per trip.
SNE/MA winter flounder	unrestricted	n/a	5,000 lb (2,268 kg) per DAS up to 15,000 lb (6,803.9 kg) per trip.
GB winter flounder	unrestricted	1,000 lb (453.6 kg) per trip	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 (907.2 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB yellowtail flounder	unrestricted	500 lb (226.8 kg) per trip	100 lb (45.4 kg)–200 lb (90.7 kg) per trip.
SNE/MA yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	5,000 lb (2268 kg), up to 15,000 lb (6,803.9 kg) per trip.	2,000 lb (907.2 kg), up to 6,000 lb (2,721.6 kg) per trip.
American plaice	unrestricted	unrestricted	unrestricted.
Pollock	1,000 lb (453.6 kg) per DAS; up to 10,000 lb (4,535.9 kg) per trip.	10,000 lb (4,535.9 kg) per trip	10,000 lb (4,535.9 kg) per trip.
Witch flounder	unrestricted	250 lb (113.4 kg) per trip	500 lb (226.8 kg) per trip.
White hake	500 lb (226.8 kg) per DAS; up to 2,000 lb (907.2 kg) per trip.	500 lb (226.8 kg) per trip	500 lb (226.8 kg) per trip.
Redfish	unrestricted	unrestricted	unrestricted.

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

Permit	Default cod trip limit	Proposed FY 2013 GOM cod trip limit	Proposed FY 2013 GB cod trip limit
Handgear A	300 lb (136.1 kg) per trip	100 lb (45.4 kg) up to 300 lb (136.1 kg) per trip.	300 lb (136.1 kg) per trip.
Handgear B	75 lb (34.0 kg) per trip	25 lb (11.3 kg) up to 50 lb (22.7 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 25 lb (11.3 kg)–175 lb (79.4 kg) of GOM cod and 25 lb (11.3 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 (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 (1,020,600 kg). This calculation accounts for the projected catch from the area outside the SAP. Based on the proposed GB yellowtail sub-ACLs of 592,823 lb (268,900 kg) and 248,241 lb (112,600 kg), derived from the proposed catch limits of 1,150 mt and 500 mt, respectively, 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 proposes to allocate 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 would not be allowed to fish in this SAP using flounder nets.

9. Recreational Fishing Measures

Framework 48 proposes to modify the recreational fishery AM and give 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. Although this measure has not been approved yet, due to the timing of Framework 48, and the drastic reductions proposed for some FY 2013 catch limits, NMFS has begun developing recreational management measures for FY 2013. 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, NMFS proposes 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, NMFS proposes an unlimited possession limit and a minimum fish size of 21 in (53.3 cm) for FY 2013. The proposed recreational management measures for FY 2013, and the current FY 2012 measures, are presented in Table 13. The proposed measures were developed using the Bio-economic Length-Structured Angler Simulation Tool, which was developed by the Northeast Fisheries Science Center. 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 proposed reductions in the FY 2013 catch limits are relatively large. NMFS proposes to raise 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. Initial analysis shows that the proposed FY 2013 recreational measures would have less than a 50-percent probability of exceeding the recreational sub-ACLs for GOM cod and haddock. Implementation of these measures under RA authority is contingent upon the approval of the proposed recreational fishery AM in Framework 48.

TABLE 13—CURRENT FY 2012 AND PROPOSED FY 2013 RECREATIONAL MANAGEMENT MEASURES FOR GOM COD AND HADDOCK

Stock	Current FY 2012 measures		Proposed FY 2013 measures	
	Bag limit	Minimum size	Bag Limit	Minimum Size
GOM Cod	9	19 in (48.3 cm)	9	19 in (48.3 cm).
GOM Haddock	Unlimited	18 in (45.7 cm)	Unlimited	21 in (53.3 cm).

10. Carryover of Unused Sector Annual Catch Entitlement

Background

The FMP authorizes up to 10 percent of unused sector ACE for all allocated regulated stocks, with the exception of GB yellowtail flounder, to be brought forward for use in the following fishing year. Termed ''carryover,'' this concept was part of the overall design of sectors in Amendment 16, and was intended to leave it up to individual fishermen and sector managers to determine when and where they will fish throughout the year. Among other things, the sector system, which includes carryover, was intended to provide flexibility to vessels as to when and how they fish which, among other benefits, promotes greater safety at sea, as prescribed by National Standard 10. For example, the ability to carry over unused catch further advances safety benefits by removing the incentive to fish for remaining allocations of groundfish stocks at the end of a fishing year even under unsafe conditions.

The carryover provision implementing regulations found at § 648.87(b)(1)(i)(C) and the Final Environmental Impact Statement (FEIS) for Amendment 16, however, did not specify how carryover should be accounted for under the concurrently implemented ACL system. In the 2 fishing years since the implementation of Amendment 16, NMFS has allowed up to the full 10-percent carryover of unused sector ACE. To date, NMFS has accounted for carryover by first attributing catch against any available carryover, without deducting it from the sector's ACE for that year. After the amount carried over has been fully caught, the sector's remaining catch for the year has been attributed to, and deducted from, the sector's ACE for that year.

For multiple reasons, this method of accounting has thus far functioned without causing the overall ACLs to be exceeded. Generally, sectors have seldom fully harvested available stock ACE, often electing to under-harvest to provide carryover to the following fishing year. In addition, the ability for sectors to fully utilize all species' ACE is often constrained by stocks with lower ACE availability. Catch by other fishery components has routinely been below their respective sub-ACLs. These factors have, to date, helped ensure that fishery-level ACLs have not been exceeded by the accounting system that NMFS has used. Even if sectors had routinely exceeded their sub-ACL, other fishery components could under-harvest their sub-ACL such that the overall ACL was not exceeded. This has been true despite the reduction in catch limits for some stocks from one fishing year to the next.

As ACL-based management programs have been implemented around the country and their first years of use evaluated, the issue of unused catch carryover has been discussed nationwide. Amendment 16, although it did not reconcile the problem, acknowledged the potential for carryover to either increase the risk of or cause overfishing in a given year, particularly in the event that year-to-year catch limits declined steeply and available allocations and carryover were fully harvested (Amendment 16 FEIS, pp. 505–6). Based on these evaluations and the dynamics of significant proposed reductions in some of the groundfish ACLs for FY 2013, NMFS now believes that a carryover from one fishing year to another must be fully accounted for in the second year ACLs to be consistent with the catch limit requirements in the Magnuson-Stevens Act and National Standard 1 guidelines. The current carryover accounting practice of the Northeast Region may be inconsistent with this conclusion to the extent it results in an ACL in one year to be exceeded due to additional carried over catch from the preceding year. This accounting practice would also be inconsistent with conservation objectives of Amendment 16. On the other hand, to completely eliminate the carryover provision because of these concerns would potentially conflict with safety and management flexibility benefits that are consistent with the National Standard 10 provision of promoting safety at sea and national standards to promote efficiency and mitigate negative impacts on the fishing industry. As a result, there is a fundamental conflict between the conservation and management objectives of Amendment 16 between the need to ensure adherence to the catch limits for conservation purposes and the benefits of promoting safety at sea and management flexibility.

FY 2013 Unused ACE Carryover Issues

If NMFS continues its past practice, sectors would receive up to 10 percent of unused FY 2012 ACE for all groundfish stocks subject to the carryover provision for use in FY 2013, without attribution to the 2013 sector sub-ACLs. Because of the magnitude of the reductions in catch limits for some stocks for FY 2013, it is likely that FY 2013 allocated catch combined with FY 2012 carryover could cause fishery-level ACLs and ABCs to be exceeded. For GOM cod, this potential total catch level would exceed the overfishing limit.

Despite discussions between NMFS and the Council regarding these issues, no clarification as to how to account for carryover was included in either Framework 48 or 50 for May 1, 2013, leaving ambiguity in the regulations on how to address the fundamental conflict previously described in this section. In the absence of clarification by the Council, NMFS' authority to address this conflict consists of a 1-year emergency action under Secretary authority provided in section 305(c) of the Magnuson-Stevens Act and/or a clarification of the existing program under section 305(d) of the Act.

In this rule, NMFS proposes to modify the existing carryover program for FY 2013 through section 305(c) emergency authority in order to limit carryover of GOM cod and to clarify the need to continue the current accounting practice for carryovers for FY 2013, as a transitional measure only, as it pertains to all other carryover eligible stocks. *NMFS also seeks public comment on a proposal to clarify, under section 305(d) of the Magnuson-Stevens Act, how to account for carryover in FY 2014 and beyond.*

Proposed FY 2012 to FY 2013 Carryover Measures

NMFS does not propose to change the amount of carryover allowed for stocks in FY 2013 except for GOM cod. NMFS has determined that the carryover amount for GOM cod, which is based on an allocation in FY 2012 that allowed for overfishing, must be reduced to ensure that the total potential catch (i.e., fishery level ACL + carryover) remains below the overfishing limit for FY 2013. NMFS proposes to use emergency authority provided by section 305(c) of the Magnuson-Stevens Act to reduce GOM cod from the 10 percent specified in current regulations to 1.85 percent of unused FY 2012 GOM cod ACE in FY 2013. NMFS does not propose to change its recent practice of not counting carryover against a sector's ACE. The intent not to change the carryover amounts, except for GOM cod, nor the current accounting practice for these carryover amounts, was announced to the public on February 14, 2013, to allow the industry to plan its activities for the remainder of FY 2012.

Use of 305(c) emergency rulemaking authority to reduce the amount of GOM cod available as carryover meets the required rationale set forth by NMFS for 305(c) emergency rulemaking (62 FR 44421, August 21, 1997). The Council has not taken action to address the potential for FY 2012 to FY 2013

carryover of up to 10 percent to result in overfishing the GOM cod stock. The failure of the Council to take appropriate action was not foreseeable because the final revised assessment of GOM cod upon which the Council would have relied to address carryover problems was not available until January 2013. Therefore, NMFS, on behalf of the Secretary, finds that a fishery-related emergency exists. Specifically, the currently provided maximum 10-percent carryover authorized by the FMP would permit a total potential catch that exceeds the GOM cod overfishing limit. As a result, reduction in the maximum carryover amount is necessary to ensure that the total potential catch, if attained in FY 2013, will not result in overfishing. Failing to take this emergency action would present a serious conservation problem because the GOM cod stock is overfished, subject to overfishing, and was determined last year by NMFS to have not made adequate rebuilding progress.

Given the timing of Frameworks 48 and 50, continuing the accounting practice for the other groundfish stocks, as a 1-year transitional practice, is necessary to balance the conservation objectives of Amendment 16 with the National Standard 10 safety benefits and management flexibility provided by a carryover. NMFS has determined that continuing to account for these carryover levels for 1 more year only can be done without increasing the risk of overfishing in FY 2013 and without jeopardizing the long-term health of these stocks. Moreover, these carryover amounts represent the maximum available under existing regulations. The actual amount carried forward would depend on each sector's utilization of ACE in FY 2012. 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. Although accounting for carryovers in this manner may result in exceeding the Framework 50 sector sub-ACLs and could increase the risk of exceeding the overall ACLs, this approach prevents catch from exceeding the overfishing limit, given the uncertainty buffers built into the management program.

NMFS has developed an appendix to the Framework 50 EA that provides analysis and rationale supporting these carryover amounts in the short-term (see **ADDRESSES**).

Allowing the continuation of NMFS' recent practice of not counting carryover against a sector's ACE is necessary and appropriate to address problems arising from the late timing and notice to industry of our intent. An anticipated carryover of up to 10 percent, based on NMFS' past practice, has been part of the fishing industry's planning process since the inception of sector management in 2010. To substantially reduce or eliminate carryover late in the fishing year could have the undesirable consequence of incentivizing a race to fish in the final weeks of the fishing year, as fishermen attempt to fully utilize available FY 2012 catch limits, thereby negating the safety benefits carryover provides. Therefore, given these safety concerns, which NMFS is obligated to consider under National Standard 10, and the determination that continuing the current accounting practice for carryovers presents little risk of overfishing or harm to the stocks, NMFS concludes that maintaining this approach for 2013 only strikes the right balance under the law.

Summary of FY 2012 to FY 2013 Proposed Carryover Analysis

NMFS evaluated the likelihood that the total potential catch would lead to overfishing for stocks eligible for carryover. This evaluation is part of the 1-year transition period only. The evaluation showed that, for many stocks, total potential catch would be 81 percent or less of the OFL. Despite the potential to exceed the Council-recommended ACLs and SSC-recommended ABCs, NMFS believes there is a very low likelihood that overfishing could occur for these stocks if the total potential catch is realized in FY 2013. These stocks are GB cod and haddock, SNE/MA yellowtail flounder, witch flounder, GB and GOM winter flounder, Acadian redfish, white hake, and pollock. For other stocks—GOM haddock, CC/GOM yellowtail flounder, and American plaice—total potential catch ranged between 81 and 91 percent of the OFL. The total potential catch for the revised GOM cod carryover amount, 1.85 percent of the FY 2012 ACE, is 94 percent of the OFL.

Carryover from FY 2013 to FY 2014 and Beyond

Although the current accounting practice for carryovers for FY 2013 can be justified, such practice is not appropriate for FY 2014 and thereafter because there is sufficient time to alert the fishing industry of how NMFS intends to account for carryover in the future in a way that is consistent with the Magnuson-Stevens Act, the National Standard Guidelines, and other provisions. This is necessary to reconcile the fundamental conflict between ensuring long-term compliance with catch limits and the need to provide, at some level, the safety and management benefits of carryovers. Because the Council did not specify in Amendment 16, or clarify how to account for carryover in light of this conflict in proposed Frameworks 48 or 50, NMFS has determined it has the responsibility under section 305(d) to propose regulations ensuring that the measures of Amendment 16 and Frameworks 48 and 50 can be carried out in a manner consistent with the Magnuson-Stevens Act. NMFS has concluded it has the authority to propose such regulations because they are fundamentally administrative in nature that clarify the carryover accounting process. These regulations are justified by this unusual circumstance in which previously approved Council-recommended measures conflict with each other and must be reconciled in order to be carried out consistent with the Magnuson-Stevens Act and the National Standard Guidelines.

NMFS proposes to clarify the carryover provision in terms of how much carried over catch is accounted for against a sector's ACE, for the purposes of determining which AMs are triggered by exceeding the ACE. Under the proposed clarifying regulatory text, NMFS proposes to count carryover, except for a nominal *de minimus* amount, against a sector's ACE only for the purpose of triggering the reactive pound-for-pound AM based on overage paybacks specified at § 648.87(b)(4)(iii).

NMFS believes that this approach is more consistent with the intent of carryover. It may not be possible to fully assess the impacts of carryover in the next fishing year until complete information is available to determining the overall catch of groundfish stocks for the preceding year. This proposed system allows for the potential that a sector may use more of its carryover amount depending on whether the stock in question is likely to exceed the overall ACL. Therefore, the amount of carryover caught by a sector would not count against its ACE for the purpose of triggering the in-season closure AM if the ACE is exceeded. This is because it would not be clear whether catching the carryover amount would result in the fishery exceeding the overall ACL until after fishing year is over and final catch is known.

This approach would allow sectors to continue fishing beyond their initially allocated ACE up to the full carryover amount for which they are eligible based on their prior year under-harvest without having to stop fishing in the stock area subject to a closure once an

ACE is exceeded. Sectors could strategize the benefits of fishing the carryover versus the possibility of triggering the pound for pound reduction in the following year's ACE if that AM is triggered. The maximum amount allowed would remain 10 percent. At the end of the fishing year, or as soon as possible after, NMFS would evaluate the total fishery catch relative to the total ACL. The amount of carryover counted against the sector ACE would depend on whether the total catch for the stock exceeds that stock's ACL. This approach would operate as follows:

- If the total ACL for the year is not exceeded, any carryover used would not be counted against a sector's ACE. No reactive AM would be required. Essentially, because the total ACL was not exceeded, most likely because sectors or other fishery components did not fully utilize their respective allocations for the year, there would be no consequence associated with the use of carryover. This would result in accounting that is similar to the current carryover accounting practice wherein carryover use is not directly attributed to the sector's ACE for the fishing year in which the carryover is taken.
- If the total ACL for the year *has* been exceeded and carryover was used, NMFS would only count the amount of carryover used above the total ACL against sector ACE. Individual sectors responsible for the ACL overage as a result of carryover use would be subject to pound-for-pound overage repayment specified by the FMP AMs. It is possible that some portion of carryover use may not be attributed to sector ACE, even if the total ACL is exceeded. If other fishery components contribute to the ACL overage, sectors would only be charged for the carryover ACE used.
- In the event that a situation similar to FY 2013 occurs, wherein substantial catch reductions are required, NMFS would reserve the right to modify the allowable carryover amount in excess of the *de minimus* level so that the total potential catch did not exceed the OFL. For FY 2013, NMFS is making this type of modification using section 305(c) authority in large part due to the timing considerations and lack of adequate public notice and comment; however, in future similar situations, NMFS would rely on section 305(d) authority to modify the allowable carryover amounts.

The provision would not count a guaranteed *de minimus* amount of carryover against a sector's ACE and would provide some certainty that carryover would be available without any negative consequences. The industry, therefore, could count on, and factor into their decisionmaking, this guaranteed carryover late in the fishing year which helps promote, albeit on a modest scale, safety at sea. NMFS has not yet determined an appropriate *de minimus* amount. One option would be to provide an amount sufficient to cover an average trip's landing for the stock in question, with the rationale being that if a single trip is not made late in the fishing year because of safety concerns or market conditions, the foregone catch from that trip could be carried forward. Another option would be to allow a small percentage of the following year's ACE for the stock in question (e.g., 1 percent of the stock's FY 2014 ACE). This would better ensure that available *de minimus* carryover was consistent with the prevailing stock conditions and catch advice for the year in which carryover would be harvested.

Allowing for a *de minimus* carryover without negative consequences in the groundfish fishery can be justified on a couple of grounds. The amount provided, if taken, would not be expected to cause fishery-level ACLs to be exceeded. The analysis conducted for FY 2012 to FY 2013 carryover has illustrated that the fishery has not operated in a manner that fully utilizes available allocations. Even with the 10 percent routinely set aside from the sector sub-ACL to provide carryover, few stocks have utilized greater than 85 percent of the available stock level ACL. In addition, depending on how much carryover is caught, the benefit to the stock from not catching that amount in the previous year may permit stock growth sufficient to offset the effects of any *de minimus* carryover allowed in the next year. As previously stated, NMFS is continuing to develop *de minimus* carryover analyses and will provide completed results to the Council's Groundfish Plan Development Team and Groundfish Committee for their review and input. It is not expected that the *de minimus* carryover amount would be re-evaluated annually; however, if the ongoing analysis indicates this would be a critical component to ensure ACLs were not likely to be exceeded, then annual review could be contemplated.

NMFS believes this proposed approach maintains the original intent of the carryover program established by Amendment 16 in enhancing the flexibility of sectors in planning their fishing year, while still promoting safety and ensuring that there will be AMs for using carryover if overall ACLs are exceeded. This general description of the proposed accounting change does not explicitly discuss the implications of leasing ACE. Leasing, as well as other complexities of the accounting system, have not yet been closely evaluated by NMFS or discussed with the Council and public. As a result, NMFS is soliciting public comment on the conceptual approach proposed. After considering comments received, NMFS may further clarify any remaining details, either in collaboration with the Council or independently, for FY 2014 implementation. The Council may also take action to revise the carryover program for FY 2014.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that, except for those measures identified as problematic, this proposed rule is consistent with Framework 50, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule has been determined to be significant for purposes of Executive Order (E.O.) 12866.

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 50 and its accompanying EA/RIR/IRFA. The IRFA describes the economic impact that this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 50, the beginning of this section (**SUPPLEMENTARY INFORMATION**) in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

Description and Estimate of the Number of Small Entities To Which the Proposed 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 proposed 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 for the four primary sub-fisheries potentially impacted by the proposed action from 2010 onward. 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 proposed action are most likely to be affected. So, for this analysis, we identified ownership groups that are most likely to be impacted by the proposed measures. 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 proposed 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 Proposed Measures and Alternatives and Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The economic impacts of each proposed measure are summarized below and are discussed in more detail in sections 7.4 and 8.11 of the Framework 50 EA. All of the proposed alternatives would have impacts on a substantial number of small entities. The economic impacts of the proposed measures on the groundfish fishery are expected to be severe and negative. The proposed action may 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, would 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 would also likely be significantly reduced under the proposed groundfish catch limits.

Southern New England/Mid-Atlantic Winter Flounder Management Measures

The proposed revision to the SNE/MA winter flounder rebuilding strategy may avoid a loss of an estimated $40.2 million in net present value compared to the no action. This assumes that landings of the stock would be allowed, which is proposed in conjunction with the revised rebuilding program. 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 proposed action. If the Council did not take any action, the rebuilding strategy would be to rebuild the stock by 2014, which is unlikely even in the absence of all fishing mortality. The management objective for SNE/MA winter flounder would be to keep fishing mortality as close to zero as possible. This has the smallest net economic benefit when compared to all of the rebuilding scenarios analyzed.

This action also proposes to allocate SNE/MA winter flounder to sectors and allow landing of the stock. In FY 2013, landings of SNE/MA winter flounder are estimated to be worth $5.4 million in ex-vessel gross revenues based on the preferred ABC alternative. Approximately $4.3 million of these estimated revenues would accrue to sector vessels, and the rest to common pool vessels. Landing of this stock has been prohibited since FY 2010. 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 continue to be prohibited, and fishing vessel revenues would be lower when compared to the Council's preferred alternative. Revenues of other groundfish stocks may also be reduced since there may be fewer groundfish trips as a result of the inability to land SNE/MA winter flounder.

This action proposes to modify 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 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 would catch their entire allocation of SNE/MA winter flounder. As a result, this option would give sector vessels greater flexibility and would potentially result in higher revenues and lower costs.

Annual Catch Limit Specifications

This proposed action would set specifications for FYs 2013–2015 for most groundfish stocks. The new ABCs would be set based on the latest benchmark stock assessment information, which is considered the best scientific information available and consistent with the, the ABC control rules in the FMP, Magnuson-Stevens Act requirments. and other applicable law. Because NFMS can only approve or disapprove measures recommended in Framework 50, the only other possible alternatives to the catch limits proposed 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 these proposed catch limits would be lower limits, which would not mitigate the economic impacts of the proposed action to the fishery. The Council's recommendation for GB yellowtail flounder does not appear to be consistent with the best scientific information available, would likely fail to end overfishing, and as a result, would violate Magnuson-Stevens Act requirements. The proposed emergency action for GB yellowtail flounder is the highest ABC possible to avoid overfishing based on the best scientific information available.

If the Council took no action to revise the specifications for FY 2013–2015, no specifications would be set for most stocks in FY 2013. The FY 2012 catch limits expire on April 30, 2013, and the FMP does not specify any rollover provisions for specifications. As a result, if no catch limits are specified as proposed in this action, groundfish vessels would be unable to fish. This would be expected to have greater negative economic impacts than the proposed action, and would be predicted to have much less revenues as well. If no action is taken to specify catch limits, Magnuson-Stevens Act requirements to achieve optimum yield and consider the needs of fishing communities would be violated.

For the reasons mentioned above, the proposed alternative is the only reasonable and legal alternative available that would mitigate the economic impacts of the proposed 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 and this proposed rule, there are numerous mitigation measures that have been extensively discussed, considered, and implemented in Amendment 16, and parallel measures that are being proposed for implementation in FY 2013. Amendment 16 established various measures to mitigate negative impacts of lower catch limits, including the sector program that provides substantial flexibility in when, how and where fishing can occur, the carryover provisions from year to year of uncaught quota, special provisions for certain small segments of the fishing fleet, and other measures that can be considered. The Amendment 16 FEIS and final rule can be found on the Council's Web site at: *http://www.nefmc.org/nemulti/index.html.* In addition, both the Council and NMFS are proposing, concurrently with this rule, other measures to mitigate the impacts of the anticipated reductions in the FY 2013 catch limits for most stocks. Mitigating measures are being proposed in Framework 48, including reduction in minimum fish sizes for some species and revisions to the discard strata for GB yellowtail flounder, an emergency action to increase monkfish trip limits, and the FY 2013 Sector Operations Plans and Contracts and Allocation of the NE Multispecies ACE rulemaking which proposes 25 exemptions to allow more flexibility for sector vessels. NMFS has also already taken action on some measures, including announcing its intent to cover at-sea monitoring costs for sector vessels in FY 2013, and an exemption for sector vessels to allow more fishing opportunity on redfish, which is a healthy groundfish stock. All of these proposed and implemented

measures can be found at: *http://www.nero.noaa.gov/sfd/sfdmulti.html.*

The analysis to estimate the economic impacts of this proposed action considered two different scenarios using a low (Scenario 1) and high (Scenario 2) ACL for both GOM cod and GB yellowtail flounder. Both 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 the proposed 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. These expected revenues in FY 2013 assume the full 10-percent carryover is available to sector vessels from FY 2012 to FY 2013. As explained below, if the carryover available to sector vessels is lower, expected revenue could decrease.

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 would be negatively affected by this proposed action. Chatham, MA, is expected to have the largest percentage decline in landings value since FY 2011.

The impacts of the proposed action would 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.

Under both scenarios analyzed, 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. Under the proposed action, crew-days, days absent, and total sector trips would also be expected to decline substantially relative 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 proposed action would reduce the scallop fishery allocation for GB and SNE/MA yellowtail flounder by at least 38 percent, and 52 percent, respectively. If the scallop fishery exceeds its allocation by more than 56 percent, scallop vessels would not have access to Closed Area II, 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. 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 Council-preferred alternative for the FY 2013 GB yellowtail flounder ABC would result in a scallop allocation of 192.1 mt, and the proposed emergency action to implement a FY 2013 ABC of 500 mt would result in a scallop allocation of 83.4 mt. The medium estimate of GB yellowtail flounder bycatch by the scallop fishery in FY 2013 is 85.3 mt. The high estimate of 2013 GB yellowtail flounder bycatch is 152.8 mt. Thus, if these estimates are accurate, it is unlikely that a significant overage would occur in FY 2013. As a result, scallop-dependent small entities are not expected to be significantly impacted by this action. *NMFS is seeking comments on the economic impacts of the proposed GB yellowtail flounder levels on the scallop fishery.*

Carryover

This proposed action would continue to allow up to 10 percent of unused FY 2012 sector ACE to be used in FY 2013 in conjunction with the proposed catch limits in this action. NMFS is proposing to reduce 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 resulting from the preferred-alternative catch limits. The analysis also evaluated if no carryover of GOM cod was permitted in FY 2013. This reduced projected gross groundfish revenue by $2.6 million to $61.7 million. NMFS estimates that the 1.85-percent GOM cod carryover could 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 proposed by NMFS would have the highest impact on vessels under 30 feet (9.1 m) in length.

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.

FY 2013 Recreational Management Measures

This proposed action would increase 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 of the proposed action were 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 would be the same as in FY 2011, the proposed action would result in an average projected gross revenue loss of $5,729 per vessel ($974 thousand divided by 170 vessels). Actual losses would likely 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 of the Proposed Rule

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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 27, 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 proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Further amend § 648.82, as proposed to be amended at 78 FR 18188, March 25, 2013, by adding paragraph (n)(2)(vi), to read as follows:

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

* * * * *

(n) * * *

(2) * * *

(vi) *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′	(1) 71°40′
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.

* * * * *

■ 3. Further amend § 648.85, as proposed to be amended at 78 FR 18188, March 25, 2013, 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, white hake, 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.

* * * * *

(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.

* * * * *

(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, white hake, 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.

* * * * *

(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.

* * * * *

■ 4. § 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. § 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.* (*i*) With the exception of GB yellowtail flounder and GOM cod, 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. A sector may carry over an amount of ACE equal to up to 1.85 percent of its original GOM cod ACE allocation that is unused at the end of one fishing year into the *following* fishing year.

(*ii*) For FY 2013, no carryover shall be counted against a sector's 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*), 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*) 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 there the stock-level ACL has been exceeded.

(*2*) In instances where the 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.

(*3*) NMFS reserves the right to reduce 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, to maintain consistency with the requirements of the Magnuson-Stevens Act.

* * * * *

(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);

* * * * *

§ 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. Further amend § 648.90, as proposed to be amended at 78 FR 18188, March 25, 2013, by revising paragraph (a)(5)(i)(A) to read as follows:

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

* * * * *

(a) * * *

(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)(F) (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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