Closed Area Exempted Fishing Permit
Draft Supplemental Information Report

April 2014

United States Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Greater Atlantic Region

Contents

1.0 Background 2
1.1 Year-Round Groundfish Closed Areas 2
1.2 2013 Sector Exemption Request from Year-Round Groundfish Closed Areas 2
1.3 2014 Sector Exemption Request from Year-Round Groundfish Closed Areas 4
1.4 Exempted Fishing Permit Request to Fish in Year-Round Closed Areas 4
2.0 Purpose of this Supplemental Information Report 5
3.0 Changes in the Proposed Action 6
3.1 Reduced Seasonal Restrictions for Closed Area II Access 6
3.2 Allowance of Smaller Codend Mesh Size 6
4.0 New Information 7
5.0 New Circumstances 7
5.1 Exempted Fishing Permit Request 7
5.2 Physical Environment/Habitat/Essential Fish Habitat 8
5.3 Target Species 8
5.4 Non-target Species 9
5.5 Protected Species 9
5.6 Fishing Communities 9
6.0 Public Participation 10
7.0 Conclusion 10
8.0 Preparers and Persons Consulted 10
9.0 References 10

Figures

Figure 1 – Groundfish Closed Areas Proposed for Opening for FY 2013……3
Figure 2 – Approved and Disapproved Closed Area Exemptions for Fishing Year 2013……4

1.0 Background

This report supplements the Environmental Assessment (EA) for the Fishing Year 2014 Northeast Multispecies (Groundfish) Sector Operations Plans and Agreements.

As proposed, the Exempted Fishing Permit (EFP) would allow three groundfish vessels to utilize selective bottom trawl gear with codend mesh as small as 5 -1/8" to target Georges Bank haddock, a stock that is currently underutilized by the groundfish fishery. The EFP would allow vessels to fish in Closed Area I for the remainder of fishing year 2014 and in a portion of Closed Area II until June 15, 2014 and again from November 1, 2014 through February 15, 2015.

1.1 Year-Round Groundfish Closed Areas

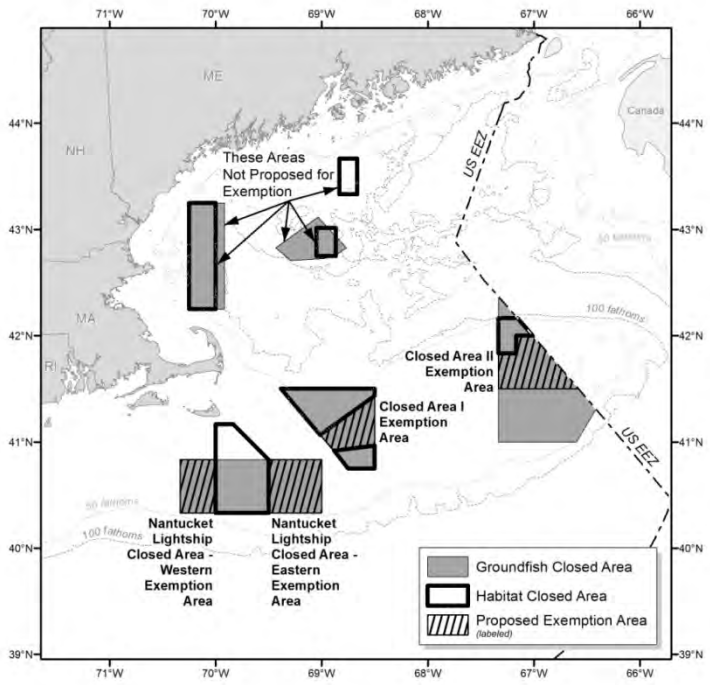
There are several year-round groundfish closed areas, including the Western Gulf of Maine Closed Area, Cashes Ledge Closed Area, Nantucket Lightship Closed Area, and Closed Areas I and II. These closures were initially implemented to help rebuild depressed groundfish stocks by affording protection to spawning activities and/or reducing overall fishing mortality. There are also areas that are closed year round to protect essential fish habitat, but the proposed action does not include access to those areas.

Amendment 16 to the NE Multispecies Fishery Management Plan prohibited sectors from requesting exemptions from certain regulatory requirements, including exemptions from year-round closed areas. To help mitigate impacts of the low FY 2013 catch limits, the New England Fishery Management Council (Council) modified the Amendment 16 provision in Framework Adjustment (FW) 48 to allow sectors to request access to fish in non-habitat year-round closed areas through their annual sector operations plans to provide additional fishing opportunity to harvest available quotas. FW 48, which was approved on April 30, 2013, includes a provision allowing sectors to request exemptions from the year-round groundfish mortality closures.

1.2 2013 Sector Exemption Request from Year-Round Groundfish Closed Areas

On July 11, 2013, we published a proposed rule considering sector exemption requests from several year-round groundfish mortality closed areas (78 FR 41772). We proposed to open, seasonally, portions of Georges Bank Closed Areas I and II to sector vessels fishing with selective trawl gear to help increase the industry's ability to catch more of the Georges Bank haddock quota while minimizing catch of severely depleted Georges Bank cod and yellowtail flounder stocks (Figure 1). The rule also proposed to open portions of the Nantucket Lightship Closure Area in Southern New England, year-round, with selective gear to give sector vessels better access to non-groundfish species.

Figure 1 – Groundfish Closed Areas Proposed for Opening for FY 2013

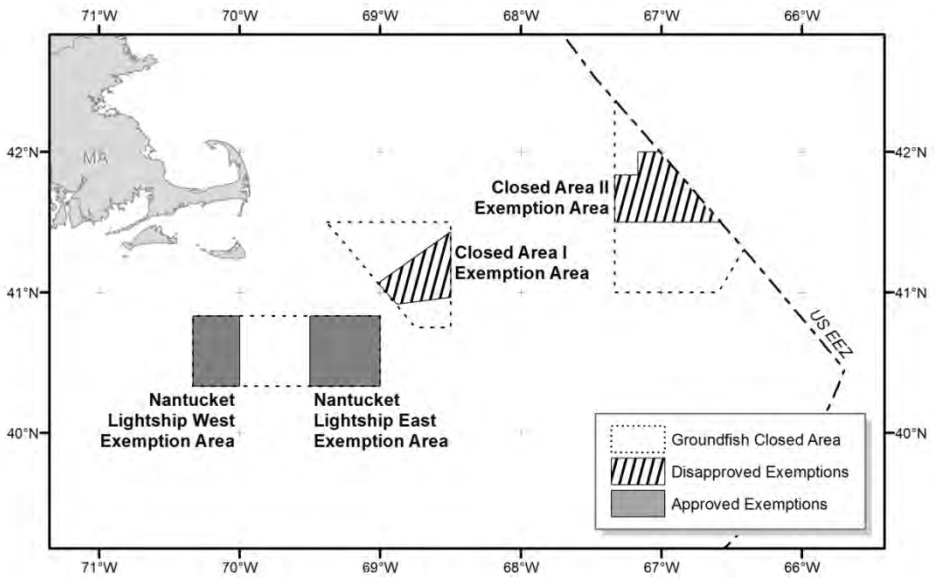


Use of the exemption required at-sea monitoring for every trip to properly account for catch. This is necessary to timely monitor potential increases in catch, higher rates of discarding, catch of spawning fish, and potential increased interactions with protected resources. Because there is no additional agency funding to cover at-sea monitoring for all trips accessing the closed areas, there was a need to require that industry fund these trips.

The primary benefit from opening a closed area would come when the catch per unit effort from opening the area is much greater than the associated impacts to the resources. An increase in catch per unit effort would result in reduced environmental impacts and increased profits for fishermen. Comments on the proposed rule submitted by both industry and environmental organizations, as well as research by the Council, indicated that the increase in catch rates would likely not exceed the expense of having to pay for a monitor on board and vessels can fish near those areas and achieve similar catch rates without having to pay for a monitor. These comments were consistent with the findings from the EA that accompanied the rule (NMFS, 2013). Further, all comments submitted by industry members stated that they would not access the areas under the proposed industry-funded monitoring requirement.

Because of the perceived minimal benefit to industry, potential environmental risks, the industry's lack of participation and opposition to funding the required monitoring coverage, and our concern for the status of several fish stocks in these areas, we decided not to allow access to Closed Areas I or II during fishing year 2013 (79 FR 22043; April 21, 2014). We did allow access to portions of the Nantucket Lightship Closed Area (Figure 2).

Figure 2 – Approved and Disapproved Closed Area Exemptions for Fishing Year 2013



Although we did not allow access to Closed Areas I or II, in the interim final rule (78 FR 76077 at page 76080) NMFS specifically explained that it is interested in gathering additional data from Closed Areas I and II to conduct additional analyses. NMFS suggested that sector vessels interested assisting NMFS in obtaining additional fisheries-dependent data from year-round closed areas submit a request for an exempted fishing permit. The exempted fishing permit request this SIR is reviewing is in direct response to this request.

1.3 2014 Sector Exemption Request from Year-Round Groundfish Closed Areas

Sectors requested access to closed areas again for fishing year 2014. As a result, NMFS proposed access similar to as that proposed in fishing year 2013 (79 FR 14639; March 17, 2014, pages 14649-14652). The EA for the Fishing Year 2014 Groundfish Sector Operations Plans and Agreements reanalyzes access to Closed Areas I and II with the same requirements as that of the Fishing Year 2013 Groundfish Closed Area Access EA (NMFS, 2013).

The proposed rule for 2014 sector exemptions also reminded groundfish permit holders that they could submit EFP requests if they were interested in conducting research in Closed Areas I or II.

1.4 Exempted Fishing Permit Request to Fish in Year-Round Closed Areas

The purpose of the EFP is to conduct “exploratory fishing” to obtain fisheries dependent data from Closed Areas I and II. This data is severely lacking in some areas and non-existent in other areas. Specifically, the EFP would:

- Generate data on the composition of catch, including absence/presence of target (GB haddock) and non-target groundfish stocks.
- Test the effectiveness of utilizing gear comparable to Canadian fishermen (this includes smaller codend mesh with square mesh rather than diamond mesh) to improve haddock selectivity, catch ratios, and improve allocation utilization rates.
- Compile data to test the economic feasibility of industry-funded at-sea monitoring.
- Examine the effectiveness of providing access to portions of the existing closed areas for improving utilization rates of GB haddock
- Gather information from Closed Areas I and II so that NMFS may conduct analyses to determine whether fishing can be allowed with less than 100 percent at-sea monitoring coverage.

Key elements of the EFP include:

- Three vessels with the same individual permit holder (owner) will be utilized
- All trips will be monitored. The vessel owner will pay for all necessary at-sea monitoring expenses.
- All discards will be monitored and catch (both landings and discards) will be attributed to the sector's allocation.
- All vessels utilizing the EFP will be equipped with both a haddock separator and Ruhle trawl for all trips
- The project will use both 6" diamond codend mesh as currently approved by US Federal regulations and 5-1/8" square mesh similar to that used by Canadian trawl vessels.
- The EFP request is for the duration of fishing year 2014
    - Vessels will be able to access Closed Area I year round
    - Vessels will be able to access the central portion of Closed Area II from October 1, 2014 through February 15, 2015.
- The EFP may be revoked if it is determined that there are large amounts of bycatch (including juvenile fish) or when catch of spawning fish exceeds 30% of catch.

A description of the fishing activity is as follows:

- The vessels will focus on the directed haddock fishery and will seek the highest ratios of haddock over other limiting species such as GB cod and GB yellowtail flounder
- Each trip would fish for 5 days
- Estimated effort <u>per vessel</u> is approximately 270 hours per month

Additional information can be reviewed in the EFP proposed rule, which is available online at

2.0 Purpose of this Supplemental Information Report

The purpose of this review is to determine and document whether our decision to approve an Exempted Fishing Permit for restricted access to Closed Areas I and II or new circumstances or information require us to supplement the 2014 Groundfish Sector EA and Finding of No Significant Impact (FONSI) (NMFS 2014).

In making a determination on the need for additional analysis under NEPA, we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ regulations state "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes *substantial* changes in the proposed action that are relevant to environmental concerns; or (ii) there are *significant* new circumstances or information relevant to environmental concerns *and* bearing on the proposed action or its impacts." 40 C.F.R. § 1502.09(c) (emphasis added). In addition, we have considered CEQ's "significance" criteria at 40 C.F.R. § 1508.27 and the criteria relied upon for the September 24, 2014 FONSI to determine whether any new circumstances or information are "significant," thereby requiring supplementation of the 2014 EA.

This report first describes the proposed action and compares it to the action analyzed in the 2014 Groundfish Sector EA. It then considers whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts. For the consideration of new circumstances and information, NMFS has consulted, among other sources, its files, academic literature, and other available information to determine whether a supplemental environmental assessment (SEA) should be prepared.

3.0 Changes in the Proposed Action

The EFP request is similar to the Closed Area exemption request discussed in the 2014 Sector Operations Plan proposed rule (79 FR 14639) and examined in the accompanying EA with three exceptions. First, unlike the sector exemptions that could allow fishing effort up to the allocated amount of groundfish and involve many vessels, this EFP is restricted to only one permit holder and three vessels. While that owner could lease in additional allocation from other vessels, much less effort is anticipated from this EFP. Second, the EFP request includes additional seasonal access to Closed Areas I and II. While the 2014 Groundfish Sector EA allowed access into Closed Areas I and II until December 31, 2014, this EFP would allow access to those areas through February 15, 2015. Third, the EFP would utilize a smaller mesh (5-1/8" square codend mesh) than is currently approved for use in the groundfish fishery management plan.

3.1 Reduced Seasonal Restrictions for Closed Area II Access

Increased access to Closed Areas is requested so that presence/absence of groundfish stocks can be observed. Because the only catch data that exists in portions of Closed Areas I and II is from research studies and trips through Special Access Programs, the presence/absence of groundfish stocks in these areas, as well as catch compositions, is relatively unknown. The EFP will provide additional catch data from these areas. Additional access will also help determine seasonal components of catch composition and catch per unit effort, which could influence the viability of fishing in these areas when fishermen are required to pay for at-sea monitoring. Additionally, spawning condition would be recorded and if 30% or more of the fish are deemed to be in spawning condition (i.e. ripe and running) fishing in the respective area would cease.

3.2 Allowance of Smaller Codend Mesh Size

The EFP proposes to use both standard 6" diamond codend mesh, which is normally utilized in the U.S., as well as smaller, 5-1/8" square codend mesh, frequently utilized in Canadian waters. One of the goals of the EFP is to determine whether gear utilized by the Candian groundfish fleet to target haddock can be used successfully by US fishermen to target haddock while avoiding bycatch of other species, including limiting catch of juvenile and spawning fish. If the gear is used effectively, it could potentially bring improved haddock catch ratios, allowing fishermen to better utilize their allocations. Testing fishing efficiency and catch per unit effort will also better allow fishermen to determine the viability of these trips if they are required to pay for an at-sea monitor.

4.0 New Information

The second part of the inquiry to determine whether an SEA is required, involves a two-step process. First, one must identify new information or circumstances. Second, one must analyze whether these are significant to the analysis of the action and relevant to environmental concerns and bearing on the action or its impacts.

Because of the recent EAs regarding closed area access by groundfish sector vessels (NMFS, 2013; NMFS, 2014) there is no new information that pertains to any potential environmental or social impacts.

5.0 New Circumstances

5.1 Exempted Fishing Permit Request

The new circumstance and reason for this SIR is that NMFS received an EFP request that was similar, but slightly different, than the closed area exemption request submitted by sectors for FY 2014. In addition, this EFP proposes increased access to year-round closed areas at times when spawning fish may be present and also requests to fish mesh size smaller than that currently allowed, NMFS felt it appropriate to further examine potential environmental impacts.

Chapter 5 of the EA supporting the 2014 Groundfish Sector EA (NMFS 2014) discusses anticipated impacts from the proposed sector exemption requests, including access to year-round closed areas. This report includes analyses for potential impacts from fishing in closed areas to include: 1) access during additional seasons, and 2) access while fishing with smaller square-shaped codend mesh.

The impacts analyzed in the EA were grouped into the following 5 valued ecosystem components (VEC) (NMFS, 2014; section 5.1.1.3):

- Physical Environment/Habitat/Essential Fish Habitat
- Target species – groundfish stocks
- Non-allocated target species and bycatch – non-groundfish stocks including monkfish, dogfish, and skates
- Protected resources
- Human communities

The impacts associated from additional access and fishing with smaller mesh are reviewed through the VECs in section 5.2-5.6 below.

5.2 Physical Environment/Habitat/Essential Fish Habitat

As explained in the 2014 Groundfish Sector EA (NMFS 2014), impacts to benthic habitats and essential fish habitats are mitigated by restricting fishing effort. Fishing effort is controlled through annual quota allocations to sectors. In addition, there are several year-round essential fish habitat closures that protect important benthic habitats. While the EFP would grant access to areas previously closed, these areas were closed for groundfish mortality reductions, not to protect essential fish habitat. In fact, many of these groundfish closed areas are already fished by other gears such as scallop dredges (for more information, see the proposed rule considering closed area access, 78 FR 41772; July 11, 2013). Fishing with a smaller codend mesh size would not result in any impacts to the physical environment not already considered under the EA. Lastly, a major purpose of the EFP is to assess and improve fishing efficiency. Increased efficiency while constrained by a total fishing allocation would result in reduced physical environmental impacts. Considering all of this, the EFP would not result in any impacts that on physical/benthic habitats or essential fish habitats that are significant or uncertain or outside the range of impacts considered in the 2014 EA for groundfish sectors.

5.3 Target Species

Fishing effort on target species is controlled through annual quota allocations to sectors, sector vessels are prohibited from exceeding their annual allocation. Some allocations, such as GB haddock, remain very large and underutilized. The purpose of the EFP is to examine ways to increase GB haddock catch while limiting bycatch of other stock such as GB cod or GB yellowtail flounder, assessing catch composition, and monitoring catch of juvenile or spawning fish. The 2014 groundfish sector EA analyzes impacts assuming that all quotas can be harvested, so any impacts from increased catch of any target species, up to the allocation limit, is within the scope of the EA.

Fishing in areas that were previously closed, or with mesh that is smaller than currently approved, could result in increased catch rates, which would benefit the fishery. Because GB haddock is underharvested and overall catch of other stocks is constrained by quotas, increased catch of GB haddock would financially benefit fishermen and fishing communities with no impacts to fish stocks. On the other hand, if fishing in an area previously closed or with smaller mesh results in an increased catch rate of juvenile or spawning fish, those impacts could be slightly negative. While we have cited concerns over catching spawning fish in previous EAs (NMFS 2013; NMFS 2014), allowing extremely limited access to these areas through an EFP could provide for additional information on presence/absence of spawning fish. Further, the EFP request explains that fishing efforts would stop in the Closed Area if it is determined that 30% or more of the fish are spawning (i.e. ripe and running) Because access would be limited to three vessels, no impacts outside of the scope considered in the 2014 groundfish sector EA would be anticipated. Again, this EFP would be closely monitored (in a manner similar to any exemption approved that would allow access to a closed area) and the EFP would be revoked if it was determined to have negative impacts on fish stocks.

While the EFP proposes to utilize smaller codend mesh (5-1/8") than what is currently approved for us in selective trawl gear (6"), the smaller mesh will be square shaped, which is shown to retain larger fish compared to diamond-shaped codend mesh (Robertson and Stewart; 1988; Halliday et al; 1999). The results may reduce overall catch, but retain larger fish (Cooper and Hickey; 1987). The 5-1/8" square mesh proposed in the EFP is based off requirements for the Canadian groundfish fishery, which has recently seen great success targeting haddock (Gavaris and Van Euckhaute, 1999; Sackton, 2014).

Similar to the exemption as proposed, all trips will be monitored and this EFP may be revoked if it is determined that there are large amounts of bycatch (including juvenile/undersized fish) or excessive catch of spawning fish (greater than 30% in spawning condition). Selective gear requirements will reduce bycatch of flounders and other flatfish and GB cod, both stocks that are overfished and subject to overfishing. Again, the focus of the EFP is to enhance fishing efficiency and catch utilization of GB haddock. Because the sector is accountable for the catch (including catch and discards) and the permit holder/owner is responsible for his allocation from the sector, if bycatch of juveniles or spawning fish prevent reduce the profitability of fish (increased catch with less associated landings), it is unlikely that the EFP trips would continue.

For all these reasons, the EFP would not result in any impacts on target species that are significant or uncertain or outside the range of impacts considered in the 2014 EA for groundfish sectors.

5.4 Non-target Species

Fishing effort on non-target species is controlled through annual quota allocations to sectors, sector vessels are prohibited from exceeding their annual allocation as well as through additional effort controls from other fisheries (i.e., days-at-sea limits on monkfish, trip limits for dogfish). In addition to these effort controls, selective trawl gear requirements will reduce catch of monkfish. For these reasons and additional reasons listed in 5.3., the EFP would not result in any impacts on non-target species that are significant or uncertain or outside the range of impacts considered in the 2014 EA for groundfish sectors

5.5 Protected Species

Most protected species impacts from the groundfish fishery are from fixed gear (primarily gillnets), which would not be utilized as part of this EFP. Otter trawls are responsible for very few takes. The EFP would not result in any impacts on protected species that are significant or uncertain outside the range of impacts considered in the 2014 EA for groundfish sectors

5.6 Fishing Communities

A major purpose of the EFP is to gather additional data to determine whether or not trips in closed areas while funding an at-sea monitor can be profitable for members of the fishing industry. The findings from the EFP will help other fishermen decide whether fishing in closed areas is worth the additional expenses associated with accessing the areas (i.e. industry-funded at-sea monitoring coverage, selective trawl gear). If successful, the EFP could result in increased

catch of GB haddock, which would benefit fishermen and fishing communities. The EFP would not result in any impacts on protected species that are significant or uncertain outside the range of impacts considered in the 2014 EA for groundfish sectors.

6.0 Public Participation

As explained in sections 1.2 and 1.3, NMFS has requested that industry submit requests for EFPs in two separate rulemakings. The EFP has been submitted in response. Two comments on the EFP request were submitted in response to the 2014 proposed rule for Sector Operations Plans and Contracts, both offering cautious support for the EFP and encouraging additional research if developed and done appropriately.

The EFP request was published in the Federal Register on April 29, 2014. X comments were submitted.

7.0 Conclusion

After considering the relevant new circumstances, NMFS has determined there is no need to supplement the 2014 Sector Groundfish EA and FONSI because: (1) the changes to the proposed action that are relevant to environmental considerations are not substantial; and (2) the new circumstances and relevant to environmental concerns and bearing on the proposed action or its impacts are not significant under NEPA. Therefore, the 2014 EA and FONSI remain valid and NMFS will continue to rely on them to support the EFP.

8.0 Preparers and Persons Consulted

Preparers:

William Whitmore, PhD., Groundfish Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

Timothy Cardiasmenos, NEPA Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

Brian Hooper, NEPA Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

Brett Alger, Groundfish Policy Analyst, NMFS Greater Atlantic Regional Fisheries Office, Gloucester Massachusetts.

9.0 References

Cooper, C. and W. Hickey. 1987. Selectivity experiments with square mesh cod-ends on haddock and cod, Oceans 1987. pp 608-613

Gavaris, S. and L. Van Euckhaute. 1999. Assessment of Haddock on Eastern Georges Bank, Department of Fisheries and Oceans, Canada, available online at http://www2.mar.dfo-mpo.gc.ca/science/trac/documents/CSAS_Res_Doc_99_72.pdf.

Halliday, C.G., C.G. Cooper, P. Fanning, W.M. Hickey, P. Gagnon. 1999. Size selection of Atlantic cod, haddock and Pollock (saithe) by otter trawls with square and diamond mesh codends of 130-155 mm mesh size, Fisheries Research 41:255-271.

National Marine Fisheries Service (NMFS). 2013. Fishing Year 2013 Northeast Multispecies Sector Operations Plans and Contracts:Year Round Closed Areas. Prepared by NMFS Greater Atlantic Regional Fisheries Office, Gloucester, Massachusetts. 250 pp.

National Marine Fisheries Service (NMFS). 2014. Fishing Year 2014 Northeast Multispecies Sector Operations Plans and Contracts Final Environmental Assessment. Prepared by NMFS Greater Atlantic Regional Fisheries Office, Gloucester, Massachusetts. 357 pp.

Robertson, J.H.B. and P.A.M. Stewart. 1988. A comparison of size selection of haddock and whiting by square and diamond mesh codends, . J. Cons. Int. Explor. Mer. 44: 148-161.

Sackton, J. 2014. Comment: NMFS, DOC to blame for 38% drop in New England haddock revenue since 2011. Undercurrent news, February 18, available online at http://www.undercurrentnews.com/2014/02/18/comment-nmfs-doc-to-blame-for-38-drop-in-new-england-haddock-revenue-since-2011/