DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100923469–1002–02]

RIN 0648–BA27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 45

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment (FW) 45 to the NE Multispecies Fishery Management Plan (FMP). FW 45 was developed by the New England Fishery Management Council (Council) to prevent overfishing, rebuild overfished stocks, achieve optimum yield (OY), and minimize the economic impact of management measures on affected vessels, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action would revise the biological reference points and stock status for pollock, update annual catch limits (ACLs) for several stocks for fishing years (FYs) 2011–2012, adjust the rebuilding program for Georges Bank (GB) yellowtail flounder, increase scallop vessel access to the Great South Channel Exemption Area, approve five new sectors, modify the existing dockside and at-sea monitoring requirements, revise several sector administrative provisions, establish a Gulf of Maine (GOM) Cod Spawning Protection Area, and refine measures affecting the catch of limited access NE multispecies Handgear A vessels. This action would disapprove the Council's proposed catch limits for GB yellowtail flounder for FY 2011, and instead propose new catch limits for this stock through emergency action authority based on new flexibility provided by the International Fisheries Agreement Clarification Act. This action is necessary to ensure that the fishery is managed on the basis of the best available science, to comply with the acceptable biological catch (ABC) control rules adopted in Amendment 16 to the FMP, and to enhance the viability of the fishery following the transition to sector management in 2010.

DATES: Comments must be received by March 18, 2011.

ADDRESSES: You may submit comments, identified by 0648–BA27, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Douglas Christel.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for NE Multispecies Framework Adjustment 45."

Instructions: All comments received are a part of the public record and will generally be posted to *http://regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of FW 45, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA analysis 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 FW 45 EA/RIR/IRFA, as well as the relevant analyses for Amendment 16 and other recent actions, are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.* Copies of recent stock assessments for stocks managed by the FMP are also accessible via the Internet at *http://www.nefsc.noaa.gov/groundfish.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone: 978–281–9141, 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; while large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species are further divided into 19 individual stocks and are referred to as "regulated species," that, along with ocean pout, are collectively referred to as groundfish.

A major overhaul of the FMP occurred in 2004 with implementation of Amendment 13 on May 1, 2004 (April 27, 2004; 69 FR 22906), which included the establishment of rebuilding programs for stocks managed by the FMP and measures necessary to end overfishing, rebuild overfished stocks, and help mitigate the economic impacts of effort reductions in the fishery to the extent practicable. Amendment 13 also established a biennial adjustment process intended to update status determination criteria, adopt and update rebuilding programs, and revise management measures necessary to achieve the objectives of the FMP and the mandates of applicable law. A second substantial revision to the FMP came in 2010, with the implementation of Amendment 16 (April 9, 2010; 75 FR 18262). Amendment 16 updated status determination criteria for all regulated NE multispecies and ocean pout stocks based upon revised assessments for all stocks; adopted rebuilding programs for stocks newly classified as being overfished and subject to overfishing; and revised management measures to achieve the conservation objectives of the FMP and to minimize the economic impacts of such measures, including significant revisions to the sector management measures, reporting requirements, trip limits, and days-at-

sea (DAS) measures. Amendment 16 not only established a process for specifying ABCs and ACLs and distributing available catch among components of the fishery that catch regulated species and ocean pout, but it also specified accountability measures (AMs) necessary to prevent overfishing on these stocks and addressed overages of ACLs, as required by the Magnuson-Stevens Act. 16 U.S.C. 1801 *et seq*. In another action, FW 44 (April 9, 2010; 75 FR 18356), NMFS set the ACLs for FYs 2010 through 2012, and distributed such allocations among the various components of the fishery that catch these stocks. An April 9, 2010, final rule (75 FR 18113) implemented the approval of 17 new sectors in FY 2010, and specified their respective annual catch entitlements (ACEs, or sector quotas) for each stock allocated to sectors pursuant to Amendment 16.

The Council developed FW 45 as part of the established framework and biennial adjustment process to revise measures necessary to prevent overfishing and rebuild overfished stocks, while achieving OY in the fishery and minimizing economic impact to the extent practicable. Pursuant to the Magnuson-Stevens Act, the Council has proposed FW 45 to NMFS, which has reviewed the proposal and is presenting it for public review. If implemented, FW 45 would set and update ACLs for several stocks pursuant to the process established by Amendment 16 and FW 44. Updated stock assessments for pollock and GB yellowtail flounder conducted in 2010 require the ACLs originally established under FW 44 to be updated based upon revised stock status for pollock and a revised rebuilding program for GB yellowtail flounder proposed in FW 45. Further, following the transition to sectors under Amendment 16, the Council realized that several changes to existing measures are necessary to make the Amendment 16 measures work more effectively, as described below.

Proposed Measures

The following summarizes the measures proposed by the Council in FW 45, based on the order in which applicable provisions appear in the regulations at 50 CFR part 648. These measures build upon the provisions implemented by previous management actions, and are intended to either supplement or replace existing regulations, as described for each measure. This proposed rule also includes revisions to regulations that are not specifically identified in FW 45, but that are necessary to correct errors in, or clarify, existing provisions, as described further below. The proposed regulations implementing measures in FW 45 were deemed by the Council to be consistent with FW 45, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a January 11, 2011, letter from the Council Chairman to the Regional Administrator (RA).

1. Status Determination Criteria for Pollock

Amendment 16 updated the status determination criteria for existing NE multispecies regulated species and ocean pout stocks based upon the best available scientific information regarding stock status resulting from the Groundfish Assessment Review Meeting (GARM III), a comprehensive stock assessment for all species managed by the FMP, conducted in August 2008. GARM III originally characterized pollock as overfished and subject to overfishing. However, due to the high uncertainty of the determination of pollock stock status, as noted in the GARM III stock assessment conclusions, and on the advice from the Council's Scientific and Statistical Committee (SSC), the body charged by the Magnuson-Stevens Act with recommending an ABC to the Council for each stock, an updated pollock stock assessment was conducted in 2010. The pollock peer-reviewed benchmark stock assessment review (Stock Assessment Workshop, or SAW, 50) was completed in June 2010, with the final summary report completed on July 14, 2010. This assessment determined that pollock is not overfished or subject to overfishing. Thus, this species no longer requires the rebuilding program established in Amendment 16. Based upon this updated assessment, NMFS implemented an emergency action (July 20, 2010; 75 FR 41996) to incorporate the results of this assessment and update the status determination criteria and the associated FY 2010 ABC and ACL for this species. On December 1, 2010 (75 FR 74661), this emergency action was continued through the end of FY 2010 (April 30, 2011).

In FW 45, NMFS proposes to integrate the results of the 2010 pollock stock assessment into the FMP. Table 1 lists the proposed revised status determination criteria, with numerical estimates of these parameters listed in Table 2. The revised biomass target parameter for pollock, where spawning stock biomass is at maximum sustainable yield (SSB_{MSY}) or its proxy, is SSB at 40 percent maximum spawning potential (MSP). The maximum fishing mortality rate (F) threshold is the F_{MSY} proxy, or $F_{40\%MSP}$.

TABLE 1—DESCRIPTION OF THE PROPOSED POLLOCK STATUS DETERMINATION CRITERIA

Species	Biomass target (B_{target})	Minimum biomass threshold	Maximum fishing mortality threshold
Pollock	SSB_{MSY}: SSB/R (40%MSP)	½ B_{target}	$F_{40\%MSP}$

TABLE 2—NUMERICAL ESTIMATES FOR THE PROPOSED POLLOCK STATUS DETERMINATION CRITERIA

Species	Biomass target (SSB_{MSY} or proxy) in mt	Maximum fishing mortality threshold (F_{MSY} or proxy)	MSY in mt
Pollock	91,000	0.41	16,200

2. Rebuilding Program for GB Yellowtail Flounder

In 2004, GARM II concluded that the GB yellowtail flounder stock was overfished and subject to overfishing. In response, the Council developed a rebuilding program for this stock in FW 42 (October 23, 2006; 71 FR 62156). That rebuilding program incorporated an adaptive rebuilding strategy that was expected to rebuild the stock by 2014 with a 75-percent probability of success, and was anticipated to rebuild this stock in 8 years, 2 years ahead of the

maximum rebuilding period allowed by section 304(e)(4) of the Magnuson-Stevens Act. The intent of that rebuilding program was to rebuild the stock as quickly as possible, consistent with efforts to jointly manage this stock with Canada as part of the U.S./Canada Resource Sharing Understanding (Understanding).

More recent estimates of the status of this stock conducted by the Transboundary Resource Assessment Committee (TRAC) in July 2010 indicate that overfishing is not occurring, but that the stock is still in an overfished condition (TRAC 2010/05). This estimate is affected by updated estimates of the 2005 year class that suggest this year class is much smaller than previously thought. This report concludes that it is not possible to rebuild this stock by 2014, even at F = 0. Accordingly, as part of FW 45, the Council proposes to revise the GB yellowtail flounder rebuilding program to rebuild the stock by 2016, with a 50-percent probability of success to extend the rebuilding program to the maximum extent allowed by applicable law. This revision would extend the rebuilding program for this stock out to the maximum 10-year rebuilding period allowed by the Magnuson-Stevens Act and lower the probability of success from 75 percent to 50 percent in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

3. Overfishing Levels and ABCs for Particular Stocks

NMFS also proposes in FW 45 to revise the overfishing levels (OFLs) and ABCs of particular stocks, including GB cod, GB haddock, GB yellowtail flounder, and pollock for FYs 2011 and 2012. Revisions to the OFLs and ABCs for pollock and GB yellowtail flounder are based upon the updated assessments and revised rebuilding strategies for these stocks, as described in Items 1 and 2 of this preamble, respectively, and by the 2010 International Fisheries Agreement Clarification Act for GB yellowtail flounder, as described in Item 5 of this preamble. Revisions to the OFLs and ABCs for the GB cod and GB haddock stocks are based upon updated TRAC assessments of the eastern components of the stock. It is anticipated that the FY 2012 values of the ABCs for GB cod, GB haddock, and GB yellowtail flounder will be revised during 2011, based on new transboundary stock assessments conducted by the TRAC, and will likely be specified again in conjunction with the FY 2012 U.S./Canada Management Area total allowable catch (TAC) levels, as further described in Item 5 of this preamble. Table 3 contains the OFLs and ABCs for FYs 2011 and 2012 proposed under FW 45 with the exception of GB yellowtail flounder, as noted below. The expected economic impacts of the proposed ABCs are summarized below.

For GB yellowtail flounder, the FY 2011 U.S. ABC shown in Table 3 represents a revised shared U.S./Canada Management Area TAC based upon, and consistent with, determinations and decisions about this stock by the Transboundary Management Guidance Committee (TMGC), pursuant to the Understanding in a February 9, 2011, conference call. This meeting of the TMGC was precipitated based on provisions of the recently enacted International Fisheries Agreement Clarification Act which provides increased flexibility to NMFS and the Council in setting higher fishing limits for those portions of stocks subject to the Understanding. This Act states that decisions made under that Understanding should be considered as "management measures under an international agreement" that "dictate otherwise" for purposes of section 304(e)(4)(A)(ii) of the Act (16 U.S.C. 1854(e)(4)(A)(ii)) and that the Council and the Secretary of Commerce may "establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if * * * overfishing is ended immediately." (Sec. 202(2) and (3) of the International Fisheries Agreement Act). Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the shared U.S./Canada Management Area TAC for this stock also represents the ABC for this stock. The revised ABC agreed to by the TMGC is being proposed consistent with the provisions of the International Fisheries Agreement Clarification Act and the harvest strategy of the Understanding that requires overfishing to be prevented and the facilitation of the rebuilding of overfished stocks.

The revised ABC recommended by the TMGC is higher than that approved by the Council's SSC and adopted by the Council in FW 45 (*i.e.,* a U.S. ABC of 1,099 mt for FY 2011 and 1,222 mt for FY 2012). Because this revised ABC was not considered by the Council in FW 45, NMFS proposes to implement the revised FY 2011 ABC and ACL for this stock as a separate but parallel action to FW 45 pursuant to its emergency action authority specified in section 305(c) of the Magnuson-Stevens Act. NMFS has determined that the adoption of the International Fisheries Agreement Clarification Act meets the criteria for proposing this emergency action, as explained further in Item 5 of this preamble. Because this proposed revision would be made under the authority to implement a Secretarial emergency action pursuant to section 305(c) of the Magnuson-Stevens Act instead of a Council action, the involvement of the SSC in the specification of the ABC for this stock is not specifically required, although the emergency rule must still be consistent with the best scientific information available. Although NMFS could wait for the SSC to consider the new assessment, the time necessary to complete such a process would unduly delay the possibility of increasing the TAC for this stock as quickly as possible and addressing the emergency exigencies of this matter. NMFS has determined that revising the ABC and ACL through this proposed emergency action is consistent with best scientific information available. The duration of this proposed revision to the GB yellowtail flounder ABC is limited by the Magnuson-Stevens Act to 180 days, but may be extended to make the revised ABC and ACL effective for the duration of FY 2011 (through April 30, 2012), consistent with the authority in the Magnuson-Stevens Act to extend emergency actions for up to an additional 186 days.

For FYs 2010–2012, the SSC recommended that the ABC for GOM winter flounder be specified based on 75 percent of recent catches of this stock as part of FW 44. For FY 2011, the Council tasked the SSC with reviewing the GOM winter flounder catches for FY 2009 and any additional survey information collected since GARM III to determine whether revisions to the FY 2011 and 2012 ABCs are necessary for this stock. The SSC considered available information at its August 2010 meeting, as well as an alternative approach to determine the ABC for GOM winter flounder by the Groundfish Plan Development Team (PDT) that utilized an area-swept survey approach to determine the ABC for this stock. However, the SSC was concerned that increased catch resulting from the PDT's alternative approach to specifying ABC for this stock could compromise stock status or rebuilding, given lingering uncertainty regarding the information necessary to evaluate the risks of jeopardizing stock status. Therefore, the SSC did not recommend any changes to the ABC for this stock, and the FW 44

values for FY 2011 and FY 2012 are maintained.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with F_{MSY}, *i.e.,* the F that, if applied over the long term, would result in MSY. The ABCs are those recommended to the Council's SSC following the SSC's August 25–26, 2010, meeting and its reports to the Council at the Council's September and November 2010 meetings. The ABCs recommended by the SSC are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year based upon the ABC control rules established by Amendment 16. The ABC represents the amount of catch associated with 75 percent of F_{MSY}, or the F rate required to rebuild the stock within the defined rebuilding time period ($F_{rebuild}$), whichever is lower, with the exception of GOM and Southern New England (SNE)/Mid-Atlantic (MA) winter flounder. For SNE/MA winter flounder, the ABC recommendations are based on estimates of discards that result from recent management measures. For GOM winter flounder, the ABC recommendation is based on 75 percent of recent catches.

TABLE 3—PROPOSED REVISIONS TO OVERFISHING LEVELS AND ACCEPTABLE BIOLOGICAL CATCHES

Stock	OFL (mt, live weight)				U.S. ABC (mt, live weight)			
	FY 2011	FY 2012	FY 2013	FY 2014	FY 2011	FY 2012	FY 2013	FY 2014
Georges Bank cod	7,311	* 8,090	NA	NA	4,766	* 5,364	NA	NA
Georges Bank haddock	59,948	* 51,150	NA	NA	34,244	* 29,016	NA	NA
Georges Bank yellowtail flounder	3,495	* 4,335	NA	NA	** 1,458	NA	NA	NA
White hake	4,805	5,306	NA	NA	3,295	3,638	NA	NA
Pollock	21,853	19,887	20,060	20,554	16,900	15,400	15,600	16,000

* Preliminary estimates that may be revised in 2012 based on TRAC and TMGC considerations.

** This value represents an increase from the U.S. ABC adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act and described further in Item 5 of this preamble.

4. ACLs

Similar to adjustments in the OFLs and ABCs described in Item 3 of this preamble, FW 45 proposes revisions to the ACLs for several stocks, including GB cod, GB haddock, GB yellowtail flounder, white hake, and pollock. Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular FY, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, State-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account, as described in Appendix II of FW 45.

For FW 45 the ABC was sub-divided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); State waters (portion of ABC expected to be caught from State waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries such as exempted fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. The percentage of the ABC deducted for anticipated catch from State waters is between 1 and 10 percent for most stocks, but for Atlantic halibut and GOM winter flounder, 50 percent and 25 percent of the ABC of each stock is set aside for State waters catch, respectively. The amount deducted for anticipated catch of other regulated species and ocean pout in other sub-components of the fishery is between 4 to 6 percent of the ABC for each stock, with the exception of windowpane flounder stocks, in which 29 percent is set aside for such catch.

The allocation of yellowtail flounder to the scallop fishery is not changed by this framework. Under FW 44, the Council elected to allocate 100 percent of the estimated GB and SNE/MA yellowtail flounder bycatch associated with the projected scallop catch in FY 2010, and 90 percent of the yellowtail flounder bycatch projected for the scallop fishery in FYs 2011 and 2012. Based on doubts about accurately estimating expected bycatch in the scallop fishery and not wanting to unnecessarily constrain the scallop fishery, the Council voted to maintain the specific FW 44 allocations of yellowtail flounder to the scallop fishery under FW 45, rather than base yellowtail flounder allocations on current information about anticipated bycatch amounts in the scallop fishery. Thus, the SNE/MA yellowtail flounder allocations to the scallop fishery listed in Tables 5 and 6 are the same amounts implemented under FW 44 in 2010 (the allocation of SNE/MA yellowtail flounder remain at 82 and 127 mt, live weight, respectively during FYs 2011 and 2012), while the GB yellowtail flounder allocations to the scallop fishery listed in Tables 11 and 12 remain at 200.8 and 307.5 mt, live weight, respectively, during FYs 2011 and 2012. No specific allocation of Cape Cod (CC)/GOM yellowtail flounder would be made to the scallop fishery, because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock will be considered part of the "other sub-component" of the ACL.

The FY 2011 and 2012 yellowtail flounder allocations to the scallop fishery are characterized as sub-ACLs to reflect the fact that the Council adopted AMs for the scallop fishery that would be responsive to yellowtail flounder catches in excess of these sub-ACLs, as part of Amendment 15 to the Atlantic Sea Scallop FMP at its November 2010 meeting. A proposed rule soliciting comment on that action is expected to

be published shortly, with a final decision to approve, partially approve, or disapprove such measures expected in spring 2011. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas from the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the proposed ACL components, "total TAC" means "total ACL." For FY 2011, this means 10 percent of 1,416 mt (141.6 mt) for GB yellowtail flounder, based on the proposed total ACL listed in Table 11 proposed based on the flexibility afforded by the International Fisheries Agreement Clarification Act, as further described in Item 4 of this preamble below. Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the U.S./Canada Management Area TAC for this stock that is available to the U.S. fishery also represents the ACL for this stock. The specification and distribution of the GB yellowtail flounder ACL is discussed further in Item 5 of this preamble and shown in Tables 11 and 12.

Under this action, the mid-water trawl fishery would be allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 5 are slightly less than 0.2 percent, due to the 7-percent reduction of these allocations to account for management uncertainty for this stock. For example, the FY 2011 ABC of 32,244 mt was multiplied by 0.002 (32,244 mt × .002 = 68.5 mt), and then reduced by 4.79 mt (68.5 mt × 0.07 = 4.79 mt) to arrive at the proposed allocation of 64 mt. Because the herring fishery already has AMs associated with this allocation that were developed as part of FW 43 (August 15, 2006; 71 FR 46871), all of the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs.

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

Tables 5 through 8 list the proposed distribution of the total ACL for stocks affected by measures in FW 45 to the groundfish fishery, the scallop fishery, the mid-water trawl herring fishery, State waters fisheries, and other fishery sub-components, such as exempted fisheries. A full list of the FY 2011 ACLs will be sent to NE multispecies permit holders and posted on the NMFS Northeast Regional Office Web site (*http://www.nero.noaa.gov*) once finalized. As noted in the FW 44 final rule, while ACLs are specified through FY 2012 for most stocks, it is likely that the Council will adopt ACLs for FYs 2012 through 2014 though a future Council action. Therefore, ACLs specified through FY 2012 in FW 44 and proposed in this action for FW 45 will only be implemented if the anticipated Council action is delayed. In contrast, the pollock ACLs are not expected to be revisited until FY 2013, with any changes effective for FY 2014. The proposed ACL listed in Table 5 for white hake corrects an error published in Table 4 of both the FW 44 proposed (February 1, 2010; 75 FR 5021) and final rules, respectively, that listed the commercial sub-ACL for white hake for FY 2011 as 2,566 mt (the FY 2010 value) instead of the correct value of 2,974 mt. For a detailed description of the process used to estimate management uncertainty and calculate ACLs as part of FW 45, refer to Appendix II of the FW 45 EA (*see* **ADDRESSES**).

TABLE 5—TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2011

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
GB cod	4,540	4,301	0	0	48	191
GB haddock	32,616	30,840	0	64	342	1,370
SNE/MA yellowtail flounder	641	524	82	0	0	27
White hake	3,138	2,974	0	0	33	132
Pollock	16,166	13,952	0	0	769	1,445

TABLE 6—TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2012

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
GB cod*	5,109	4,841	0	0	54	215
GB haddock*	27,637	26,132	0	54	290	1,161
SNE/MA Yellowtail flounder	936	759	127	0	0	40
White hake	3,465	3,283	0	0	36	146
Pollock	14,736	12,612	0	0	754	1,370

* Preliminary estimate that may be revised in 2012 based on Transboundary Resource Assessment Committee and Transboundary Resource Management Committee considerations.

TABLE 7—POLLOCK TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2013

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Pollock	14,927	12,791	0	0	756	1,380

TABLE 8—POLLOCK TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2014

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Pollock	15,308	13,148	0	0	760	1,400

The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative Potential Sector Contributions (PSCs) associated with those sectors. Table 9 lists the preliminary distribution of the groundfish sub-ACL between common pool and sectors based on rosters submitted to NMFS as of December 1, 2010. This distribution is different from the common pool and sector sub-ACLs listed in the EA for FW 45, as those were based upon preliminary sector roster information and do not reflect updated rosters submitted to NMFS. However, this distribution is the same as the sector sub-ACLs and ACE specified for each sector listed in the proposed rule to approve sector operations plans for FY 2011. That rule uses sector rosters submitted to NMFS as of December 1, 2010, to calculate each individual sector's ACE for FY 2011, and which are expected to publish soon. FY 2011 sector rosters will not be finalized until May 1, 2011, because the owners of individual permits signed up to participate in sectors have until April 30, 2011, to drop out of a sector and fish in the common pool. Therefore, it is possible that the FY 2011 sector sub-ACL listed in Table 9 and the proposed rule to approve the FY 2011 sector operations plans will be reduced at a later date, and the common pool sub-ACL will increase, due to vessels leaving sectors and entering the common pool after publication of the FW 45 final rule and specification of ACLs for FY 2011.

Despite such changes, the proposed groundfish sub-ACL (common pool sub-ACL plus the sector sub-ACL) listed in Tables 5 through 8 would not likely change. Based on the final rosters, NMFS intends to publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change. In addition, it is almost certain that all of the FY 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2012 due to annual changes to the sector rosters and changes to the ABCs for GB cod, GB haddock, and GB yellowtail flounder based on the specification of Canadian TACs for these stocks, as described above in Item 5 of this preamble.

TABLE 9—PRELIMINARY DISTRIBUTION OF GROUNDFISH SUB-ACL BETWEEN COMMON POOL AND SECTOR VESSELS

[Mt, live weight]

Stock	Groundfish sub-ACL		Common pool sub-ACL		Sector sub-ACL	
	FY 2011	FY 2012 *	FY 2011	FY 2012 *	FY 2011	FY 2012 *
Georges Bank cod	4,301	4,841	99	111	4,202	4,730
Georges Bank haddock	30,840	26,132	129	109	30,711	26,023
Georges Bank yellowtail flounder **	1,142	1,142	17.4	17.4	1,124.6	1,124.6
White hake	2,974	3,283	35	39	2,939	3,244
Pollock	13,952	12,612	138	125	13,814	12,487

* Preliminary estimate that may be revised in 2012 based on updated sector rosters and Transboundary Resource Assessment Committee and Transboundary Resource Management Committee considerations.

** These values represent an increase from the ACLs adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act and described further in Item 5 of this preamble.

5. Annual Specifications for the U.S./Canada Management Area

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

Annual TACs for these stocks are determined through a process involving the Council, the TMGC, and the U.S./Canada Transboundary Resources Steering Committee. In August 2010, the TMGC approved the 2010 Guidance

Documents for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. The recommended FY 2011 TACs were based on the most recent stock assessments (TRAC Status Reports for 2010), and the fishing mortality strategy shared by NMFS, the Department of Fisheries and DFO. The shared strategy has two parts: (1) To maintain a low to neutral (less than 50-percent) risk of exceeding the F limit reference (Fref = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively); and (2) when stock conditions are poor, F should be further reduced to promote rebuilding. The Council reviewed the recommendations of the TMGC and approved those recommendations at its September 2010 meeting, as detailed further below.

The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod for FY 2011 is 1,050 mt. This TAC corresponds to the average of the pertinent two models for a low risk (less than 25-percent) of exceeding the Fref of 0.18 (*i.e.,* F_{MSY}) in FY 2011, and a greater than neutral probability of biomass growth of up to 10 percent. The annual allocation shares between countries for FY 2011 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Applying this formula results in the proposed allocations of 19 percent of the shared TAC to the U.S. and 81 percent for Canada, or a FY 2011 quota of 200 mt for the U.S. and 850 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada Management Area TAC for FY 2011 is 22,000 mt. This corresponds to a 50-percent risk of exceeding Fref (*i.e.,* F_{MSY}) of 0.26, assuming the entire TAC will be caught in FY 2010. In reality, this TAC level represents a low risk level, because the anticipated catch in FY 2010 will likely be less than the FY 2010 TAC. The annual allocation share recommendations between countries for FY 2010 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Applying this formula results in proposed allocations of 43 percent of the shared TAC to the U.S. and 57 percent to Canada, or a FY 2011 quota of 9,640 mt for the U.S. and 12,540 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada Management Area TAC for FY 2011 is 1,900 mt. This TAC corresponds to a low probability (< 25 percent) of exceeding F_{ref} (*i.e.,* F_{MSY}) of 0.25, and an expected 10-percent increase in median biomass from 2011 to 2012. The TMGC noted that F was below 0.15 in 2008 and 2009. The annual allocation share recommendations between countries for FY 2011 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). This weighting results in proposed allocations of 55 percent of the shared TAC to the United States and 45 percent to Canada, or a FY 2011 quota of 1,045 mt for the United States and 855 mt for Canada.

TABLE 10—2011 U.S./CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES (IN PARENTHESES)

	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared TAC	1,050	22,000	1,900
U.S. TAC	200 (19%)	9,640 (43%)	1,045 (55%)
Canada TAC	850 (81%)	12,540 (57%)	855 (45%)

This proposed rule notifies the public that a recent statute, the International Fisheries Agreement Clarification Act, signed by President Obama on January 4, 2011, affects the proposed FY 2011 U.S./Canada Management Area TAC and ACL for GB yellowtail flounder. Specifically, the new statute allows for additional flexibility under the Understanding regarding the range of catch levels that may be considered for GB yellowtail flounder, which allows for a higher yearly TAC for this species.

As described in Item 4 of this preamble, the catch limits for GB yellowtail flounder result from the annual recommendation of the TMGC, a group that consists of NMFS and United States fishing industry representatives and their counterparts in the DFO and the Canadian fishing industry. Based on the new flexibility provided by the International Fisheries Clarification Act, the TMGC held a conference call on February 9, 2011, to reconsider the FY 2011 shared GB yellowtail flounder TAC. During this conference call, the TMGC agreed to a revised shared GB yellowtail flounder TAC for FY 2011 of 2,650 mt (documentation of this call is available from NMFS, *see* **ADDRESSES**). This revised TAC represents a 39 percent increase compared to the FY 2011 TAC (*i.e.,* 1,900 mt) originally adopted by the Council as part of FW 45, and would increase the amount of GB yellowtail flounder allocated to the directed NE multispecies fishery (1,142 mt) by 44 percent compared to the amount of this stock originally allocated to this fishery under FW 45 (790.7 mt). NMFS is considering implementing this revised U.S./Canada Management Area TAC for this stock based upon Secretarial emergency authority specified in section 305(c) of the Magnuson-Stevens Act through the final rule that would implement approved measures under FW 45. To put this in the context of the Magnuson-Stevens Act, NMFS is proposing to disapprove the ABC, ACL, and U.S./Canada Management Area TAC for GB yellowtail flounder adopted by the Council in FW 45, and to replace them, through its emergency authority, with the revised ABC, ACL, and U.S./Canada Management Area TAC for this stock recommended by the TMGC following its February 9, 2011 conference call.

NMFS policy guidelines for the use of emergency rules (August 21, 1997; 62 FR 44421) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) if the emergency action is being implemented without prior public comment, the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. In this case, the third prong of these criteria is not directly involved because NMFS is providing opportunity for prior public comment. NMFS policy guidelines further provide that emergency action is justified for certain situations where

emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. The 2010 International Fisheries Agreement Act, signed into law by President Obama on January 4, 2011, is considered to be a "recently discovered circumstance," because the Council was not aware if or when the legislation would be considered by Congress when it adopted final measures under FW 45 at its November 2010 meeting. The emergency presents serious management concerns because the low catch limits for GB yellowtail flounder dictated by Magnuson-Stevens Act requirements in force before the International Fisheries Agreement Act was enacted could result in substantially reduced fishing effort and decreased catch and revenue compared to the higher catch limits that would be available if action is taken pursuant to the International Fisheries Agreement Act. For the common pool fishery, when the projected catch of GB yellowtail flounder is equal to the common pool GB yellowtail flounder sub-ACL, such vessels may no longer fish in the Eastern U.S./Canada Area, and may not possess yellowtail flounder caught in the Western U.S./Canada Area. For vessels fishing in sectors, when an individual sector's GB yellowtail flounder ACE is caught, participating vessels may no longer fish in the U.S./Canada Management Area. As a result of the loss of access to the Eastern U.S./Canada Area (for common pool vessels) or the whole U.S./Canada Management Area (for sector vessels), not only do vessels lose revenue associated with GB yellowtail flounder, but they lose revenue associated with multiple other stocks that are caught concurrently, such as GB winter flounder. Emergency action to increase the GB yellowtail flounder ACL and U.S./Canada Management Area TAC would enable additional economic opportunity that could otherwise be forgone and, therefore, likely avoid economic impacts from an unnecessarily low ACL for this stock, based upon applicable law. Therefore, NMFS has determined that the current situation meets the criteria for emergency action.

Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the U.S./Canada Management Area TAC for this stock that is available to the U.S. fishery also represents the ACL for this stock. Thus, the revised GB yellowtail flounder TAC proposed in this action also requires applicable changes to the ACL, and how the ACL for this stock is distributed to the various components of the fishery that catch this stock, that were adopted by the Council in FW 45. The proposed revised GB yellowtail flounder ACL, sub-ACL, and ACL sub-components are specified in Tables 11 and 12 for FYs 2011 and 2012, respectively. A revised U.S./Canada TAC for GB yellowtail flounder would not affect the sub-ACL for the scallop fishery, specified by FW 45 as 200.8 mt.

TABLE 11—REVISED GB YELLOWTAIL FLOUNDER TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2011

[Mt, live weight]

Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-Water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
1,416	1,142	200.8	0	0	73

TABLE 12—REVISED GB YELLOWTAIL FLOUNDER TOTAL ACL, SUB-ACL, AND ACL-SUBCOMPONENTS FOR FY 2012

[Mt, live weight]

Total ACL*	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
1,426	1,046	307.5	0	0	77

* Preliminary estimate that may be revised in 2011 based on TRAC and TMGC considerations.

The regulations related to the Understanding, promulgated by the final rule implementing Amendment 13, state that "any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, if an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2010, the pertinent components of the ACL would be adjusted downward in order to be consistent with the FMP and Understanding. If an adjustment to one of the FY 2011 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act, and the fishing industry will also be notified.

6. Incidental Catch TACs and Allocations to Special Management Programs

This proposed rule specifies incidental catch TACs applicable to the NE multispecies special management programs (*i.e.,* special access programs (SAPs) and the Regular B DAS Program) for FYs 2011 and 2012, based on the proposed common pool sub-ACLs listed in Item 4 of this preamble. As noted above, FY 2011 sector rosters will not be finalized until May 1, 2011, because permits currently enrolled in sectors have until April 30, 2011, to drop out of a sector and fish in the common pool. Therefore, the amount of the common pool sub-ACL may change based upon changes to the number of vessels participating in the common pool during FY 2011. Based on the final rosters, NMFS will publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change.

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, in order to limit the amount of catch of stocks of concern that can be caught under such programs. The Incidental Catch TACs proposed below are consistent with the allocation of incidental catch TACs among special management programs in the FMP. However, because pollock is no longer considered overfished or subject to overfishing, FW 45 proposes to remove this species from the list of stocks of concern, and eliminate the incidental catch TAC for this stock.

The incidental catch TACs apply to catch (landings and discards) that end on a Category B DAS (either Regular or Reserve B DAS). The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs, but rather the overall common pool sub-ACL for that stock. The incidental catch TACs by stock based on the common pool sub-ACL are shown in Table 13, while Tables 14 and 15 list the distribution of these TACs among existing special management programs.

TABLE 13—PRELIMINARY COMMON POOL INCIDENTAL CATCH TACS BY STOCK FOR FY 2011–2012

[Mt, live weight]

Stock	Percentage of sub-ACL	2011 Incidental catch TAC	2012 Incidental catch TAC
GB cod	2	2.0	2.2
GOM cod	1	1.3	1.3
GB yellowtail flounder	2	0.3	0.3
CC/GOM yellowtail flounder	1	0.3	0.4
SNE/MA yellowtail flounder	1	1.1	1.7
American plaice	5	3.9	4.1
Witch flounder	5	1.2	1.2
SNE/MA winter flounder	1	7.3	7.6
GB winter flounder	2	0.3	0.3
White hake	2	0.7	0.8

TABLE 14—DISTRIBUTION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

[Mt, live weight]

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

TABLE 15—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2011–2012

[Mt, live weight]

Stock	Regular B DAS program		Closed area I hook gear haddock SAP		Eastern U.S./Canada haddock SAP	
	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
GB cod	1.0	1.1	0.3	0.4	0.7	0.8
GOM cod	1.3	1.3	na	na	na	na
GB yellowtail flounder	0.15	0.15	na	na	0.1	0.1
CC/GOM yellowtail flounder	0.3	0.4	na	na	na	na
SNE/MA yellowtail flounder	1.1	1.7	na	na	na	na
American plaice	3.9	4.1	na	na	na	na
Witch flounder	1.2	1.2	na	na	na	na
SNE/MA winter flounder	7.3	7.6	na	na	na	na
GB winter flounder	0.1	0.2	na	na	0.1	0.2
White hake	0.7	0.8	na	na	na	na

7. Great South Channel Exemption Area

The current regulations at § 648.80 state that a vessel may not fish in either the GOM or GB Exemption Areas unless it is fishing under a NE multispecies or a scallop DAS, is fishing with exempted gear, or is fishing in an exempted fishery, among other restrictions. Several exempted fisheries were created by previous adjustments to the FMP based on a procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries originally established by FW 9 to the FMP on April 15, 1995 (60 FR 19364), and expanded in Amendment 7 on May 31, 1996 (61 FR 27710). A fishery may be exempted by the NMFS NE RA after consultation with the Council, if the RA determines, based on available data or information, that the bycatch of

regulated species of groundfish is, or can be reduced to, less than 5 percent by weight of the total catch, and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

On October 25, 2005, a request was submitted on behalf of the General Category scallop fleet to establish an additional exempted scallop dredge fishery in the GOM/GB Exemption Area, in the vicinity of traditional scalloping grounds within the area known as the Great South Channel, off Cape Cod, MA. This request was approved, and the Great South Channel Exemption Area was created, on August 31, 2006 (71 FR 51779). That rule allowed vessels issued a general category scallop permit, then an open access permit, and vessels with limited access scallop permits not fishing under a scallop DAS allocation, to use small dredges with a combined width not greater than 10.5 ft (3.2 m) in portions of the Great South Channel. Two large portions of the exemption area were closed seasonally to General Category scallop vessels to protect spawning populations of yellowtail flounder during peak spawning periods, including a southern closure from April 1 through June 30 of each year, and a northern closure from June 1 through June 30. However, limited access scallop vessels fishing under a scallop DAS could still fish within the Great South Channel Exemption Area during those peak spawning periods because their catch of scallops, and, therefore, yellowtail flounder, was limited by the DAS effort controls in the scallop fishery.

Since the 2006 rulemaking that created the Great South Channel Exemption Area, the general category scallop permits have become limited access permits subject to an individual fishing quota (IFQ) system under Amendment 11 to the Atlantic Sea Scallop FMP (April 14, 2008; 72 FR 20090). Amendment 11 redefined the general category permits as "limited access general category," or "LAGC" permits, and imposed limits on the amount of scallop catch from each LAGC IFQ vessels. Because of the catch limits of the IFQs, the amount of regulated species and ocean pout, particularly yellowtail flounder, caught by these vessels is also limited. Thus, the main justification for the spawning protection areas for general category scallop vessels—to minimize the impact on spawning yellowtail flounder—has been significantly mitigated through these catch limits. Further evaluation of the catch of limited access scallop vessels fishing on a DAS during these spawning periods reveals that the bycatch of yellowtail flounder in these areas during the peak spawning periods is below the 5-percent bycatch threshold established for exempted fisheries under Amendment 7. Therefore, based upon an industry request to reevaluate the necessity of these spawning closures, FW 45 proposes to eliminate the yellowtail spawning closure areas within the Great South Channel Exemption Area and allow all scallop vessels, including LAGC scallop vessels, to fish within this area throughout the entire year in accordance with applicable scallop regulations. To clarify that scallop vessels operating in the Great South Channel Exemption Area are still subject to the applicable scallop regulations, a reference to the scallop regulations at subpart D of 50 CFR part 648 was included in the proposed regulations.

8. GOM Cod Spawning Protection Area

During the solicitation of public comment on measures proposed under Amendment 16, several individuals expressed concern regarding the impact of fishing activity on known spawning aggregations of GOM cod. Similar concerns were identified by the Massachusetts Division of Marine Fisheries during the early development of FW 45. In response, FW 45 proposes to create a GOM Cod Spawning Protection Area that would be effective from April through June of each year to protect spawning aggregations of GOM cod.

The proposed GOM Cod Spawning Protection Area is rectangular in shape and would be located just south of the Isle of Shoals off the New Hampshire coastline, with its long axis oriented in a northwest to southeast direction. The exact coordinates for this proposed area are specified in section 4.3.2 of FW 45 and in this proposed rule. This area was identified by researchers at the University of New Hampshire, working in conjunction with several commercial fishing vessels, and corresponds to areas and times when large spawning cod congregate during peak spawning months. The proposed area is intended to prevent fishing from interfering with spawning activity and reducing future recruitment in the fishery.

As proposed, all commercial fishing vessels using gear capable of catching groundfish would be prohibited from fishing within the proposed area from June 1 through June 30 of each year, while all recreational vessels would be prohibited from using gear capable of catching groundfish in the area from April 1 through June 30 of each year. For commercial vessels, only vessels fishing with "exempted gear," as defined in the current regulations, would be allowed into this area during the closure periods. Exempted gear includes pelagic hook and line gear, pelagic longline gear, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls with a properly configured grate, and surfclam and ocean quahog dredges. Pelagic gillnet gear is currently further defined as a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), that is attached to the boat and fished in the upper two-thirds of the water column. Only pelagic hook-and-line gear, as defined in the current regulations, would be allowed to be used in the area by recreational vessels. For both recreational and commercial vessels, "pelagic hook and line gear" is defined as handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The catch or possession of any regulated species or ocean pout by vessels using the exempted gear described above from April 1 through June 30 of each year would be prohibited. Both recreational and commercial vessels would be allowed to transit the proposed area, provided all gear is stowed according to existing regulations.

During the development of FW 45, draft measures and discussions at Council and Groundfish Oversight Committee meetings made it clear that the Council did not intend to allow vessels using midwater trawl gear to fish in the proposed GOM Cod Spawning Protection Area from April 1 through June 30. However, it is less clear whether the Council intended this prohibition to also apply to vessels employing purse seine gear. The proposed regulations to implement FW 45 that were submitted by the RA to the Council for deeming consistent with section 303(c) the Magnuson-Stevens Act reflected the current text in the FW 45 document, as described above. Therefore, because midwater trawl gear and purse seine gear are not included in the current list of exempted gear, this action would not allow commercial vessels fishing with either midwater trawl gear or purse seines into this area during June of each year. These regulations were deemed consistent with FW 45 and the FMP by the Council Chairman through a letter dated January 11, 2011. Accordingly, NMFS considers the proposed regulations to be consistent with Council intent for FW 45.

9. Handgear A and B Measures

Cod Trip Limit

Amendment 13 originally created the limited access NE multispecies Handgear A permit and open access NE multispecies Handgear B permit, and specified the existing effort controls for such permits, including trip limits. The cod trip limit for Handgear A and B vessels implemented under Amendment 13 was set at 300 lb (135 kg) and 75 lb (90.7 kg) per trip, respectively, and did not differentiate between the GOM and GB cod stocks. In addition, Amendment 13 implemented measures that adjusted these cod trip limits proportionally to any changes to the GOM cod limit specified for NE multispecies DAS vessels in § 648.86(b), rounded up to the nearest 50 lb (22.7 kg) for Handgear A vessels and 25 lb (11.3 kg) for Handgear B vessels. Further, Amendment 13 did not differentiate between the GOM and GB cod stocks regarding adjustments to the cod trip limits. Thus, under Amendment 13, if the GOM cod limit specified for DAS vessels was reduced, the cod limit for Handgear A and B vessels would be reduced as well, regardless of whether such vessels fished in either the GOM or GB cod stock area, as demonstrated in an adjustment to such trip limits on July 30, 2010 (75 FR 44924).

FW 45 proposes to rectify these two issues by clarifying that the cod trip limits applicable to Handgear A and B vessels are stock-specific to the GOM or GB cod stock, including any adjustments to such trip limits. Handgear A vessels would be subject to an initial cod limit of 300 lb (135 kg) per trip for both the GOM and GB cod stocks, until NMFS adjusts the cod trip limit applicable to common pool vessels fishing under a NE multispecies DAS for either of these stocks below 300 lb (135 kg) per trip. Once either the GOM or the GB cod trip limit for common pool DAS vessels is reduced below 300 lb (135 kg) per DAS, the applicable cod trip limit for Handgear A vessels would be adjusted to be the same as the daily limit for common pool DAS vessels. For example, if only the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area (*i.e.,* the area specified for the GOM cod trip limit) would also be reduced to 250 lb (113.4 kg); however, the cod trip limit for a Handgear A vessel fishing for GB cod south of the GOM Regulated Mesh Area (the GB cod stock area is considered the GB, SNE, and MA Regulated Mesh Areas) would be maintained at 300 lb (135 kg) per trip. The initial Handgear B cod limit for both the GOM and GB stocks would be maintained at 75 lb (90.7 kg) per trip, but would be adjusted proportional (rounded up to the nearest 25 lb (11.4 kg)) to any changes in the daily GOM or GB cod trip limits for DAS vessels in the future, as necessary. For example, if the GOM cod trip limit was reduced by 50 percent from 800 lb (362.9 kg) per DAS to 400 lb (181.4 kg) per DAS, then the cod trip limit for a Handgear B vessel fishing in the GOM Regulated Mesh Area would also be reduced by 50 percent to 37.5 lb (17 kg), rounded to the nearest 25 lb (11.3 kg), or 50 lb (22.7 kg) per trip. In this example, the cod trip limit for a Handgear B vessel fishing for GB cod south of the GOM Regulated Mesh Area would be maintained at 75 lb (90.7 kg) per trip.

FW 45 explicitly provides NMFS with the ability to propose administrative measures necessary to implement the stock-specific cod trip limits, including a letter of authorization (LOA) to fish in defined stock areas. Consistent with existing provisions to administer different cod trip limits for DAS vessels that were first established by FW 20 (April 1, 1997; 62 FR 15381), NMFS proposes to require the owner or operator of a Handgear A or B vessel to declare his or her intent to fish for GB cod by obtaining and retaining on board a paper LOA from the RA. Alternatively, the owner or operator of a Handgear A permitted vessel may declare his or her intent to fish for GB cod south of the GOM Regulated Mesh Area prior to each trip via a vessel monitoring system (VMS), if the vessel elects, or is required (*i.e.,* when fishing in multiple broad stock areas on the same trip), to use VMS under the current regulations. These declarations enable at-sea enforcement personnel to identify the applicable cod trip limits and effectively enforce the appropriate regulations during boarding operations. The minimum participation period for this LOA would be 7 consecutive days to minimize the administrative burden of this provision, consistent with existing practice for LOAs issued to DAS vessels. If a vessel declares via VMS, this would be required on a trip-by-trip basis, and no minimum participation period is necessary.

Because the current cod trip limits are based upon Regulated Mesh Area, not stock area, the owner or operator of a Handgear A or B vessel that intends to fish for GB cod would commit to fishing south of the GOM Regulated Mesh Area. Consistent with the existing cod LOA for DAS vessels, this action proposes to restrict vessels issued the cod LOA described above to fishing south of the GOM Regulated Mesh Area for the duration of the LOA to more effectively enforce this measure. NMFS is particularly interested in soliciting public comment regarding this restriction, as neither FW 45, nor Council or Groundfish Oversight Committee discussion of this measure explicitly considered this restriction.

Access to Seasonal Closure Areas

The catch of regulated species and ocean pout by vessels issued either a Handgear A or B permit participating in the common pool is limited not only by the cod trip limits described above, but also by seasonal closure areas, and the common pool sub-ACL for each stock. The current seasonal closure areas in the GOM and on GB run from March through June, and October and November, and include large portions of inshore waters most frequently fished by the predominantly smaller handgear vessels. Accordingly, many of these vessels are unable to fish during these months, because it would be unsafe for them to venture farther offshore and fish in open areas.

Existing regulations implementing FW 44 allow the RA to adjust the trip limits applicable to common pool vessels, including those issued a Handgear A or B permit, to ensure the common pool sub-ACLs are not exceeded before the end of the FY. This authority was utilized during FY 2010 to reduce trip limits for stocks caught by Handgear A and B vessels, including cod and haddock, as early as May 27, 2010 (75 FR 29678). Thus, handgear vessels are competing against often larger trawl, gillnet, and hook vessels to catch the available sub-ACL of each stock. However, due to the operational limitations caused by the seasonal closure areas, handgear vessels are often precluded from fishing, particularly in the GOM, until June or July of each year. If common pool trip limits are reduced before June to prevent a sub-ACL from being exceeded, the trip limits might be reduced so low as to make it economically unviable for handgear vessels to fish at all during a particular FY.

To ensure that handgear vessels are provided an opportunity to fish during at least the early part of the FY, FW 45 proposes to exempt both Handgear A and B vessels from the GB Seasonal Closure Area defined in § 648.81(g), and to allow Handgear A vessels to also fish in the Sector Rolling Closure Areas defined in § 648.81(f)(2)(vi)(A) through (C), and depicted in section 4.3.3 of FW 45. These latter areas represent smaller portions of the GOM Rolling Closure

Areas, and would enable Handgear A vessels fishing in the GOM a greater chance at catching some of the available sub-ACLs for cod and haddock during a particular FY before such trip limits are reduced to prevent the ACL from being exceeded. It is unlikely that this measure would increase F or jeopardize rebuilding requirements for overfished stocks, as the sub-ACLs and associated AMs established for the common pool are sufficient to prevent overfishing and to continue to rebuild overfished stocks.

10. Dockside/Roving Monitor Requirements

FW 45 proposes several revisions to the existing dockside/roving monitor requirements originally established in 2010 under Amendment 16. Each of these revisions is considered a separate provision and is discussed in further detail below.

Delay in Requirement for Industry To Fund Dockside/Roving Monitors

One of the primary objections to the dockside/roving monitoring program expressed by the public during the development and implementation of Amendment 16 and the development of FW 45 was the high cost of providing sufficient coverage to monitor offloads. As a result, NMFS made sufficient funding available to pay for 100 percent of the costs associated with dockside/roving monitoring coverage in FY 2010, and pledged to do the same in FY 2011 to help alleviate the economic impacts of monitoring costs and smooth the transition to a quota-based management regime in the FMP.

To address lingering concerns regarding the ability of the fishing industry to pay for future costs of a dockside/roving monitoring program, particularly while stocks continue to rebuild, NFMS proposes to delay the industry's responsibility for paying for dockside/roving monitoring coverage until FY 2013. Instead, NMFS would specify coverage levels during FYs 2011 and 2012 based upon available NMFS funding. None of the costs associated with dockside/roving monitors during FYs 2011 and 2012 would be imposed upon the owner or operator of a NE multispecies vessel. NMFS would endeavor to provide dockside/roving monitoring coverage to observe the offloads of up to 100 percent of sector and, for FY 2012, common pool trips, if funds are available. If funds are not available for monitoring 100 percent of groundfish trips, NMFS would first provide dockside/roving monitor coverage to trips that do not have an observer, at-sea monitor, or approved electronic monitoring equipment.

Dockside/Roving Monitoring Program Requirements Beginning in FY 2013

Neither the Council motion approving the delayed industry funding of dockside/roving monitor coverage discussed above, nor FW 45 explicitly describes the Council's intent regarding dockside/roving monitoring requirements beginning in FY 2013. Amendment 16 clearly indicated the Council's intention to monitor landings of regulated species and ocean pout by all limited access NE multispecies vessels beginning in FY 2012, and that the industry would eventually be responsible for the costs of dockside/roving monitoring requirements. Based upon the intention expressed in Amendment 16, NMFS interprets the language describing the measures in the FW 45 EA to reinstate the dockside/roving monitoring requirements originally implemented under Amendment 16 beginning in FY 2013. Thus, proposed regulations to implement FW 45 that were submitted by the RA to the Council for deeming included, starting again in 2013, the requirement for sectors to develop and pay for a dockside/roving monitoring program as part of their annual operations plans, the requirement for common pool vessels to be subject to dockside/roving monitoring upon the transition to a trimester TAC AM, the trip-start and trip-end hail reporting requirements associated with such provisions, and the requirement for dockside/roving monitors to observe the landings of 20 percent of all common pool and sector trips determined in a statistically random manner. These regulations were deemed consistent with FW 45 and the FMP by the Council Chairman through a letter dated January 11, 2011. Accordingly, NMFS considers the proposed regulations to be consistent with Council intent for FW 45.

As noted above, the regulations implementing Amendment 16 currently require common pool vessels to comply with dockside/roving monitoring requirements beginning in FY 2012. To facilitate administration and compliance with the dockside/roving monitoring operational standards specified at § 648.87(b)(5), the regulations at § 648.82(n)(2)(iv) indicate that such vessels may only use one dockside/roving monitor service provider per FY. Further clarification of this requirement was provided in the March 30, 2010, permit holder letter explaining the Amendment 16 regulations. That letter indicated that the owner of each common pool vessel must contract with a dockside/roving monitoring service provider approved by NMFS beginning in FY 2012. Because this action proposes to require most common pool vessels to comply with the dockside/roving monitoring provisions originally implemented under Amendment 16 beginning in FY 2013, this action would revise the regulations at § 648.82(n)(2)(iv) to clearly state that the owner or operator of each common pool vessel subject to dockside/roving monitoring requirements must contract for such services with a service provider approved by NMFS by 2013. The need for vessel owners to contract with a specific service provider is necessary in the absence of any NMFS-controlled dockside/roving monitoring program in which NMFS can act as a mediator between the fishing industry and approved service providers. Further, because each individual permit is considered a separate legal entity, NMFS is not inclined to mandate that common pool vessels use a particular service provider in a particular FY in order to increase competition among service providers and potentially decrease costs to the affected vessel owners. Groups of vessel owners, however, may elect to contract with the same service provider to help lower the costs associated with such requirements.

Exemption of the Dockside/Roving Monitor Requirements for Certain Permit Categories

Vessels issued a limited access NE multispecies Handgear A or Small Vessel Category permit, and vessels issued an open access NE multispecies Handgear B permit, land very small amounts of regulated species and ocean pout compared to vessels issued limited access NE multispecies DAS permits. Thus, dockside/roving monitoring costs would represent a greater proportion of their operational costs compared to NE multispecies vessels operating under a NE multispecies DAS. Based on public input, there is the potential that such costs would be more than the value of fish landed on a particular trip. Accordingly, FW 45 proposes to exempt Handgear A, Handgear B, and Small Vessel category permits from any dockside/roving monitoring requirements when operating in the common pool. Under such an exemption, it would not be possible for dockside/roving monitor service providers to provide statistically random coverage of all common pool trips, as required under Amendment 16. Therefore, the proposed regulations would also revise the Amendment 16 dockside/roving monitoring coverage provisions to accommodate this

exemption, and specify that service providers must provide random coverage of all trips subject to the dockside/roving monitoring requirements.

Trip-End Hail Requirement

Based upon a pilot dockside/roving monitoring program, the dockside/roving monitor provisions implemented under Amendment 16 currently require that vessels submit both a trip-start and trip-end hail report. The trip-start hail report was intended to provide the basic trip information necessary for dockside/roving service providers to coordinate the deployment of dockside/roving monitors, including the date, time, and port of intended landing and offloading. The trip-end hail report provides more detailed information that confirmed or revised information submitted in the trip-start hail report. This latter report is also used by both State and Federal enforcement personnel to facilitate dockside intercepts.

As described above, the Council considered, but did not approve, a motion that would have eliminated the dockside/roving monitoring requirements of Amendment 16. Instead, in FW 45, NMFS proposes to rely upon its available funding to determine the amount of dockside/roving monitoring coverage in FYs 2011 and 2012. If the Council had elected to eliminate completely the dockside/roving monitor requirements, the trip-end hail report would have also been eliminated. Because the recent transition to quota-based management under ACLs and AMs increases incentives to misreport or underreport landings of regulated species and ocean pout, the Council considered it important to ensure that the trip-end hail report in FW 45 was retained, even if there was insufficient NMFS funding to support dockside/roving monitoring coverage in FYs 2011 or 2012. This measure is expected to increase the chances that a particular trip would be subject to dockside inspection by enforcement personnel and may, in turn, increase compliance with applicable measures and the accuracy of landings data used to monitor the fishery.

Beginning in FY 2011, if implemented, FW 45 would require all sector vessels and common pool vessels fishing under a DAS to submit trip-hail report via VMS prior to returning to port. If there is sufficient NMFS funding to provide for some level of dockside/roving monitor coverage, vessels assigned a dockside/roving monitor for a particular trip would be required to submit both a trip-start and a trip-end hail report for that trip, however, consistent with current practice. The trip-end hail report would contain the same information as the trip-end hail report implemented by Amendment 16, including the vessel permit number; vessel trip report (VTR) serial number of the first VTR page for that trip; intended offloading location(s), including the dealer name/offload location, port/harbor, and State for the first dealer/facility where the vessel intends to offload catch and the port/harbor and State for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight) on board at the time the vessel first offloads its catch from a particular trip. This report, if submitted when there is insufficient funding to provide for a NMFS-controlled dockside/roving monitoring program, would only be submitted to NMFS' Office of Law Enforcement rather than also to a dockside/roving monitor service provider.

Inspection of Fish Holds

Amendment 16 established approval requirements for entities providing dockside/roving monitoring services. These standards included hiring individual dockside monitors that were capable of climbing ladders and inspecting fish holds. For FY 2010, NMFS developed operational standards necessary to implement the Amendment 16 dockside monitoring provisions, based on a pilot dockside/roving monitoring program conducted during the summer of 2009. These standards did not require dockside monitors to inspect fish holds for FY 2010. However, based on further evaluation of the performance of the dockside monitoring program and consideration of concerns expressed by enforcement personnel, NMFS is proposing to require dockside monitors to inspect the fish holds for any trip that is assigned a dockside/roving monitor beginning in FY 2011. This requirement would enhance the enforceability of existing provisions and minimize the incentives to under-report/misreport the amount of regulated species landed.

11. Sector Measures

Distribution of the PSC From Cancelled Permits

As described in Amendment 16, a PSC represents an individual permit's portion of the total historical landings of each regulated species or ocean pout stock during FYs 1996–2006 by all permits, including those in confirmation of permit history (CPH), that were eligible to participate in the NE multispecies fishery as of May 1, 2008. This date was selected to provide a recent baseline of eligible permits so that the PSCs of each permit could be calculated only once, and then become fixed. Accordingly, if a permit is cancelled after May 1, 2008, its historic landings between FYs 1996–2006 are still used to calculate the total landings by eligible permits, and continue to effectively reduce the PSC of all remaining permits.

As noted above, the current regulations calculate the ACL available to sector and common pool vessels based on the cumulative PSCs of each permit participating in each sector. By default, if the owner of a particular permit has not elected to participate in a sector, that permit is considered to be participating in the common pool, and its PSC contributes to the sub-ACL available to the common pool at large. Similarly, if a permit or CPH is cancelled for any reason, that permit or CPH cannot participate in sectors, or any fishery, and the PSC is used to contribute to the sub-ACL available to the common pool. Thus, the PSCs of cancelled permits artificially inflate the PSCs of those permits operating in the common pool and are not equitably distributed among the permits remaining in the fishery.

Under FW 45, the PSC calculations adopted under Amendment 16 would be performed yearly based upon valid permits, including those held in CPH, that are eligible to participate in the fishery as of a certain date. To do so, the PSCs for each stock calculated pursuant to the process specified in Amendment 16 would be multiplied by a factor of "1/PSC of the remaining permits." The Council provided NMFS with the authority to specify the date on which PSCs are calculated each year. To reflect permits that are renewed by the beginning of each FY (May 1), and allow NMFS time to process such renewals, this action proposes to recalculate PSCs on June 1 of each year, unless another date is specified by the RA. These recalculated PSCs would be used to calculate ACEs for each sector during the following FY. For example, if a PSC is calculated on June 1, 2011, that PSC will affect sector ACE for the 2012 FY that begins on May 1, 2012. This provision would mean that each permit's PSC may increase on a yearly basis to reflect its higher portion of the historic landings of each regulated species and ocean pout stock due to the removal of the landings histories of any

permits that were cancelled by June 1 of each year. On or about July 1 of each year, NMFS would inform permit holders of updated PSCs. If this measure is approved, the RA would recalculate PSCs for each permit using valid permits as of May 1, 2011, to update PSCs for FY 2011 and reflect permits cancelled through FY 2010.

Operations Plan Requirements

Amendment 16 specified that sectors must submit final rosters, proposed operations plans, and associated environmental analyses by September 1, so that NMFS could review such documents as part of the process to approve sector operations for the following FY. NMFS extended this deadline in 2009 to provide more time for vessel owners to decide whether to join sectors for FY 2010. Based on industry input, NMFS requested that the Council formally integrate such flexibility into the current regulations as part of FW 45. Thus, NMFS proposes to require sectors to provide preliminary rosters and proposed operations plans by September 1, but to submit final rosters by December 1. Draft rosters by September 1, and final rosters by December 1, provide NMFS with the information it needs to review or conduct environmental analyses associated with draft sector operations plans, while allowing vessel owners additional time to decide whether to participate in sectors, or which sector to join during the following FY.

Sector Exemptions

Amendment 16 defined several measures for which sectors cannot request an exemption. These include year-round closure areas, permitting restrictions, gear restrictions designed to reduce impacts to habitat, and reporting requirements. Amendment 16 specifically noted that sectors could request an exemption from the DAS reporting requirements, as sectors were universally exempted from the NE multispecies DAS restrictions. As part of public comments received on the proposed rule to implement Amendment 16 (December 31, 2009; 74 FR 69382), several members of the public requested that NMFS exempt sector vessels operating west of 72° 30′ W. long. (*i.e.,* Shinnecock Inlet, NY) and using larger mesh in the monkfish fishery from the Amendment 16 dockside/roving monitoring requirements. This requirement was based on the argument that regulated species are rarely encountered in waters south of New York, particularly when using the large mesh required in the monkfish fishery. NMFS disapproved this request based on the Amendment 16 requirements to monitor all sector trips.

Similar concerns were raised during the final meeting to approve measures for FW 45. To reduce dockside/roving monitoring costs, especially due to infrequent landings of regulated species in more southerly ports, some individuals sought to limit the geographic scope of dockside/roving monitoring requirements, or exempt vessels landing in particular ports from the dockside/roving monitoring requirements. FW 45 proposes to address these concerns by specifically removing dockside/roving monitoring requirements from the list of reporting requirements at § 648.87(c)(2)(i). This would enable sectors to request exemptions, or at least partial exemptions, from the dockside/roving monitoring requirements to minimize monitoring costs for sector trips targeting monkfish in southern waters, for example.

At-Sea or Electronic Monitoring Requirements

Amendment 16 currently requires that sectors develop and pay for an at-sea or electronic monitoring program starting in FY 2012. This requirement was intended to provide sufficient information to accurately monitor landings and discards of regulated species and ocean pout by sector vessels, while allowing sectors 2 years to develop such a program on their own. As noted above, members of the fishing industry and the Council are concerned about the high cost of at-sea and electronic monitoring requirements. Because of the costs associated with sectors, including costs to join a sector, the Council was concerned that imposing additional monitoring costs on the industry, particular shortly after the transition to sector management and before many of the currently overfished stocks rebuild enable higher ACLs to be specified, would reduce profitability and result in making the sector system an economic failure. Therefore, FW 45 would delay the industry's responsibility for developing and paying for an at-sea or electronic monitoring program by 1 year. Unless the Council further revises this provision, sectors would be responsible for developing and paying for such a program beginning in FY 2013.

During the deliberation of this provision, NMFS expressed concern about the Council's reliance upon NMFS funding to fully support a provision required by the FMP, particularly the specific at-sea or electronic monitoring coverage levels in Amendment 16. Because NMFS' funding is not guaranteed, and depends upon Congressional appropriations, it is likely that funding levels will fluctuate on a yearly basis and may not be sufficient to fully fund the dockside/roving monitoring coverage requirements in the FMP. Thus, NMFS indicated that this measure may not be approvable as part of FW 45.

12. Authorization of New Sectors

FW 45 would authorize five new sectors. These sectors are described in Section 4.2.1 of the FW 45 EA, and include the State of Maine Permit Banking Sector, the State of Rhode Island Permit Bank Sector, the State of New Hampshire Permit Bank Sector, the Commonwealth of Massachusetts Permit Bank Sector, and the Sustainable Harvest Sector III. All operational aspects of these sectors would be specified in their annual operations plans, as submitted to NMFS. Most of these sectors are proposed to be used for the primary purpose of leasing ACE to other sectors. Details of these operations plans are expected to be proposed in a parallel rulemaking to be published in the **Federal Register** soon, as noted above. If approved, each of these sectors must comply with the existing sector provisions, unless otherwise exempted by a future action. The Council is currently considering specifically exempting State-funded and -operated permit banks from several of the existing sector provisions, including the minimum size requirement for sectors originally established under Amendment 16, through a separate rulemaking being developed by the Council. Public comment will be solicited separately on that action.

13. Measures for FY 2011 Under RA Authority

The FMP provides authority for the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs, as described further below. This proposed rule includes a description of measures that may be considered by the RA for implementation in FY 2011 for these components of the groundfish fishery, in order to provide an opportunity for the public to comment on whether such measures are appropriate. Although these measures are not proposed by the Council for implementation through FW 45, this proposed rule makes the public aware of measures under consideration by the RA, under the authority of the FMP. It also enables the public to comment on such measures in the

context of the measures proposed in FW 45, that, if approved, would also be implemented for FY 2011. The RA may implement measures that differ from the measures described below if, based on current information, such measures are necessary to conform to the requirements of the FMP. However, NMFS does not anticipate the measures that would be implemented will be substantially different than those described below. The measures implemented through RA authority for FY 2011 will be implemented through the FW 45 final rule, or through a separate final rule, if necessary, due to the availability of relevant data or the timing of FW 45.

The FW 44 final rule implemented RA authority to alter common pool trip limits at § 648.86(o). If the RA projects that the catch of any NE multispecies stock allocated to common pool vessels will exceed the pertinent sub-ACL, NMFS may implement or adjust possession and trip limits in order to prevent exceeding the common pool sub-ACL. Table 16 provides a summary of the trip limits that are the default trip limits in effect if the RA takes no action to modify such limits, as well as a summary of trip limit modifications that occurred during FY 2010, and potential starting trip limits that would be in effect for FY 2011. These potential trip limits were developed after considering changes to the 2011 common pool sub-ACLs and sector rosters, catch rates of these stocks during FY 2010, price of fish during FY 2010, bycatch considerations, the potential for differential DAS counting during FY 2011, and other available information. Specifically, compared to the FY 2010 sub-ACLs, FY 2011 sub-ACLs (*see* Table 5) would increase for SNE/MA yellowtail flounder (69 percent), GB cod (25 percent), CC/GOM yellowtail flounder (21 percent), white hake (16 percent), GOM cod (6 percent), American plaice (9 percent), witch flounder (45 percent), GB winter flounder (8 percent), redfish (10 percent), and Atlantic halibut (10 percent). Decreased catch limits compared to FY 2010 are expected for GB haddock (−24 percent), GB yellowtail flounder (−18 percent), pollock (−16 percent), and GOM haddock (−5 percent). Although the slow catch rate of SNE/MA yellowtail flounder by common pool vessels in FY 2010 suggests that trip limits could be increased substantially to increase the catch of this stock in FY 2011, due to concerns over the potential of increased SNE/MA yellowtail flounder trip limits to increase the bycatch and discard of SNE/MA winter flounder (a stock that cannot be possessed by any vessel to help ensure this stock rebuilds according to the approved rebuilding program), only a small increase in the trip limit for this stock is proposed at this time. For stocks that include a range of potential trip limits in Table 16, a final trip limit would be specified in the final rule for this action based upon public comment. NMFS is requesting public input on common pool trip limits for FY 2011.

TABLE 16—DEFAULT, FY 2010, AND POTENTIAL FY 2011 TRIP LIMITS FOR THE COMMON POOL

Stock	Default limit in regulations	FY 2010 limit implemented	Potential FY 2011 limit
GOM cod	800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip.	200 lb (90.7 kg) per DAS, up to 1,000 lb (453.6 kg) per trip; reduced to 100 lb (45.4 kg) per DAS, up to 1,000 lb (453.6 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.	no change to default limit	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	750 lb (340.2 kg)—1,000 lb (453.6 kg) per trip.
GB haddock	unrestricted	10,000 lb (4,535.9 kg) per trip	7,500 lb (3,402 kg)—10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	unrestricted	250 lb (113.4 kg) per trip	250 lb (113.4 kg) per trip.
GB winter flounder	unrestricted	started at 5,000 lb (2,268 kg); reduced to 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.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.
GB yellowtail flounder.	unrestricted	started at 2,500 lb (1,134 kg) per trip; reduced to 1,000 lb (453.6 kg) per trip; reduced again to 100 lb (45.4 kg) per trip.	1,000 (453.6 kg)—1,500 (680.4 kg) per trip.
SNE/MA yellowtail flounder.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip—500 lb (226.8 kg), up to 2,000 (907.2 kg) per trip.
American plaice	unrestricted	unrestricted	unrestricted.
Pollock	1,000 lb (450 kg) per DAS; up to 10,000 lb (4,500 kg) per trip.	unrestricted	unrestricted.
Witch flounder	unrestricted	130 lb (59 kg) per trip; reduced to possession prohibition.	250 lb (113.4 kg) per trip.
White hake	unrestricted	Started at 2,000 lb (907.2 kg) per DAS; up to 10,000 lb (4,500 kg) per trip; reduced to 100 lb (45.4 kg) per DAS; up to 500 lb (226.8 kg) per trip.	1,000 lb (453.6 kg)—1,500 lb (680.4 kg) per trip.
Redfish	unrestricted	unrestricted	unrestricted.

Amendment 16 implemented a provision that AMs for the common pool fishery will be triggered for FY 2011 if the catch in FY 2010 exceeds the pertinent common pool sub-ACL (§§ 648.90(a)(5)(i)(A) and 648.82(n)). Specifically, the FMP requires that the DAS counting rate during FY 2011 be adjusted if the catch of the relevant stocks by common pool vessels exceeds the pertinent common pool groundfish sub-ACLs during FY 2010. Based on current information, the common pool catch of witch flounder during FY 2010 will exceed the witch flounder sub-ACL

specified for the common pool (25 mt) by 20 percent or more. As an example, if the percent of the common pool sub-ACL for witch flounder caught at the end of FY 2010 is determined to be 124 percent, the required differential DAS rate would be 1.2 where historically witch flounder are caught. The geographic areas for which the differential DAS rate would apply are defined for witch flounder by the FMP as the Offshore GOM Differential DAS Area, the Offshore GB Differential DAS Area, and the Inshore GB Differential DAS Area, with coordinates specified at § 648.82(n)(1)(i). The differential DAS rate would not apply to the Inshore GOM Differential DAS Area or the SNE/MA Differential DAS Area, provided only the witch flounder ACL is exceeded, and AMs are not required for a stock with predominantly inshore catch. The differential DAS would apply to all Category A trips taken by common pool vessels in the applicable areas. Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished (1.2 times 24-hr DAS counting), for the time spent fishing in the applicable DAS counting area (noted above) based upon the first VMS position into the applicable differential DAS counting area, and the first VMS position outside of the applicable differential DAS counting area. If the catch of other stocks such as GOM cod exceed their respective sub-ACLs, additional differential DAS restrictions or an adjustment to the DAS allocation may be required. NMFS provides an estimate of the status of the common pool catch to the public through the following Internet address: *http://www.nero.noaa.gov/ro/fso/reports/common_pool/Common_Pool_Summary.html.*

Under authority granted by the FMP (§ 648.85(a)(3)(iv)(D)), the RA may implement rules to optimize the harvest of the transboundary stocks managed under the Understanding. Pursuant to this authority, NMFS is considering postponing the opening of the Eastern U.S./Canada Area for non-sector (common pool) vessels fishing with trawl gear in FY 2011 from May 1, 2011, to August 1, 2011. This action would prevent trawl fishing in the Eastern U.S./Canada Area during the time when cod bycatch is likely to be very high, and prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder, as well as other valuable stocks such as winter flounder. This action would not affect valid members of sectors fishing with trawl gear in the Eastern U.S./Canada Area, because such vessels are subject to additional restrictions on catch as members of a sector. Industry members believe that sector restrictions provide sufficient incentives for vessels to fish in a manner that optimizes catch, and that such incentives are not existent under common pool regulations. To further constrain fishing mortality on GB cod, NMFS may limit the common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2011, to a cod catch of 5 percent of the Eastern GB cod TAC, or 10 mt of cod.

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. As implemented in 2005 by FW 40B (June 1, 2005; 70 FR 31323), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (*i.e.,* 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg) total. This calculation takes into account the projected catch from the area outside the SAP. Based on the groundfish sub-ACL of 2,125,256 lb (964,016 kg), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (*i.e.,* 2,125,256 lb (964,016 kg) available < 2,250,000 (1,020,600 kg) needed). Therefore, based on existing authority, this proposed rule would allocate zero trips to the CA II Yellowtail Flounder SAP for FY 2010, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the Closed Area II Yellowtail Flounder/Haddock SAP. This means that vessels could fish in this SAP, but would not be allowed to fish any trips using flounder nets, as defined in the regulations at § 648.85(a)(3)(iii)(B), and would instead need to fish with a haddock separator trawl, a Ruhle trawl, or hook gear.

14. Corrections and Clarifications

This proposed rule would also correct a number of inadvertent errors, omissions, and ambiguities in existing regulations in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP, or to more effectively administer and enforce existing provisions pursuant to the authority provided to the Secretary of Commerce in section 305(d) of the Magnuson-Stevens Act. The following proposed measures are listed in the order in which they appear in the regulations, and indicate the genesis of the regulation and/or the cause of the regulatory error.

Amendment 16 requires the owner or operator of any vessel issued a limited access NE multispecies permit fishing on either a common pool (*i.e.,* non-sector) or a sector trip to declare its intent to fish within one or more of the NE multispecies broad stock areas (BSAs) and provide the vessel trip report (VTR) serial number for the first page of the VTR for that particular trip via VMS prior to leaving port at the start of a fishing trip. In addition, a vessel fishing in more than one BSA per trip must submit a VMS catch report detailing the amount of each species retained from each BSA fished prior to crossing the VMS demarcation line upon its return to port. Because the VTR serial number can only be submitted by a VMS catch report, for trips into more than one BSA, these regulations require duplicative reporting requirements. This action would modify the timing requirements for the submission of the VMS catch report in § 648.10(k)(1) to require all NE multispecies limited access vessels, regardless number of broad stock areas fished, to submit the VMS catch report listing the VTR serial number applicable for that trip prior to crossing the VMS demarcation line upon its return to port following each fishing trip on which regulated species were caught.

To further clarify the administration and enforcement of dockside/roving monitoring provisions originally implemented under Amendment 16 and revised by this action, NMFS is proposing to add a prohibition at § 648.14(k)(18)(i)(D) to state that, if the offloads of a particular trip are assigned to be monitored by a dockside/roving monitor, the vessel cannot offload its catch until the assigned dockside/roving monitor arrives at the designated offloading site specified by the vessel owner or operator.

The regulations at § 648.82(a)(2) currently state that a vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip. This provision was first implemented under FW 33 (April 24, 2000; 65 FR 21658) to close a perceived loophole that could have allowed a vessel fishing under a NE multispecies DAS to possess and land fish smaller than the minimum fish size specified for commercial vessels and to sell their catch from such operations. In a similar manner, this action proposes to expand

this provision to apply to vessels fishing on a sector trip or under the limited access NE multispecies Small Vessel Category or Handgear A permits.

In §§ 648.87(b)(1)(i)(A) and 648.90(a)(4)(iii)(E)(*2*), the proposed regulations would add the term "permits" to the phrase "vessels participating in sectors" to reflect that vessels issued permits, including those held in CPH, can participate in sectors.

To provide more flexibility to sectors, Amendment 16 allowed the transfer of ACE between sectors, and also permitted carrying over ACE from one FY to the next. With the exception of GB yellowtail flounder, a sector may carry-over up to 10 percent of its unused ACE for each stock into the following FY. The final rule implementing Amendment 16 did not specify whether the 10 percent carry-over for each stock is to be derived from the unused portion of a sector's total available ACE, including ACE acquired from another sector through an ACE transfer, or from the unused amount of the sector's originally allocated ACE based upon the PSCs of vessels participating in that sector.

The Council did not intend these provisions to allow a sector to exceed its ACE. To clarify how the ACE carry-over provision will be applied, this action proposes to refine the regulations at § 648.87(b)(1)(i)(C) to state that a NE multispecies sector may carry-over up to 10 percent of its allocated ACE for each stock, with the exception of GB yellowtail flounder, into the following FY, provided the sector has not harvested more than 90 percent of its original ACE allocation for that stock by the end of the FY. This provision is intended to limit the applicability of ACE carry-over to only the ACE allocated to a sector and not the ACE acquired from another sector, as part of an ACE transfer. Because the Council did not specifically state whether the ACE carry-over provision applies to allocated or total available ACE, NMFS is specifically seeking public input on this measure.

In addition to the proposed revisions to the calculation of PSCs noted above, this proposed rule would revise the regulatory text describing the calculation of PSCs at § 648.87(b)(1)(i)(E)(*1*) and (b)(1)(i)(E)(*2*). These revisions would not revise the manner in which the PSCs are calculated, as adopted in Amendment 16, but rather they would clarify and more accurately reflect the processes that were, and continue to be, applied to implement such calculations. Specifically, this rule would clarify that the landings histories of any limited access NE multispecies permit, including those that were put into CPH, and those of an open access NE multispecies handgear permit that eventually qualified for, and resulted in, the issuance of a limited access NE multispecies Handgear A permit during FYs 1996 through 2006 would be used to calculate the PSCs for each valid permit as of June 1 each year. In addition, these revisions would provide an example of the landings of regulated species and ocean pout that would not be used to calculate PSC; namely, any landings of yellowtail flounder by scallop vessels operating under a scallop DAS. Finally, the PSC that results from such a calculation would be specified as the PSC for each stock.

This proposed rule includes revisions to the regulatory text at §§ 648.87(b)(1)(iii)(C) and (viii) that provide for the transfer of a sector's ACE for up to 2 weeks into the subsequent FY, and the processing of such ACE transfers by NMFS for up to 61 days. These provisions were originally included in Amendment 16 to provide an opportunity for sectors to participate in the ACE Transfer Program to cover any ACE overages that the sector accrued at the end of the FY. These regulatory provisions are dependent upon the completion of NMFS' evaluation of year-end sector catch, including sector ACE overages, and may not account for the timing of NMFS' year-end evaluation process. Therefore, to account for additional time for this process, if necessary, the phrase "unless otherwise instructed by NMFS" is being added to reference to the 2-week and 61-day deadlines in the regulatory text.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on several proposed measures for which the agency has concern, particularly the proposed measure to restrict vessels issued either a Handgear A or Handgear B permit that are issued a LOA to fish south of the GOM Regulated Mesh Area from fishing within the GOM Regulated Mesh Area for the duration of the LOA; the proposed August 1, 2011, delayed opening of the Eastern U.S./Canada Area for common pool vessels fishing with trawl gear; and the proposed initial FY 2011 common pool trip limits for certain stocks.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with FW 45 to the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Further, pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed this proposed rule as necessary and appropriate to implement FW 45.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA, consistent with the Regulatory Flexibility Act (RFA) analysis contained in FW 45 and the preamble to this proposed rule, has been prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in FW 45, and in the preamble to this rule. A summary of the analysis contained in FW 45 follows. In this analysis, the baseline (no-action alternative) is the set of measures that were in place during FY 2010 (*i.e.,* the measures implemented under Amendment 16 and FW 44). Tables and sections that are referenced in this IRFA refer to those contained in the EA developed for FW 45. A copy of FW 45 is available from the Council (*see* **ADDRESSES**).

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The measures proposed in FW 45 would affect recreational anglers and any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit (Handgear B permit) or charter/party permit, or a LAGC scallop permit. In addition, because this action would affect the dockside/roving and at-sea or electronic monitoring program requirements and require dockside monitors to inspect fish holds, this action would also affect any entity intending to provide dockside/roving or at-sea or electronic monitoring services. As of December 20, 2010, the maximum number of small fishing entities (as defined by the Small Business Administration (SBA)) that may be affected by this action would be 3,935 entities. The potentially affected entities include 1,144 limited access NE multispecies DAS permit holders; 133 limited access NE multispecies Handgear A (Handgear A) permit holders; 11 limited access NE multispecies Small Vessel Exemption (Category C) permit holders; 1,156 open access NE multispecies Handgear B (Handgear B) permit holders; 824 open

access NE multispecies charter/party permits; and 667 Atlantic sea scallop LAGC permits. In addition, it is expected that the five entities currently providing dockside/roving monitoring and at-sea or electronic monitoring services would continue to do so in FYs 2011 and 2012, and would be affected by this action. It is likely that the actual number of small fishing entities affected by this action would be much smaller. For instance, information contained in Section 10.11.2 of the FW 45 EA indicates that only 397 vessels had reported any sales of regulated species and ocean pout as of December 2010, including 18 Handgear A vessels, 50 Handgear B vessels, and 329 other vessels issued limited access NE multispecies DAS permits. Further, only 18 entities conducted party/charter operations in the proposed GOM Cod Spawning Protection Area proposed in this action, according to that analysis. Finally, it is difficult to estimate the number of private recreational anglers that may be affected by this action, as the proposed GOM Cod Spawning Protection Area is too small to accurately determine the number of anglers that fish in this area based on available data.

It is important to note that past fishing activity and enrollment in sectors may not be an accurate predictor of future fishing activity. In particular, it is possible that revisions to measures affecting both the Handgear A and Handgear B fisheries may increase participation by vessels issued such permits. In addition, as of December 1, 2010, 835 permits had elected to join a sector during FY 2011, as determined through the submission of sector rosters to NMFS, indicating that 453 permits would be enrolled in the common pool. However, vessels may withdraw from sectors until the beginning of FY 2011 on May 1, 2011. Therefore, because participation in sectors is voluntary, the number of vessels that will actually participate in sectors during FY 2011 and future years is likely to fluctuate based upon whether joining a sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The SBA considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is $7 million in sales. Based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million. For regulated charter/party operators, the median value of gross receipts from passengers was just over $9,000, and did not exceed $500,000 in any year during 2001 to 2007. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this proposed rule.

Economic Impacts of the Proposed Action

The economic impacts of each proposed measure is discussed in more detail in Sections 8.4, 9.4, and 10.11 of the FW 45 EA. The following summarizes the economic impacts contained in those sections for each proposed measure.

Revised Status Determination Criteria and Rebuilding Programs

Economic impacts resulting from the proposed revisions to status determination criteria for pollock and the rebuilding period for GB yellowtail flounder are primarily reflected in the ACLs specified for these stocks during future years, as discussed further below. However, an estimate of the present value of the potential revenues of each rebuilding strategy considered for GB yellowtail flounder under FW 45 was developed. This analysis indicates that the proposed rebuilding strategy would result in a U.S. catch that is expected to achieve a present value of about $70.8 million, assuming a 5-percent yearly discount rate over the course of a 10-year period (*i.e.,* through 2020).

ACLs

The total potential revenue of the proposed FY 2011 and 2012 ACLs was estimated to be approximately $187.8 million and $181 million using FY 2010 prices, respectively. However, this estimate assumes that the entire ACL for each stock will be caught, meaning there are no discards and the fishery is using gear that is perfectly selective. To more accurately evaluate the expected economic impacts of ACLs proposed in this action, the catch rate for each stock as of October 16, 2010, was calculated and projected forward for the rest of the FY (*i.e.,* through April 30, 2011) and through FY 2012. Resulting revenues were calculated, after first deducting an estimate of discards. This estimate produced expected commercial revenues of $79.8 million in FY 2011 and $72.5 million in FY 2012. Compared to the no action alternative (*i.e.,* maintaining the FY 2011 and 2012 ACLs implemented under FW 44), the proposed ACLs would reduce revenues by $0.4 million in FY 2011 and by $9.4 million in FY 2012. Assuming the current trend in fishing revenues observed during the first half of FY 2010 continues, expected groundfish revenues would be about $83.7 million in FY 2010. Therefore, the proposed FY 2011 revenues would be about $4 million lower than projected FY 2010 revenues (about 5 percent of groundfish sales, or $12,000 per vessel), while proposed FY 2012 ACLs would produce revenues that are about $11.2 million lower than those expected in FY 2010. These estimates suggest that sectors may be able to obtain higher use rates and, therefore, landings of several stocks compared to landings from previous FYs.

This evaluation incorporates the potential impacts associated with the U.S./Canada Management Area TACs, incidental catch TACs, and the proposed allocation of yellowtail flounder to the scallop fishery, as each of these components is part of the available ACL for applicable stocks. As a result, no additional impacts beyond those described above are expected for these provisions. However, separate analysis was conducted to provide more detailed information regarding the potential specific impacts of these provisions, as detailed further below.

The primary reason for the difference in the expected revenue under this proposed action and the no action alternative or the expected FY 2010 revenues is the lower ACLs of GB haddock and GB yellowtail that result from the aging of the very large 2003 year class of GB haddock and the reduced ACL for GB yellowtail flounder that is necessary to rebuild this stock under the proposed rebuilding program. These reduced ACLs are sufficient to overcome any gains resulting from the updated status and associated increased ACLs for pollock proposed under this action. However, because the FW 45 EA applied the 2010 catch rates to the lower FY 2011 and 2012 sub-ACL for GB haddock, it is possible that the adverse economic impacts specified in the FW 45 EA were overestimated. Rather than assuming that the 2010 catch rate for this stock would continue into future FYs, as was done in the FW 45 EA, it is reasonable to assume that the fishery is capable of catching the same amount of GB haddock in future FYs. If the same amount of GB haddock is caught in FYs 2011 and 2012 as is projected based on observed catch rates so far in FY 2010, then the realized adverse economic

impacts of the ACLs proposed in this action would be less than those estimated in the FW 45 EA. Given that GB haddock, pollock, and redfish (another rebuilt stock) comprise nearly 70 percent of the aggregate groundfish ACL (41, 18.5, and 10 percent, respectively), improvements in fishing selectivity, particularly while fishing for these stocks, could lead to substantially higher revenues for the fishery.

Because NMFS is also proposing to implement a higher FY 2011 GB yellowtail flounder ACL than that adopted by the Council in FW 45 based on the flexibility afforded by the International Fisheries Agreement Clarification Act, it is likely that fishing revenues will be slightly higher in FY 2011 than that analyzed under FW 45 and described above. The revised FY 2011 GB yellowtail flounder sub-ACL available to the NE multispecies species based upon the TAC approved by the TMGC in its February 9, 2011, conference call is 358 mt (789,255 lb) higher than the ACL adopted in FW 45. At $1.34 per pound ($2.95 per kg), this revised ACL could increase fishing revenues by $1,057,602 in FY 2011. Because GB yellowtail flounder are also caught in conjunction with other regulated species, it is likely that revenues will be even higher based upon additional revenues from landing these other species.

Economic impacts of these ACLs on the fishery at large may not be representative of impacts to individual vessels. Over the past decade, there has been a significant amount of consolidation in this fishery in response to the severely depleted state of the majority of the groundfish stocks and to changes in management measures. In particular, the recent implementation of ACLs, AMs, and an expanded use of sectors under Amendment 16 has affected fishing patterns in ways that are not yet determined. For example, sector measures were intended to provide a mechanism for vessels to increase the economic efficiency of fishing operations. Reasons why fewer vessels have fished thus far may be related to owners with multiple vessels fishing fewer vessels, or vessel owners or sectors using quota differently and waiting to fish later in the fishing year to maximize revenue in response to some of the efficiencies gained through the implementation of sector measures in 2010. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for and landing regulated species and ocean pout stocks, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, as alluded to above, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to fishing years prior to the implementation of Amendment 16. Based upon concerns over consolidation raised by the public during the development of Amendment 16, the Council is currently working on a white paper regarding fleet diversity and accumulation limits, and has agreed to develop an amendment to the FMP to address concerns identified.

U.S./Canada Management Area TACs

The economic impacts to the groundfish fishery of specification of the U.S./Canada Management Area TACs are difficult to predict due to the many factors that may affect the level of catch. This includes the potential that inseason actions necessary to ensure that the U.S./Canada Management Area TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder are not exceeded, including area closures, trip limit adjustments, and gear restrictions, may affect the catch of other stocks caught in this area and the timing of when such catch can be landed. The amount of fish landed and sold would not be equal to the sum of the proposed TACs for these stocks, but would be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from landing large amounts of fish in a short duration following the start of the FY, and the resulting potential impact on markets. It is likely that, because the proposed FY 2011 TACs for these stocks are substantially lower compared to the TACs for FY 2010, the proposed action would result in reduced overall revenue from the U.S./Canada Management Area. Some of this reduction in revenue could be mitigated if the selectivity of the fishery increases such that vessels can minimize the catch of Eastern GB cod and increase catch of abundant resources of Eastern GB haddock.

An evaluation of the specific impacts of the proposed FY 2011 TACs was conducted using FY 2009 prices and discard ratios. It is important to note that this evaluation is not directly comparable to the evaluation of the impacts of proposed ACLs discussed above, due to the use of lower market prices observed during FY 2009 and the likely higher discard rates recorded compared to preliminary estimates from FY 2010 to date. In addition, these impacts are not cumulative, and should not be added to the impacts estimated for the proposed ACLs, as noted above. Nonetheless, this analysis suggests that the proposed FY 2011 U.S./Canada Management Area TACs may result in revenue that is between 48 to 67 percent less than that recorded for FY 2009. Because this analysis used conservative prices from FY 2009, the expected reduction in revenue would likely be less than reported here. In addition, because NMFS is proposing a higher FY 2011 GB yellowtail flounder ACL than that adopted by the Council in FW 45, the resulting reduction in fishing revenue is expected to be less than that analyzed in FW 45, as discussed above. Overall, the primary cause for reduced revenue is the substantially lower proposed FY 2011 TACs compared to those specified for FY 2010 (41 percent lower for Eastern GB cod and 20 percent lower for Eastern GB haddock). The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for common pool vessels using trawl gear that is proposed in this action and described below would likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species, particularly GB haddock. Similarly, the proposed closure of the CA II Yellowtail Flounder/Haddock SAP to targeting yellowtail flounder and the associated prohibition of the use of flounder nets in this SAP should reduce the bycatch of these stocks and increase the harvest of the available Eastern GB haddock TAC, prolong the opening of the Eastern U.S./Canada Area, and result in greater overall revenue.

Different impacts would likely be realized by common pool and sector vessels due to the nature of the operations of such groups and applicable regulations. Unlike vessels operating within the same sector, the common pool is unable to actively coordinate fishing operations to maximize fishing revenue based upon resource availability and market price. Therefore, impacts on common pool vessels will be dependent upon the overall rate at which available TACs are caught, and whether any responsive measures necessary to prevent such

TACs from being exceeded are triggered. Further, once the available ACE for a particular stock is caught, sectors must cease fishing operations in the entire stock area. In contrast, while common pool vessels may be subject to more restrictive DAS or trip limits in a particular area, they could continue to fish in the Western U.S./Canada Area even after the GB yellowtail flounder TAC is caught, provided they do not retain any GB yellowtail flounder.

Yellowtail Flounder Allocations to the Scallop Fishery

FW 45 would maintain the yellowtail flounder allocations to the scallop fishery originally implemented under FW 44. This allocation to the scallop fishery recognizes the importance of yellowtail flounder to the prosecution of the scallop fishery and allocates most of the yellowtail flounder that the fishery is expected to catch if it harvests the available scallop yield. It also creates an incentive for scallop fishermen to reduce bycatch of yellowtail flounder in order to maximize scallop yield. The allocation of yellowtail flounder to the scallop fishery in FYs 2011 and FY 2012 would likely have fewer economic impacts on the scallop fishery than those originally estimated in FW 44, because, with the exception of the allocation of GB yellowtail flounder to the scallop fishery in FY 2012 (the proposed action would provide 93 percent of expected yellowtail flounder bycatch by the scallop fishery), that allocation would not constrain scallop catch based on updated estimates of the amount of yellowtail flounder necessary to fully harvest available scallop resources. However, these updated projections of expected yellowtail flounder bycatch by the scallop fishery are based upon data from FY 2009 that are considered to be overly optimistic due to the substantially lower bycatch of yellowtail flounder, particularly from the Nantucket Lightship Closure Area, compared to that observed during previous FYs. In addition, these projections are subject to a high degree of uncertainty, including uncertainty associated with the size of the yellowtail flounder stock. Additional detail regarding the evaluation of the likely economic impacts to the scallop fishery, including those resulting from the proposed yellowtail flounder allocation to the scallop fishery and expected scallop catch and the AMs proposed in that fishery as part of Amendment 15 and FW 22 to the Atlantic Sea Scallop FMP, are contained in the supporting EIS and EA developed for those actions, respectively. Overall, however, it is expected that the allocation of yellowtail flounder to the scallop fishery represents the greatest overall benefit to the nation consistent with the Magnuson-Stevens Act, because it would reduce the likelihood that scallop AMs would be triggered due to excessive catch of yellowtail flounder in FYs 2011 and 2012 and, therefore, put far less fishing revenue at risk compared to other allocation alternatives considered in FW 45. The economic impacts of other alternatives considered for this measure are discussed further below.

The economic impact of this action on the NE multispecies fishery in FY 2011 has two components: (1) The primary revenue reduction due to the forgone sale of yellowtail flounder, and (2) secondary revenue reduction as a result of reduced access to a particular yellowtail flounder stock area. Secondary revenue reduction occurs once a sector's yellowtail flounder ACE is caught and that sector is required to cease fishing in that stock area, or when the GB yellowtail flounder TAC for common pool vessels is caught and the Eastern U.S./Canada Area is closed to such vessels. At a market price of $1.34 per lb ($2.95 per kg), the primary revenue reduction in the NE multispecies fishery associated with the allocations of GB yellowtail flounder to the scallop fishery is estimated at $593,787 and $906,928 for FYs 2011 and 2012, respectively. For SNE/MA yellowtail flounder allocations to the scallop fishery, the primary revenue reduction in the NE multispecies fishery is estimated at $242,241 and $375,179 for FYs 2011 and 2012, respectively.

The secondary revenue reduction in the groundfish fishery from yellowtail flounder allocations to the scallop fishery were estimated using the ratio of the value of catch of all species to yellowtail flounder. In FY 2010, that ratio was approximately 19 to 1 for GB yellowtail flounder. At a market price of $1.34 per lb ($2.95 per kg), the value of each metric ton of GB yellowtail flounder to the NE multispecies fishery is estimated to be $2,954. Accordingly, for each metric ton of GB yellowtail flounder that cannot be caught, approximately $56,130 of revenue from other species would also be lost due to the reduction of catch of other species caught in association with each ton of GB yellowtail flounder caught. Similar to the discussion of the economic impact of the proposed U.S./Canada Management Area TACs, it is important to remember that these impacts are not cumulative, and should not be added to the impacts estimated for the proposed ACLs discussed above. Instead, this discussion provides additional information that clarifies the potential impact of this particular component of the proposed suite of measures that is estimated to be captured by the discussion of the impact of the proposed ACLs on the NE multispecies fishery. It is also not appropriate to consider all of the yellowtail flounder allocated to the scallop fishery as a "loss" to the groundfish fishery because the groundfish fishery does not "own" the yellowtail flounder. Rather, it is more accurate to consider the allocations as a transfer between the two fisheries, particularly given the long and documented history of bycatch of yellowtail flounder in the scallop fishery and the current requirement that scallop vessels must land all legal-size yellowtail flounder.

U.S./Canada Area Measures

This proposed rule would allocate zero trips to target yellowtail flounder in the CA II Yellowtail Flounder/Haddock SAP. This measure would prevent vessels from accessing the SAP to target yellowtail flounder with flounder nets, as defined in the current regulations, but would not reduce the potential revenue from the available ACL of stocks that are caught in this area for several reasons. First, the measures implemented under Amendment 16 allow vessels to access the same SAP area to target GB haddock, a rebuilt stock whose ACL has not been fully harvested in recent years, using hook gear and selective trawl gear such as the haddock separator trawl and Ruhle trawl. Secondly, available ACL of GB yellowtail flounder can also be caught outside this SAP in either the Eastern U.S./Canada Area or the Western U.S./Canada Area. Thus, this measure would not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock.

This action would also delay the opening of the Eastern U.S./Canada Area to common pool trawl vessels until August 1, 2011. This delay has been requested by the Council and implemented by NMFS for the past several FYs to reduce the bycatch of Eastern GB cod during the summer months and prolong access to the Eastern U.S./Canada Area. This measure attempts to maximize fishing revenues by increasing the chances that a greater portion of the available Eastern GB haddock TAC can be caught without triggering the premature closure of the Eastern U.S./Canada Area to avoid exceeding the common pool TAC of Eastern GB cod before the end of FY 2011 on April 30, 2012. As noted above

in the description of the economic impacts of the proposed U.S./Canada Management Area TACs, the expected benefits of this measure depend upon the selectivity of the fishery and other factors that are difficult to predict, but will still likely be reduced compared to those observed during FY 2010 due to the reduced TAC of Eastern GB cod. The potential 2011 common pool trip limits listed in Table 14 should increase the likelihood that the fishery will fully harvest, but not exceed, the 2011 common pool sub-ACLs and minimize the need for further revisions to trip limits or differential DAS counting rates. Thus, these trip limits should not result in any different economic impacts than those identified for the proposed 2011 ACLs discussed above.

Great South Channel Exemption Area

This measure would remove the existing yellowtail flounder peak spawning closures and allow LAGC scallop vessels to fish for scallops in the Great South Channel Exemption Area through the year. It is expected that this measure would allow such vessels to harvest individual allocations of scallops in a more cost-effective manner. In doing so, vessel profitability would improve and increase IFQ share values compared to the no action alternative. However, the potential benefit cannot be reliably quantified. If it is later found that fishing with scallop dredge gear during yellowtail flounder peak spawning seasons interferes with yellowtail flounder spawning success, the proposed elimination of the spawning closures may reduce the likelihood that yellowtail flounder stocks will rebuild and could lead to further economic impacts in the future to ensure that the rebuilding requirements of the FMP are achieved.

GOM Cod Spawning Protection Area

FW 45 would create a GOM Cod Spawning Protection Area and prohibit commercial and recreational vessels from fishing in this area with gear capable of catching regulated species and ocean pout from April 1 through June 30 of each year. The proposed measure would affect private recreational anglers and vessels issued a NE multispecies charter/party permit and the value such anglers derive from taking a trip into the proposed protection area. Recreational fishing values are typically measured by the economic surplus beyond what anglers have to pay to take a trip, using specialized surveys that are not available for the recreational groundfish fishery at this time. It can be expected that the proposed action would reduce the economic surplus to anglers that fish in this area, as they would not be allowed to fish for groundfish in their preferred area from April to June of each year. Even if trips could be taken in a different area during these months, the reduction in economic surplus would still impact affected entities.

An estimate of the impact of the proposed measures on charter/party vessels was derived by measuring the loss in passenger revenues if trips are not taken in this area and the vessel cannot fish in another area. During FYs 2007 through 2009, up to 2 percent of charter/party trips taken in the GOM between April and June occurred in the proposed protection area. However, only about 10 vessels are considered likely to be affected by this action based upon their more recent activity within this area. For trips taken in these areas during FYs 2008 and 2009, gross sales were up to $112,000 per year. For vessels that took multiple trips into this area, annual gross sales would be reduced by about 6 to 7 percent, or about $10,000 per vessel (the impacts ranged from less than $1,000 to just over $42,000 per vessel, depending on the FY). Overall, the proposed action would reduce the annual gross sales of the entire charter/party fishery operating in the GOM by between 1.9 to 3 percent. These impacts likely represent a maximum impact, as this analysis did not consider the sales from fishing in alternative locations. If charter/party vessels are able to attract passengers willing to fish in other areas, these impacts would be mitigated, at least to some degree.

Handgear A and Handgear B Measures

If implemented, FW 45 would specify stock-specific cod trip limits and trip limit adjustments (*i.e.,* different trip limits and trip limit adjustments for GOM and GB cod stocks) for vessels issued a limited access NE multispecies Handgear A or an open access NE multispecies Handgear B permit, as described above. In addition, this action would allow Handgear A and Handgear B vessels to access the existing GB Seasonal Closure Area, and Handgear A vessels to access the existing Sector Rolling Closure Areas. Finally, this action would exempt Handgear A and Handgear B vessels from the dockside/roving monitoring requirements, as described further below.

Compared to the no action alternative, the proposed measures are expected to improve the economic opportunity available to such vessels. Although the realized economic impacts of these measures are uncertain as far as the number of vessels that would benefit from these measures based on historic fishing patterns and the degree by which landings by such vessels would change, they are expected to be positive. In particular, specifying stock-specific trip limits and adjustments means that handgear vessels fishing for GB cod would not be subject to lower cod limits if high catch rates of GOM cod by common pool vessels necessitates lower trip limits to prevent the common pool sub-ACL for that stock from being exceeded prior to the end of the FY. Thus, the economic impacts caused by unnecessarily reducing the cod limit for handgear vessels fishing in the GB cod stock area would be avoided. Further, increasing access to seasonal closure areas would provide handgear vessels operating in the common pool a greater chance of landing the allowable cod limit early in the FY before common pool cod trip limits would need to be reduced to ensure the sub-ACL is not exceeded. Further, by maintaining the Handgear A cod trip limit at 300 lb (135 kg) per trip until the applicable cod trip limit for vessels operating under a NE multispecies DAS drops below 300 lb (135 kg) per DAS, such vessels would be better able to land larger amounts of cod and increase fishing revenue compared to the no action alternative.

Dockside/Roving and At-Sea Monitor Requirements

This action would make several changes to the current dockside/roving monitoring requirements, including delaying the requirement for the fishing industry to pay for dockside/roving and at-sea monitoring coverage until FY 2013, exempting vessels issued a NE multispecies Handgear A or B and Small Vessel Category permits operating in the common pool from the dockside/roving monitoring requirements, maintaining the trip-end hail reports in the absence of any dockside/roving monitoring requirements for a particular FY, and requiring dockside monitors to inspect the fish holds. Delaying the fishing industry's responsibility to pay for dockside/roving monitors and exempting handgear and Small Vessel category permits from the dockside/roving monitoring requirements would save approximately $281,000 per year (assuming 20 percent of trips would be covered), while delaying the responsibility for paying for at-sea monitoring would save industry about $5 million per year (assuming 30 percent of trips would be covered). If the level of NMFS funding prevents the Agency from providing sufficient at-sea monitoring coverage through FY 2013, then uncertainty in catch accounting may necessitate the adoption of higher

buffers between the ABC and ACL for each stock in future FYs to account for this increased management uncertainty. Higher buffers would result in decreased ACLs and lower fishing revenues, if adopted in a future action. Maintaining the trip-end hail reports in the absence of any dockside/roving monitoring program for a particular FY would maintain the costs anticipated for such reports, as implemented under Amendment 16. These costs were estimated to be $24,750 ($0.90 per hail report) based on 25,000 trips per year. However, based on fishing patterns during FY 2010, it is likely that the number of trips will be lower in future years, with about 13,000 trips expected during FY 2010. If this trend continues, trip-end hail reports would cost about $12,870 per year. Inspection of fish holds is an administrative measure that would not affect the costs or revenues of fishing operations. Because dockside monitoring service providers are required to have sufficient insurance to cover liability associated with dockside monitor injury, this should result in no impact to either inspected vessels or service providers.

Exempting Handgear A, Handgear B, and vessels issued a Small Vessel Category permit from these regulations would reduce operational costs to such vessels. Assuming dockside/roving monitoring costs remain the same as they are during FY 2010, the estimated costs of dockside/roving monitoring would be a fixed rate of $33 per trip, and an additional $27 for a trip in which a roving monitor is required, with an additional $0.015 per lb ($0.033 per kg) of regulated species landed for 20 percent of trips taken. These costs would represent 5.2 percent of the total regulated species landed by Small Vessel Category permits, and 2.3 percent and 3.7 percent of the regulated species landed by Handgear A and Handgear B permits, respectively. This action would reduce such costs, amounting to an aggregate annual savings of $9,841.

Sector Measures

If implemented, FW 45 would recalculate the PSC for each stock on a yearly basis to reflect the elimination of landings histories from cancelled permits and allow sectors to request an exemption from the dockside/roving monitoring requirements as part of their annual operations plans. Assuming equivalent PSC utilization rates and cost of fishing, the economic value derived from available ACL would be unchanged whether the PSC from cancelled permits is allocated to the common pool under the no action alternative, or equally distributed to all permits as proposed in this action. If, on average, vessels that fish in the common pool are less profitable than sector vessels, then this action would result in an improvement in these vessels' economic efficiency as compared to taking no action. The magnitude of the impact from this provision would likely be small, as few permits have been cancelled since the PSCs were calculated using permits valid as of May 1, 2008. Cancelled permits represent only about 72,000 lb (32,659 kg) of all species combined that would be divided among the 1,288 valid limited access NE multispecies permits based on each permit's individual fishing history. Thus, this measure, in itself, is unlikely to make an unprofitable fishing operation marginally profitable. Nevertheless, this action would provide some positive benefit and increased economic opportunity to all remaining permit holders, and may increase the amount of ACE available on the market to lease. Allowing sectors to request an exemption from the dockside/roving monitoring requirements would likely result in cost savings to applicable sectors that are difficult to quantify. It is expected that some sectors would request an exemption from the dockside/roving monitoring requirements, particularly for trips in southern waters targeting monkfish with large mesh. These trips rarely encounter regulated species and ocean pout, suggesting that the dockside/roving monitoring requirements offer little benefit to increasing the accuracy of monitoring data or the enforceability of sector provisions. Thus, such an exemption, if justified, could result in reducing operational costs and increasing the economic efficiency of sector operations. The environmental analysis developed to support a sector operations plan that includes such an exemption request, not FW 45, would include a discussion of any anticipated economic impacts of such a request.

This action would also approve five new sectors, including four State permit banks and an additional lease-only sector. The approval of these new sectors may affect the market price of both permits or available DAS and ACE on the leasing market. There is a concern that the presence of large institutions such as State governments that have less emphasis on achieving a return on investment, and the potential for such institutions to acquire permits in a short contracting window, would raise the price of available permits for sale. This increase could place a private entity at a competitive disadvantage in relation to the permit market, particularly if access to capital for investment in additional permits by such private entities is limited or already maximized. For these same reasons, State permit banks may also serve to lower the price of DAS or ACE available on the leasing market. The lowering the price of DAS or ACE available on the leasing market by State-operated permit banks, along with the approval of another lease-only sector, may benefit some vessels by providing additional fishing opportunities at a lower market price, especially considering reports that the ACE leasing market that has developed so far during FY 2010 has resulted in higher leasing rates, and a restricted supply of available ACE.

Overall, however, the presence of additional permit banks and lease-only sectors would facilitate price discovery, leading to more efficient markets, the establishment of competitive prices, and a limitation on the ability of market participants to exert some form of monopoly power. Finally, the approval of the lease-only sector may provide some benefits to participating vessels in that it could, depending on the fee structure developed by that sector, reduce or eliminate the need for participating vessels to pay fees associated with dockside/roving and at-sea or electronic monitoring and require participating vessels to only pay a processing fee for any ACE or DAS transactions in which it participates.

Based on funding provided to such permit banks to date, it is unlikely that the amount of permits and associated DAS and ACE that would be able to be purchased by State permit banks would be sufficient to fully meet the demand for available ACE, as a rough estimate suggests that available funding would only able to procure about 1,300 mt of ACE of all stocks, if permits are available to purchase. This benefit is likely to accrue only to a subset of vessels, at least initially, as State permit banks would only be able to lease ACE to vessels that are 45 feet (13.7 m) or shorter and are associated with communities of less than 30,000 residents, based on funding agreements with NMFS. While State permit banks may be able to lower the price of available DAS and ACE, if they elect to offer DAS or ACE at below the prevailing market price, this would affect the returns to private entities in the leasing market that also offer DAS or ACE to lease to other entities.

Any estimate of the magnitude of the possible impacts of the proposed approval of State permit banks or the lease-only sector is speculative. This action would only approve the concept

of such additional sectors, and would not actually approve the annual operations of these sectors. That approval is occurring through a parallel rulemaking to this proposed action.

Corrections

There are several corrections proposed in this rule that are considered to be mostly administrative in nature and do not affect vessel operations that would result in any economic impact to regulated entities. These corrections would include inserting text that would apply a long-standing prohibition on the sale of fish while carrying passengers for hire to vessels fishing on a sector trip and those fishing under the Small Vessel Category and Handgear A permit restrictions, inserting a prohibition to prevent offloading fish prior to the arrival of an assigned dockside/roving monitor, clarifying that sectors can only carry over up to 10 percent of allocated ACE for each stock except for GB yellowtail flounder into the next FY, clarifying that permits in CPH can participate in sectors to reflect the intent of Amendment 16, and revising the text describing how PSCs are calculated to more precisely describe the process outlined in Amendment 16 and implemented by NMFS.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The proposed action contains several measures that would directly or indirectly provide small entities with some ability to offset at least some portion of the estimated economic impacts associated with proposed measures. The major mitigating measures would include allowing LAGC scallop vessels greater access to the Great South Channel Exemption area; increasing access to the seasonal closure areas for Handgear A and Handgear B permits; exempting the existing dockside/roving monitoring requirements; delaying requiring sectors and common pool vessels to pay for dockside/roving and at-sea or electronic monitoring; extending rebuilding period for GB yellowtail flounder and formal recognition of the rebuilt status of pollock; redistributing PSC from cancelled permits to all remaining valid limited access NE multispecies permits; and approving new sectors, including State permit banks and a lease-only sector. During the development of Framework 45, NMFS and the Council considered ways to reduce the regulatory burden on and provide flexibility to the regulated community. The approach taken is consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). Proposed actions and alternatives are described in detail in Framework 45, which includes an Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (available at **ADDRESSES**).

Eliminating the yellowtail flounder peak spawning closure areas in the Great South Channel Exemption Area would enable LAGC scallop vessels greater access to this area. If this measure reduces operational costs by allowing vessels to operate in a more efficient manner, it could increase the economic efficiency of vessel operations and increase the value of the IFQ permits.

Exempting Handgear A, Handgear B, and Small Vessel Category permits from dockside/roving monitoring requirements, delaying industry responsibility for paying for dockside/roving monitoring coverage until FY 2013, and delaying industry responsibility for paying for a sector at-sea monitoring program until FY 2013 would explicitly reduce monitoring costs to affected entities, saving such entities approximately $5.28 million each year compared to the no action alternative.

Allowing vessels with handgear permits access to at least some of the seasonal closure areas would increase the chance that such permits could increase their catch of regulated species, particularly during the early months of the fishing season before trip limits may be reduced to prevent the overall ACLs from being exceeded. Similar benefits would be expected from specifications of stock-specific trip limits and trip limit adjustments for cod for these vessels.

Extending the rebuilding program for GB yellowtail flounder would indirectly reduce economic impacts on NE multispecies vessels by allowing higher ACLs to be specified for the remainder of the rebuilding program compared to the existing rebuilding program adopted for this stock. The adoption of updated biological reference points for pollock would formally end the rebuilding program implemented for this stock under Amendment 16, and enable the specification of higher ACLs on an indefinite basis that would have otherwise expired on April 30, 2011, following the extension of the July 20, 2010, emergency rule.

As noted above, the approval of new sectors, including State permit banks and a lease-only sector, would help to reduce vessel operational costs by increasing the amount of DAS and ACE available on the leasing market, reducing market price for such additional fishing opportunities, and increasing competition in the leasing market by providing alternative means to acquire the ACE necessary for to help vessels remain financially solvent. In addition, it is possible that the lease-only sector could reduce sector monitoring fees due to the presumption that participating vessels would not be actively fishing, but rather exist for the sole purpose of providing PSC that the sector may use to enable other sectors to continue fishing.

Economic Impacts of Alternatives to the Proposed Action

Under the no action alternative, updated status determination criteria would not be adopted for pollock. These updated criteria were adopted in the July 20, 2010, emergency action, but would expire on April 30, 2011, if not formally integrated into the FMP under this action. The expiration of the emergency action would mean that the rebuilding program implemented under Amendment 16 would be reinstated, and that the fishery would not be able to benefit from the harvest the additional pollock based upon its status as a rebuilt stock. The implications of this alternative are transmitted through lower ACLs described in further detail below.

Because FW 45 is a discrete adjustment in a long line of frameworks and amendments, a number and scope of alternatives have either already been considered in earlier actions or are not appropriate in the context of this action. FW 45 considered five alternatives to revising the GB yellowtail flounder rebuilding strategy. These five alternatives included: (1) The no action alternative that would maintain the current FW 42 rebuilding period that would rebuild the GB yellowtail flounder stock by FY 2014 with a 75 percent probability of success; (2) Sub-option A (the proposed action) that would rebuild this stock by 2016 with a 50 percent probability of success; (3) Sub-option B that would rebuild this stock by 2016 with a 60 percent probability of success; (4) Sub-option C that would rebuild this stock by 2016 with a 75 percent probability of success; and (5) Sub-option D that would rebuild this stock by 2019 with a 60 percent probability of success. The present values of a stream of potential revenues over a 10-year period for each of these alternatives are presented in Section 9.4.1 of the FW 45 EA using several discount rates. Discards were not incorporated into this analysis; however, because discard rates are not expected to differ among the

alternatives, this was not expected to affect the ranking of these alternatives.

According to this analysis, sub-option D (rebuilding this stock by 2019 with a 60-percent probability of success) would result in the highest median present values among all alternatives considered, followed by sub-option A (the proposed action), sub-option B, the no action alternative, and sub-option C. This pattern was repeated, regardless of the discount rate applied. Sub-option D would result in U.S. catches with a median present value of $74.7 million through 2020, while the proposed action is expected to yield $70.8 million over the same period, using a 5-percent discount rate. Therefore, sub-option D would result in about $4 million of additional revenue, compared to the proposed action, over the course of 10 years. However, as noted earlier in this preamble, because sub-option D would extend the rebuilding period though FY 2019, the rebuilding period would run 13 years, or 3 years beyond the maximum rebuilding period allowed under the Magnuson-Stevens Act. Therefore, that alternative is not consistent with applicable law. The proposed action, in contrast, is consistent with applicable law and would result in the next highest median present value among the alternatives considered. Thus, the proposed action represents the alternative with the least economic impact of the alternatives that were considered that are also consistent with applicable law.

Under the no action alternative, the ACLs implemented under FW 44 would be retained for FYs 2011 and 2012. Those ACLs do not reflect the updated status of pollock, or the extended rebuilding period for GB yellowtail flounder proposed in this action. This alternative would result in foregone income for NE multispecies vessels, as they would not be able to capitalize on increased ACLs for these stocks under this proposed action. The economic impact of the no action alternative was measured by estimating the revenue associated with landing the full amount of available ACL for each stock using prices as of September 30, 2010. This analysis suggests that the potential value of FY 2011 and 2012 ACLs under the no action alternative would be $191.3 million and $184.6 million, respectively. These estimates are lower than that specified under FW 44 ($205 million and $196 million, respectively) due to changes in prices used. The proposed action would result in a value of between $185.4 million and $187.8 million, depending on the GB yellowtail flounder rebuilding alternative analyzed, or between nearly $3.5 million and $6 million less value than the no action alternative. However, because the no action alternative and GB yellowtail flounder rebuilding sub-option C would specify an ACL of zero for that stock, the potential realized revenues associated with those options would be much lower, since revenues associated with any other stock caught with GB yellowtail flounder would be reduced as well. This factor is particularly important for sectors, as sectors are not allowed to operate in the GB yellowtail flounder stock area since they would not be allocated any GB yellowtail flounder ACE during FYs 2011 and 2012 based on existing regulations.

A more realistic estimate projected FY 2011 landings based upon the ACL utilization rate as of October 16, 2010, and a consideration of discards. This analysis suggests that potential revenues from the no action alternative would be $80.2 million during FY 2011 and $81.9 million during FY 2012, with estimated sector revenues of $71.1 million and $73 million for those FYs, respectively. Compared to the proposed action, the no action alternative would produce about $0.4 million more revenue in FY 2011 and $9.4 million revenue in FY 2012. Once again, this amount does not factor in potential revenue loss from the specification of zero GB yellowtail ACL. Because the no action alternative for ACLs is affected by the integration of updates to the status determination criteria for pollock and the updated rebuilding program for GB yellowtail flounder, the no action alternative for specifying ACLs would not incorporate the best available scientific information and would be, therefore, inconsistent with the Magnuson-Stevens Act.

Failure to specify FY 2011 U.S./Canada Management Area TACs under the no action alternative would result in increased revenue compared to the proposed action. Vessels would be able to harvest the available ACL for GB cod, GB haddock, and GB yellowtail flounder throughout GB, including in the Eastern U.S./Canada Area, but overall catches would still be limited by ACLs specified under this action. Revenue from the catch of other stocks caught in conjunction with these stocks would also be higher under the no action alternative. However, because the no action alternative would ignore the joint efforts to manage transboundary stocks, it would likely set F on such stocks higher in FY 2011 than they actually are (or would be), and perhaps at unsustainable levels. In contrast to the proposed action, the no action alternative may result in long-term negative economic impacts if such fishing would undermine efforts to prevent overfishing and rebuild overfished stocks of GB cod and GB yellowtail flounder and necessitate further action in the future to ensure the FMP's conservation objectives are achieved.

The Council considered one alternative allocation of GB and SNE/MA yellowtail flounder to the Atlantic sea scallop fishery to the allocations proposed in this action based upon the management measures adopted in the scallop fishery as part of FW 22 to the Atlantic Sea Scallop FMP. The Council opted to retain the existing allocations of yellowtail flounder implemented under FW 44, even though it also analyzed additional alternatives as part of FW 22 to the Atlantic Sea Scallop FMP. This allocation to the scallop fishery recognizes the importance of yellowtail flounder to the prosecution of the scallop fishery and allocates most of the yellowtail flounder that the fishery is expected to catch if it harvests the available scallop yield. It also creates an incentive for scallop fishermen to reduce bycatch of yellowtail flounder in order to maximize scallop yield. It is expected that the allocation of yellowtail flounder to the scallop fishery will represent the greatest net benefit to the nation, as it will enable the continuation of one of the nation's most profitable fisheries by reducing the chance that the catch of scallops will be limited by the available bycatch of yellowtail flounder, as described in further detail in FW 45 and the analysis of FW 22 to the Atlantic Sea Scallop FMP.

A possible impact from allocating yellowtail flounder to the scallop fishery is that it may limit opportunities for groundfish fishermen to target other stocks. The FW 45 analysis characterizes this potential impact as secondary revenue at risk. The proposed action to allocate yellowtail flounder to the scallop fishery would place far less fishing revenue at risk compared to the other option considered. For example, based upon the ratio of yellowtail flounder revenues to total groundfish revenues, the amount of fishing revenue at risk in the groundfish fishery (*i.e.,* the amount of groundfish revenue reduction that would be expected if the groundfish fishery was not able to harvest allocated 100 percent of the available yellowtail flounder based on the proposed allocations) is estimated to be $11.2 million in FY 2011 and $17.2 million in FY 2012 for GB yellowtail flounder, and $1.8 million in FY 2011 and $2.8 million in FY 2012 for SNE/MA yellowtail flounder, or a combined $32,560,387 at a discount rate of 3

percent. The amount of fishing revenue at risk in the scallop fishery (*i.e.,* the amount of scallop revenue reduction that would be expected if the groundfish fishery was not able to harvest allocated 100 percent of the available yellowtail flounder based on the proposed allocations) is estimated to be about $4,228,222 in FY 2011 using a discount rate of 3 percent, because the GB yellowtail flounder sub-ACL to the scallop fishery is 93 percent of the amount of yellowtail flounder the scallop fishery is expected to catch in FY 2012, indicating that 7 percent of the scallop revenues from this stock are at risk in FY 2013 based on the AMs implemented in FW 22 to the Atlantic Sea Scallop FMP that would be implemented the year after an overage. Therefore, the total fishing revenue at risk for the proposed allocation is $36.8 million in FY 2011, using a 3 percent discount rate. In contrast, under the other allocation alternative considered (Option 2) that would have only allocated 90 percent of the estimated yellowtail flounder catch by the scallop fishery based upon updated projections, the revenue at risk would be $91,063,372 ($27,042,096 revenue at risk in the groundfish fishery plus $64,021,277 revenue at risk in the scallop fishery) in FY 2011 using a 3 percent discount rate, or $54,274,763 more revenue at risk than the proposed action. Thus, the proposed action put far less fishing revenue at risk. In addition, the proposed action may also result in less adverse biological effects on a wide range of species compared to Option 2, because the proposed action would reduce the likelihood that the scallop bycatch of yellowtail flounder would exceed sub-ACLs and, therefore, the overall yellowtail flounder ABC, and trigger AMs that would alter the distribution of scallop fishing effort and the resulting impacts to other species.

The only other alternative considered to the proposed approval of five new sectors is the no action alternative. The no action alternative for this measure would not approve any new sectors for FY 2011. This may have a small adverse economic impact on permit holders intending to participate in the Sustainable Harvest Sector III. However, permit holders may be able to remain in or join the Sustainable Harvest Sector that was approved under Amendment 16. If the operations plan for the Sustainable Harvest Sector III offered reduced operational costs to participating vessels due to the intended lease-only status of that sector, those costs savings may not be realized under the no action alternative.

Additional sectors were considered for approval under FW 45, but the Council chose not to approve them because they did not submit an operations plan to NMFS by the existing deadline of September 1. Approval of these other sectors, the Northeast Fisheries Sector XIV and the Sustainable Harvest Sector II, may have resulted in a small positive economic impact since permit holders would have had more options for which sectors to join. However, permit holders were able to join other sectors following the Council's decision, so any impacts to such permit holders would be minimal.

Under the no action alternative, the dockside monitoring requirements originally implemented under Amendment 16 would be maintained. These requirements would make sector vessels responsible for developing and paying for a dockside/roving monitoring program beginning in FY 2010, and an at-sea or electronic monitoring program beginning in FY 2012, while all common pool vessels would be subject to dockside/roving monitoring beginning in FY 2012. The no action alternative would have resulted in an estimated annual cost of $9,841 per vessel to Handgear A, Handgear B, and Small Vessel Category vessels. Further, the estimated $280,000 cost of dockside monitoring to the remainder of the fishery would have been imposed on the fleet, as well as the $5 million cost associated with at-sea monitoring during FYs 2011 and 2012, respectively.

Failing to redistribute PSC from cancelled permits to all valid limited access NE multispecies as of a certain date each year as part of the no action alternative would result in continued allocation of such PSC to the common pool. This allocation would provide some marginal benefit to the common pool that would be redistributed to the entire fishery under the proposed action. However, because the amount of PSCs that have been cancelled to date represent a small amount of fish (72,000 lb (32,659 kg) of all regulated species and ocean pout stocks combined), the benefits are not expected to materially affect the operations of the common pool under the no action alternative, particularly because a majority of this PSC is pollock, a species that has not been constraining to the operations by the common pool so far during FY 2010.

The no action alternative would not specify stock-specific cod limits for handgear vessels, allow such vessels increased access to the existing seasonal closure areas, or allow LAGC vessels to fish in the Great South Channel Exemption Area during peak yellowtail flounder spawning periods. It would maintain the existing value of such permits, and not improve the economic opportunity provided to these vessels as part of the proposed action. Such an action would reduce the economic efficiency of such vessels.

The no action alternative would also maintain the existing recreational measures and would not implement the proposed GOM Cod Spawning Protection Area. Since FY 2007, the number of trips taken by charter/party vessels in the GOM has steadily declined, with gross receipts declining by almost $2 million based on an average ticket price of $60 per person. Thus, the no action alternative is not likely to alter what appears to be a continuing downward trend in participation in the charter/party fishery in the GOM in recent years.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The only reporting and recordkeeping requirements affected by this proposed rule are the request for a LOA to fish south of the GOM Regulated Mesh Area by Handgear A and Handgear B vessels, or a similar declaration via VMS prior to each trip by Handgear A vessels required to use VMS under the existing regulations, and the trip-end hail report already approved as part of Amendment 16. This action would not impose any new reporting or recordkeeping requirements that have not already been in existence. However, it would require additional vessels (handgear vessels) to comply with the LOA requirements. Existing reporting and recordkeeping requirements for the dockside/roving and at-sea or electronic monitoring programs approved under Amendment 16 have been included below for reference.

The costs associated with the reporting and recordkeeping requirements supporting measures proposed in this action are detailed in the PRA analysis associated with Amendment 16 and the permit family of forms for the Northeast Region of NMFS. The time burden associated with a telephone call to request for a LOA to fish south of the GOM Regulated Mesh Area is estimated at 5 minutes, with no costs to vessels requesting such a LOA. The cost associated with a similar declaration via VMS is estimated at $0.50 per submission. For the trip-end hail reports, the yearly cost to each vessel would be approximately $17, assuming that such reports were made via VMS. Costs to vessels receiving

dockside/roving monitoring services proposed under Amendment 16 include $10 per year for confirming pre-trip hail reports and $13 per year to confirm trip-end hail reports and specify whether a particular trip would be observed by a dockside monitor. Requirements to maintain and enter data into a dockside monitoring database would cost approximately $4,225 per service provider annually, while submitting dockside monitoring data to NMFS would cost each service provider approximately $36,000 per year. Similar costs to service providers are expected to notify sector vessels of selection for at-sea/electronic monitoring coverage ($3,125 per year) and to submit at-sea or electronic monitoring data to NMFS ($36,000 per year).

Other Compliance Requirements

This proposed rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under the various OMB control numbers listed below. Public reporting burden for these collections of information are estimated to average, as follows:

1. VTR submissions, OMB# 0648–0605, (5 min/response);
2. Sector operations plan and associated NEPA analysis, OMB# 0648–0605, (640 hr/response);
3. Dockside/at-sea monitoring service provider application, OMB# 0648–0605, (10 hr/response);
4. Dockside/at-sea monitoring service provider response to application disapproval, OMB# 0648–0605, (10 hr/response);
5. Data entry for sector discard monitoring system, OMB# 0648–0605, (3 min/response);
6. Sector weekly catch report, OMB# 0648–0605, (4 hr/response);
7. Sector annual report, OMB# 0648–0605, (12 hr/response);
8. Notification of expulsion from a sector, OMB# 0648–0605, (30 min/response);
9. Request to transfer ACE, OMB# 0648–0605, (5 min/response);
10. VMS certification form, OMB# 0648–0605, (10 min/response);
11. VMS confirmation call, OMB# 0648–0605, (5 min/response);
12. VMS area and DAS declaration, OMB# 0648–0605, (5 min/response);
13. VMS trip-level catch reports, OMB# 0648–0605, (15 min/response);
14. Request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, OMB# 0648–0605, (5 min/response);
15. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
16. VMS declaration to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
17. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648–0605, (2 min/response);
18. Trip-end hail report to a dockside monitoring service provider, OMB# 0648–0605, (15 min/response);
19. Confirmation of dockside monitoring trip-end hail report, OMB# 0648–0605, (2 min/response);
20. Dockside/roving service provider data entry, OMB# 0648–0605, (3 min/response);
21. Dockside/roving or at-sea monitor deployment report, OMB# 0648–0605, (10 min/response);
22. Dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, OMB# 0648–0605, (5 min/response);
23. Dockside/roving or at-sea monitor report of harassment and other issues, OMB# 0648–0605, (30 min/response);
24. OLE debriefing of dockside/roving or at-sea monitors, OMB# 0648–0605, (2 hr/response);
25. Copy of dockside/roving or at-sea monitoring service provider contract upon request, OMB# 0648–0605, (30 min/response);
26. Copy of dockside/roving or at-sea monitoring service provider information materials upon request, OMB# 0648–0605, (30 min/response);
27. Observer program pre-trip notification, OMB# 0648–0605, (2 min/response);
28. Daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, OMB# 0648–0605, (15 min/response);
29. Daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, OMB# 0648–0605, (15 min/response);
30. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648–0605, (15 min/response);
31. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648–0605, (2 min/response);
32. Forward trip start/end hails to NMFS, OMB# 0648–0605 (2 min/response);
33. Notification to vessel/sector/NMFS of monitor emergency, OMB# 0648–0605 (5 min/response);
34. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648–0202, (10 min/response);
35. DAS Transfer Program application, OMB Control Number 0648–0202, (5 min/response);
36. VMS purchase and installation, OMB Control Number 0648–0202, (1 hr/response);
37. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648–0202, (5 sec/response);
38. VMS proof of installation, OMB Control Number 0648–0202, (5 min/response);
39. Expedited submission of a proposed SAP, OMB Control Number 0648–0202, (20 hr/response);
40. Request to power down VMS for at least 1 month, OMB Control Number 0648–0202, (5 min/response);
41. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648–0202, (5 min/response);
42. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648–0202, (5 min/response);
43. Submission of a sector allocation proposal, OMB Control Number 0648–0202, (50 hr/response);
44. DAS "flip" notification via VMS for the Regular B DAS pilot program, OMB #0648–0202 (5 min/response);
45. DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program, OMB #0648–0202 (5 min/response);
46. NMFS Office of Law Enforcement landings notice requirement for Category 1 herring vessels operating with an observer waiver, OMB# 0648–0521, (5 min/response);
47. Notification and Communication with USCG and Center for Coastal Studies, OMB# 0648–0521, (10 min/response);
48. Written requests to receive a DAS credit for standing by an entangled whale, OMB# 0648–0521, (30 min/response);
49. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648–0475, (1 hr/response);
50. Spawning block declaration, OMB# 0648–0202 (2 min/response);
51. Sector Manager daily reports for CA I Hook Gear Haddock SAP, OMB# 0648–0212 (2 hr/response);
52. DAS Leasing Program application, OMB# 0648–0475 (10 min/response); and
53. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648–0202 (5 min/response).

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, andcompleting and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this

data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.10, revise paragraph (k)(1) to read as follows:

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

* * * * *

(k) * * *

(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators.* In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common pool or sector trip must declare the following information via VMS or IVR, as instructed by the Regional Administrator:

(i) *Broad stock area(s) to be fished.* To fish in any of the broad stock areas, the vessel owner or operator must declare his/her intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, prior to leaving port at the start of a fishing trip;

(ii) *VTR serial number.* On its return to port, prior to crossing the VMS demarcation line, as defined at § 648.10, the vessel owner or operator must provide the VTR serial number for the first page of the VTR for that particular trip, or other applicable trip ID specified by NMFS; and

(iii) *Trip-end hail report.* Unless otherwise required to comply with both the dockside/roving monitoring trip-start and trip-end hail reports pursuant to § 648.87(b)(5), beginning in fishing year 2011 (May 1, 2011), upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and State for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and State for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator.

* * * * *

3. In § 648.14, revise paragraph (k)(7)(i)(B); and add paragraphs (k)(9)(i), (k)(15)(ii)(A)(*5*), and (k)(18)(i)(D) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(7) * * *

(i) * * *

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f) and (o), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), (f)(2)(vi), (i), (o)(2)(i), or as authorized under § 648.85.

* * * * *

(9) * * *

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iv).

* * * * *

(15) * * *

(ii) * * *

(A) * * *

(*5*) If operating under the provisions of a limited access NE multispecies Handgear B permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.88(a)(2)(iv).

* * * * *

(18) * * *

(i) * * *

(D) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as specified by § 648.87(b)(1)(v)(B)(1) and (b)(5)(i)(C).

* * * * *

4. In § 648.80, revise the introductory text to paragraph (a)(18), and remove paragraphs (a)(18)(ii)(C) and (D) to read as follows:

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

(a) * * *

(18) *Great South Channel Scallop Dredge Exemption Area.* Vessels issued a LAGC scallop permit, including limited access scallop permits that have used up their DAS allocations, may fish in the Great South Channel Scallop Dredge Exemption Area, as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS or on a sector trip, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section and applicable scallop regulations in subpart D of this chapter.

* * * * *

5. In § 648.81, revise paragraphs (f)(2)(vi) and (i); and add paragraphs (g)(2)(vi) and (o) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(f) * * *

(2) * * *

(vi) That are fishing on a sector trip, or under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), provided such vessels comply with the following restricted areas referred to as the Sector Rolling Closure Areas:

* * * * *

(g) * * *

(2) * * *

(vi) That are fishing under the provisions of a Northeast multispecies Handgear A permit, as specified at § 648.82(b)(6), or the provisions of a Northeast multispecies Handgear B permit, as specified at § 648.88(a).

* * * * *

(i) *Transiting.* Unless otherwise restricted or specified in this paragraph (i), a vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, the EFH Closure Areas, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), and (o)(1), of this section, respectively, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(1) of this section, in accordance with paragraph (b)(2)(iv) of this section. Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (o)(1) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning Protection Area and has been gutted and stored.

* * * * *

(o) *GOM Cod Spawning Protection Area.* (1) Except as specified in paragraph (o)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used, on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. latitude	W. longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (o)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in State waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

* * * * *

6. In § 648.82, revise paragraphs (a)(2), the introductory text of paragraph (b)(6), and (n)(2)(iv), and add paragraph (b)(6)(iv) to read as follows:

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

(a) * * *

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program and fish under a DAS, fish on a sector trip, or fish under the provisions of a limited access Small Vessel Category or Handgear A permits pursuant to paragraphs (b)(5) and (b)(6) of this section, respectively, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) * * *

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (b)(2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(iv) *Declaration.* For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating his or her intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. For any such vessel that is required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare his or her intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed in accordance with the provisions at § 648.23(b).

* * * * *

(n) * * *

(2) * * *

(iv) *Monitoring requirements.* Except as specified in paragraph (n)(2)(iv)(C) of this section, starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean pout by common pool vessels shall be monitored at the point of offload by independent, third-party service providers approved to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. Unless otherwise instructed by

NMFS, these service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. For fishing year 2012 only, common pool vessels must comply with any dockside/roving monitoring program specified by NMFS pursuant to § 648.87(b)(1)(v)(B)(*1*). None of the costs associated with dockside/roving monitors during fishing year 2012 shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2013 and thereafter, the costs associated with monitoring vessel offloads shall be the responsibility of individual vessels, unless otherwise instructed by NMFS. An individual vessel owner or operator may only use one dockside/roving monitoring service provider per fishing year beginning in fishing year 2013, and must contract for such services with a service provider approved by NMFS pursuant to § 648.87(b)(4), as instructed by the Regional Administrator. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

(A) *Coverage levels.* For fishing year 2012, dockside/roving monitoring coverage levels shall be determined by NMFS based on available funding. If NMFS does not require 100-percent coverage of all common pool trips, NMFS shall first provide dockside/roving monitoring for trips that are not also assigned an observer or at-sea monitor pursuant to § 648.11. Starting in fishing year 2013, at least 20 percent of the trips taken by vessels operating under the provisions of the common pool shall be monitored. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip must be monitored by a dockside/roving monitor, as specified in paragraph (n)(2) of this section, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Except as provided in this paragraph (n)(2)(iv)(A) or paragraph (n)(2)(iv)(C) of this section, or as instructed by the Regional Administrator, any service provider providing dockside/monitoring services required under this paragraph (n)(2)(iv) must ensure that coverage is randomly distributed among all such trips, and that the landing events monitored are representative of fishing operations by common pool vessels throughout the fishing year.

(B) *Dockside/roving monitor service provider standards.* Starting in fishing year 2013, a common pool vessel must employ a service provider approved by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved to provide the services specified in paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards in § 648.87(b)(4).

(C) *Exemption.* Common pool vessels operating under the provisions of either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (n)(2)(iv).

* * * * *

7. In § 648.87, revise the introductory text of paragraphs (b)(1)(i)(E), (b)(1)(viii), (b)(2), and (b)(5); revise paragraphs (b)(1)(i)(A), (b)(1)(i)(C), (b)(1)(i)(E)(*1*), (b)(1)(i)(E)(*2*)(*i*) and (*ii*), (b)(1)(iii)(C), (b)(1)(v)(B), (b)(1)(viii)(C), and (c)(2)(i); and add paragraphs (b)(5)(ii)(E) and (d)(20) through (24) to read 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, SNE/MA winter flounder, 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. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

* * * * *

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. 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 this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This 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.

* * * * *

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(*1*) and (*2*) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). This calculation shall be performed on July 1 of each year, unless another date is specified by the Regional Administrator, to redistribute the landings history associated with permits that have been voluntarily relinquished or otherwise canceled among all remaining valid limited access NE multispecies permits as of that date during the following fishing year. The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits,

landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(*1*).

(*2*) * * *

(*i*) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each owner of a valid NE multispecies permit, or CPH, that committed to participate in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid authorized signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be equal to the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(*1*) of this section. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*i*) shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit for the following fishing year.

(*ii*) *GB cod PSC for all other permits.* For each owner of a valid NE multispecies permit or CPH that has not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (b)(1)(i)(E)(*2*)(*i*) of this section, the GB cod PSC for each such permit or CPH shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section. To determine the GB cod PSC for each of these permits, the sum of the individual permit's landings of GB cod available in the NMFS dealer database for fishing years 1996 through 2006 shall be divided by the total landings of GB cod during that period by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008. This individual share shall then be multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section from one. The PSC calculated pursuant to this paragraph (b)(1)(i)(E)(*2*)(*ii*) shall then be multiplied by a factor of 1/PSC of remaining permits as of July 1 of each year, unless another date is specified by the Regional Administrator, to calculate the GB cod PSC for each permit.

* * * * *

(iii) * * *

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (*i.e.,* through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

* * * * *

(v) * * *

(B) *Independent third-party monitoring program.* A sector must comply with any dockside/roving monitoring program specified by NMFS for fishing years 2011 and 2012, pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, including the dockside/roving monitoring operational standards specified in paragraph (b)(5) of this section, and develop and implement an independent third-party dockside/roving monitoring program by fishing year 2013. A sector must also develop and implement an at-sea or electronic monitoring program by fishing year 2012 (May 1, 2012) consistent with paragraph (b)(1)(v)(B)(*2*) of this section. Both the dockside/roving and at-sea or electronic monitoring program developed by sectors must be approved by NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service provider providing dockside/roving and at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea or electronic monitoring program proposed by sectors must meet the operational standards specified in paragraphs (b)(5) and (b)(6) of this section, respectively, and be approved by NMFS in a manner consistent with the Administrative Procedure Act. None of the costs associated with any dockside/roving monitor or at-sea or electronic monitoring requirements shall be paid by the owner or operator of a vessel subject to these requirements during fishing years 2011 and 2012. Starting in fishing year 2013, sectors shall be responsible for paying the costs associated with dockside/roving and at-sea or electronic monitoring coverage, unless otherwise instructed by NMFS.

(*1*) Dockside/roving monitoring program. Dockside/roving monitors shall monitor landings of regulated species and ocean pout at every offload for which a trip has been selected to be observed by a dockside/roving monitor, whether directly to a Federally permitted dealer or to a truck for transfer to a Federally permitted dealer, to verify such landings at the time the landings are weighed by a Federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. Unless otherwise specified in this part, the level of coverage for landings is specified in paragraph (b)(1)(v)(B)(*3*) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving

monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/roving monitoring services pursuant to this paragraph (b)(1)(v)(B)(*1*) must meet the service provider standards specified in paragraph (b)(4) of this section. The details of the dockside/roving monitoring program used by each sector starting in fishing year 2013 pursuant to paragraph (b)(1)(v)(B) of this section must be specified in the sector's operations plan, and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act. Common pool vessels operating under the provisions of the either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (b)(6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (b)(1)(v)(B)(*1*). Except as provided in this paragraph (b)(1)(v)(B)(*1*), all common pool and sector vessels, along with service providers providing dockside monitoring services, will be subject to the dockside monitoring operational requirements specified at § 648.87(b)(5).

(*2*) At-sea or electronic monitoring program. Beginning in fishing year 2012, in addition to any dockside/roving monitoring requirement implemented pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, an at-sea or electronic monitoring program must be implemented by each sector to verify area fished, as well as catch and discards by species and gear type. A sector may elect to develop an at-sea or electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor, unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea or electronic monitoring program developed and implemented by each sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea or electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for operations by sector vessels is specified in paragraph (b)(1)(v)(B)(*3*) of this section.

(*3*) Coverage levels. Except as specified in paragraph (b)(1)(v)(B)(*3*)(*i*), any service provider providing dockside/roving or at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*3*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within the common pool or each sector, and by all operations of common pool vessels or vessels operating in each sector throughout the fishing year.

(*i*) Dockside/roving monitoring. For fishing years 2011 and 2012, NMFS shall determine the level of coverage for any NMFS-sponsored dockside/roving monitoring program specified pursuant to paragraph (b)(1)(v)(B)(*1*) of this section based on available funding. If 100-percent coverage of all sector and common pool trips is not possible, NMFS shall first provide coverage to trips without an observer or at-sea monitor assigned pursuant to § 648.11(k), or approved electronic monitoring equipment assigned pursuant to paragraph (b)(1)(v)(B) of this section for sector vessels. Starting in fishing year 2013, at least 20 percent of all sector and common pool trips shall be monitored by dockside/roving monitors.

(*ii*) At-sea or electronic monitoring. For fishing year 2012, coverage levels for an at-sea or electronic monitoring program developed by a sector shall be specified by NMFS based upon the amount of funding available to support sector at-sea or electronic monitoring programs for that fishing year. Starting in fishing year 2013, coverage levels for an at-sea or electronic monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer is required to observe that trip.

(*4*) Hail reports. For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any dockside/roving monitoring program required by paragraph (b)(1)(v)(B)(*1*) of this section, or specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (b)(6) of this section.

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

* * * * *

(viii) ACE transfers. All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (*i.e.,* through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B) of this section.

* * * * *

(C) Duration of transfer. Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this

paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

* * * * *

(2) Operations plan and sector contract. To be approved to operate, each sector must submit an operations plan and preliminary sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. A final roster, sector contract, and list of Federal and State permits held by participating vessels for each sector must be submitted by December 1 prior to the fishing year in which the sector intends to begin operations, unless otherwise instructed by NMFS. The operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified in an approved operations plan as administrative only. If a proposed sector does not comply with the requirements of this paragraph (b)(2), NMFS may decline to propose for approval such sector operations plans, even if the Council has approved such sector. At least the following elements must be contained in either the final operations plan or sector contract submitted to NMFS:

* * * * *

(5) Dockside monitoring operational standards. In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed by NMFS pursuant to paragraph (b)(1)(v)(B)(*1*) of this section must meet the following operational standards to be approved by NMFS:

(ii) * * *

(E) Inspection of fish holds. A dockside/roving monitor assigned to observe the offloading of fish from a particular trip shall inspect the fish holds, or any other areas of the vessel in which fish are stored, to determine if all fish are offloaded for that particular trip.

* * * * *

(c) * * *

(2) * * *

(i) Regulations that may not be exempted for sector participants. The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (*e.g.,* vessel upgrades, *etc.*); gear restrictions designed to minimize habitat impacts (*e.g.,* roller gear restrictions, *etc.*); and reporting requirements. For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

(d) * * *

(20) State of Maine Permit Banking Sector.

(21) State of Rhode Island Permit Bank sector.

(22) State of New Hampshire Permit Bank Sector.

(23) State of Massachusetts Permit Bank Sector.

(24) Sustainable Harvest Sector III.

8. In § 648.88, revise paragraph (a)(1), and add paragraph (a)(2)(iv) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) * * *

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring his or her intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

* * * * *

9. In § 648.89, revise paragraph (e)(1) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) * * *

(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1) of this section, a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(o)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(o)(2)(iii).

* * * * *

10. In § 648.90, revise paragraph (a)(4)(iii)(E)(*2*) to read as follows:

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

(a) * * *

(4) * * *

(iii) * * *

(E) * * *

(*2*) *Commercial allocation.* The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between sectors operating under an approved sector operations plan, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels/permits participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

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