NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 09/15/2005
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 07/01/2005.

TITLE: Alaska Region Scale & Catch Weighing Requirements

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0330
EXPIRATION DATE: 11/30/2005

BURDEN:	RESPONSES	HOURS	COSTS($,000)
Previous	13,034	10,032	15
New	17,896	11,716	339
Difference	4,862	1,684	324
Program Change		1,684	324
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request
DOC/NOAA/NMFS/AKR

2. OMB control number
a. 0648 - 0330
b. [ ] None

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [✔] Revision of a currently approved collection
c. [ ] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [ ] Three years from approval date b. [✔] Other Specify: 11 / 05

7. Title
Alaska Region Scale & Catch Weighing Requirements

8. Agency form number(s) (*if applicable*)

9. Keywords
"Fishing" and "Fishing Vessels"

10. Abstract
The NOAA Fisheries, Alaska Region, catch weighing and catch monitoring procedures are extended to non-American-Fisheries-Act trawl catcher/processors in the Bering Sea/Aleutian Islands Management Area (BSAI) through the Improved Retention/Improved Utilization Program's Groundfish Retention Standards (GRS).

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. x Individuals or households d. ___ Farms
b. P Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [✔] Required to obtain or retain benefits
c. [ ] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents: 97
b. Total annual responses: 17,896
1. Percentage of these responses collected electronically: 40 %
c. Total annual hours requested: 11,716
d. Current OMB inventory: 10,032
e. Difference: 1,684
f. Explanation of difference
1. Program change: 1,684
2. Adjustment: ____

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs: 320
b. Total annual costs (O&M): 19
c. Total annualized cost requested: 339
d. Current OMB inventory: 15
e. Difference: 324
f. Explanation of difference
1. Program change: 324
2. Adjustment: ____

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. ___ Program planning or management
b. p Program evaluation f. ___ Research
c. ___ General purpose statistics g. x Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [ ] Reporting
1. [ ] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [ ] Annually
7. [ ] Biennially 8. [✔] Other (describe) daily for time period

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Patsy A. Bearden
Phone: 907-586-7008

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature signed by Alan Risenhoover	Date 06/20/2005
Signature of NOAA Clearance Officer	
Signature signed by Ira M. Grossman	Date 06/22/2005

SUPPORTING STATEMENT
SCALE AND CATCH WEIGHING REQUIREMENTS
OMB CONTROL NO.: 0648-0330

INTRODUCTION

Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq*.) (Magnuson Stevens Act), National Marine Fisheries Service (NMFS) manages the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) in the exclusive economic zone (EEZ) off the coast of Alaska. The North Pacific Fishery Management Council (Council) prepared Amendment 79 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Area to reduce bycatch and improve utilization of groundfish harvested by catcher/processors that use trawl gear in the BSAI, that are equal to or greater than 125 ft (38.1 m) length overall (LOA), and that are not subject to the American Fisheries Act (AFA). These vessels are referred to as non-AFA trawl catcher/processors. This action is intended to promote the management objectives of the Improved Retention/Improved Utilization (IR/IU) program (50 CFR part 679.27).

This action adds 16 non-AFA, trawl catcher/processors regulated under the annual Groundfish Retention Standard (GRS) to this collection of information. The percent of groundfish retained is a percent calculated as a specified ration of the round weight equivalent of total retained groundfish to total groundfish. The GRS is enforced on an individual vessel basis as opposed to a sector basis, so that vessels that chronically fail to meet the standard could not impose a penalty on those vessels that consistently meet these requirements.

A. JUSTIFICATION

1. <u>Explain the circumstances that make the collection of information necessary</u>.

a. All regulated vessels are required to use NMFS-approved scales to determine the weight of total catch. In addition, operators of these vessels must ensure that a NMFS-approved observer for verification observes each haul that all fish are weighed. Each vessel is required to provide a single collection point for observers (observer sampling station) to collect samples for the purpose of reducing the potential of sample bias. Observer sampling of each haul is necessary to determine the percentage of the total catch that is comprised of groundfish.

The Council's analysis of groundfish retention rates in the BSAI fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. The EA/RIR/IRFA for Amendment 79 reported that the non-AFA trawl catcher/processor sector had a retained groundfish catch rate of 75.1 percent in 2001. However, during the same year in the BSAI, AFA trawl catcher/processors had a retained catch rate of 99.1 percent, pot catcher/processors had a retained catch rate of 93.5 percent and longline catcher/processors had a retained catch rate of 85.4 percent. In 2001, the non-AFA trawl catcher/processor sector accounted for 67 percent of all discards in the BSAI. For these reasons, the GRS program authorized under Amendment 79 focuses on this sector for improved groundfish retention rates and reduced bycatch.

Amendment 79 implements an annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) length overall (LOA). The percent of groundfish retained is a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The owners or operators of these vessels are required to meet this standard on an annual basis. The use of total groundfish catch in the denominator of the calculation, instead of total catch, is meant to avoid a potential incentive to target on non-groundfish species and to recognize that retention of non-groundfish often is either impractical or prohibited. Further, the catch of groundfish that is required to be treated as prohibited species under 50 CFR 679.20(d)(2) is removed from the GRS calculation for individual vessels. By removing groundfish that are in prohibited species status, vessel operators are not held accountable for retaining catch that they are required to discard. Groundfish species closed to directed fishing are included in the calculation for percent of groundfish retained, because species taken incidental to target species may be retained up to the maximum retainable amount (MRA) (50 CFR 679.20(e)). This constraint is intended to provide an incentive to reduce incidental catch while providing flexibility to catch target species. GRS ratios are provided annually.

2. <u>Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines</u>.

a. Scales

All GRS regulated vessels are required to use NMFS-approved scales to determine the weight of total catch. In addition all vessels must obtain sufficient observer coverage to ensure each haul is observed for verification that all fish are weighed.

NMFS-approved flow scales, Respondent	
Number of respondents (16 – 9)	**7**
16 vessels required to have scales	
9 already have scales; 7 need to purchase scales	
Total annual responses	**7**
Total initial capital costs	**$257000**
NMFS-approved flow scale @ $50,000 ea x 7 = $350000	
Equipment Installation = $20,000 to $100,000 = $60,000 ea x 7 = $770,000	
Total = $770,000/3 yr = $257,000	
Total burden hours	**0**
Total personnel costs	**0**
Total annual miscellaneous	**0**

NMFS-approved flow scales, Federal Government	
Total burden hours	0
Total personnel cost	0
Total miscellaneous cost	0

b. Observer sampling station

Each vessel is required to provide a single location for observers to collect samples. Observer sampling of each haul is necessary to determine the percentage of the total catch that is

comprised of groundfish. This information is used to estimate total groundfish weight used in the denominator of the GRS calculation.

Observer sampling station, Respondent	
Number of respondents 16 vessels required to have observer sampling stations 9 already have; 7 need to purchase observer sampling stations	**7**
Total annual responses	7
Total initial capital costs Observer sampling station equipment $6,000 to $12,000 = $9,000 ea x 7	$63000
Total burden hours	0
Total personnel cost	0
Total miscellaneous costs	0

Observer sampling station, Federal Government	
Total burden hours	0
Total personnel cost	0
Total miscellaneous cost	0

c. Records of daily scale tests.

To verify that each scale used to weigh total catch meets the Maximum Permissible Error (MPE), the operator must ensure the daily test is performed on each scale or scale system in an accurate and timely manner when use of the scale is required. Each scale used to weigh total catch must be tested daily.

The observer must be notified at least 15 minutes before the time that the test will be conducted, and the test must be conducted while the observer is present.

NMFS observers, enforcement staff, and scale program staff to ensure regulatory compliance and to monitor the accuracy of the scales use information from the form.
Record on the daily scale test form:

Records of daily scale test
Vessel name
Month, day, and year of test
Time test started (to the nearest minute)
<u>Platform scale weight of the fish</u>
Collect approximately 400 kg of fish in baskets and weigh it on the platform scale.
Record the weight of each basket of fish (basket plus fish) in Section I of the form.
Record the total weight of all baskets plus fish in the first box in Section II.
Record the weight of the baskets in the second box.
Subtract the weight of the baskets from the total weight of fish plus baskets to determine the weight of the fish only; record this weight in the third box in Section II
<u>Flow scale weight of fish</u>
Record the weight displayed on the flow scale before and after the test fish are weighed.
Weigh the fish from the baskets on the flow scale.
Record the weight in the fourth box of Section II (B).
<u>Percent error of flow scale</u>
Subtract the platform scale weight (A) from the flow scale weight (B).
Record the error (C) in the fifth box of Section II.
Calculate percent error by dividing the error (C) by the known weight of the fish (A) and multiplying by 100.

Record this information in the last box of Section II.
The scale is weighing within 3 percent error if the result is between -3.0% and +3.0%.
Record Beaufort Scale sea conditions at time of test.
Signature of vessel operator and observer.

When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent. If the scale fails the daily test, it may be re-tested at any time. However, it may not be used to weigh fish until it passes the daily test.

The daily test information may be recorded on either a "pdf." format file or an "excel" spreadsheet, available from the Alaska Region home page. Although not submitted to NMFS, the forms must be available for inspection on board or onsite until the end of the fishing year during which the tests were conducted and retained by the owner for three years after the test occurred.

Records of daily scale tests, Respondent	
Number of respondents	**16**
Total annual responses (16 x 135)	**2160**
Frequency of response (2 to 200 = 135)	
Total burden hours (2160 x 0.75)	**1620**
Time per response (45 min/60 min = 0.75)	
Total personnel cost ($25 x 1620)	**$40500**
Total miscellaneous costs (16 x $35)	**$560**
Binders, printer paper	

Records of daily scale tests, Federal Government	
Total annual responses	**0**
Total burden hours	**0**
Total miscellaneous costs	**0**

d. Inspection Request, At-sea Scales

All groundfish harvested and processed by catcher/processors must be weighed at-sea prior to processing. Once a scale is installed on a vessel and approved by NMFS for use to weigh catch at sea, the scale must be inspected and approved annually by a NMFS-approved scale inspector to determine if the scale meets all of the applicable performance and technical requirements. The scale inspection is required before the vessel participates in any fishery requiring the weighing of catch at sea. A scale inspection is a visual assessment and test of a scale after it is installed on the vessel, while the vessel is tied up at a dock and not under power at sea.

Each scale must be re-inspected within 12 months of the date of the most recent inspection. The owner or operator annually must submit an inspection request to NMFS for each vessel that is required to have approved scales. NMFS-authorized scale inspectors to schedule and conduct a scale inspection on scales use the request.

Inspection Request, At-sea Scales
General
Company name
Vessel name
Mailing address
Vessel location
Contact person on board

Telephone and FAX numbers for contact person
Requested inspection date
Today's date
Telephone number on vessel where inspector may be contacted during inspection

Scales To Be Inspected

Manufacturer name and model
Indicate YES or NO whether repair company will be onsite at time of inspection
Repair company name
Contact person name and telephone number

Inspection Request, At-sea Scales, Respondent	
Number of respondents	16
Total annual responses	**16**
Total burden hours (16 x 0.1 = 1.6))	**2 hr**
Hours per response = 0.1 hr	
Total personnel cost (2 x $25)	**$50**
Total miscellaneous cost ($2.4)	**$2**
Photocopy (16 x 0.10 = 1.6)	
Electronic submittal (16 x .05 = 0.8)	

Inspection Request, At-sea Scales, Federal Government	
Total responses	**16**
Total burden hours (16 x .08 =1.28)	**1 hr**
Hours per response (5/60 = 0.08)	
Total personnel cost ($25 x 0.1)	**$2.5**

e. Printed output of at-sea scale weight

NMFS staff, observers and NOAA Enforcement personnel to maintain accurate records of catch and to ensure compliance with quotas use the printed output of scale weights. The printout also forms the basis of an audit trail for each haul that can be used to resolve inconsistencies in catch reports submitted by the observer and the vessel or processor. These printouts are not submitted to NMFS, but they must be available for inspection on board the vessel or onsite during the fishing year and retained by the vessel or plant owner for three years after the test occurred.

Each scale used to weigh catch must be equipped with a printer, and a printout or printouts showing the total weight of each delivery must be generated after each delivery has been weighed. Reports must be printed at least once every 24 hours when use of the scale is required. Reports must be printed before any information stored in the scale computer memory is replaced. The printouts of the scale weight of each haul, set, or delivery must be made available upon request by the authorized scale inspector at each scale inspection and must also be printed at any time upon request of the observer, the scale inspector, NMFS staff, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. The required information on the printout is programmed into the scale software and printing is nearly automatic.

Printed output from the at-sea scale

Vessel name
Federal fisheries permit number
Date and time the information was printed
Total amount weighed since the last printout was made
Total cumulative weight of all groundfish or other material weighed on the scale

Printed output, Respondent	
Number of respondents	16
Total annual responses (16 x 135)	**2160**
Frequency of response (2 to 200 = 135)	
Total burden hours (2160 x 0.02= 43.2)	**43 hr**
Time per response (1 min/60 min = 0.02)	
Total personnel cost ($25 x 43)	**$1075**
Total miscellaneous cost	**$2800**
Miscellaneous cost (binders, paper) (16 x $35 = 560)	
Printer cost ($420/3 yr = $140 x 16 = 2240)	

Printed output, Federal Government	
Total burden hours	0
Total personnel cost	0
Total miscellaneous cost	0

f. At-sea scale approval report/sticker

Annually, the NMFS scale inspector for each scale approved completes one sticker. The vessel owner or operator must ensure that a "NMFS approved scale" sticker is on each approved scale and is legible or that the scale approval report is available for inspection by NMFS staff, United States Coast Guard personnel, or NMFS observers. The sticker lists the month and year the scale was approved.

Scale approval sticker, Respondent	
No. of respondents	16
Total annual responses	**16**
Total Time burden (0.1 x 16)	**2 hr**
Total personnel cost ($25 x 2)	**$50**
Total miscellaneous cost	**0**

Scale approval sticker, Federal Government	
Total responses	**16**
Total Time burden (16 x 4)	**64 hr**
Hours per response = 4 hr	
Total Personnel Cost ($25 x 64)	**$1600**
Total miscellaneous cost	**0**

g. Observer sampling station inspection request

Observer sampling stations provide a location where observers can work safely and effectively. These sampling stations must meet specifications for size, location, and content. Each observer sampling station must be inspected and approved by NMFS annually. An observer sampling station inspection request form provides the basic information needed to schedule and conduct an inspection.

Observer sampling station inspection request form

For catcher/processors using trawl gear, attach a diagram drawn to scale showing
- the location(s) where all catch will be weighed,
- the location where observers will sample unsorted catch, and
- the location of the observer sampling station.

Vessel name

Federal fisheries permit number

Mailing address
Vessel location, including street address, pier, and city
Name, telephone number, and FAX number for contact person on vessel
Requested inspection date
Today's date
Contact person's signature
Indicate YES or NO whether received and passed a scale inspection
If YES, indicate the date of the most recent inspection

Observer Sampling Station Inspection Request Form, Respondent	
No. of respondents	16
Total annual responses	**16**
Total Time burden (0.1 x 16)	**2 hr**
Total personnel cost ($25 x 2)	**$50**
Total miscellaneous cost	**$50**
Photocopy (16 x 0.10 = 1.6)	
FAX (8 x $6 = 48)	
Electronic submittal (8 x .05 = 0.40)	

Observer Sampling Station Inspection Request Form, Federal Government	
No. of respondents	16
Total responses	**16**
Total burden hours (16 x .08 =1.28)	**2 hr**
Hours per response (5/60 = 0.08)	
Total personnel cost ($25 x 2)	**$50**
Total miscellaneous cost	**0**

h. Prior notice to Observers of scale tests

Each catcher/processor operator must notify the observer 15 minutes before the time that a scale test w ill be conducted and must conduct the test while the observer is present. This notice consists of vessel personnel verbally informing the observer that a scale test is scheduled.

Prior notice to Observers of scale tests, Respondent	
Number of respondents	16
Total annual responses (16 x 30)	**480**
Frequency of response (fishing days) = 30	0.03 hr
Total burden hours (480 x 0.03 hr= 14.4)	**15 hr**
Hours per response (2/60 = 0.03)	
Total personnel cost ($25 x 15 hr)	**$375**
Total miscellaneous cost	**0**

Prior notice to Observers of scale tests, Federal Government	
Total burden hours	0
Total personnel cost	0
Total miscellaneous cost	0

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the following paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior

to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The flow scale record of daily scale tests form is available as a Microsoft Excel template that can be installed on the vessel's computer if the operator wishes to do so. The daily scale test form also is available on NMFS Alaska Region home page at http://www.fakr.noaa.gov and is fillable on-screen.

The request for inspection of at-sea scales and the request for inspection of observer sampling station are available as a fillable form.

4. Describe efforts to identify duplication.

None of the information on any of these forms duplicates other collections. This information collection is part of a specialized and technical program that is not like any other.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection of information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Without the flow scale record of daily scale test form, NMFS is unable to effectively audit catch in the non-AFA catcher/processor trawl fisheries. Without the daily scale testing and printed output frequency, NMFS would not be as confident of the accuracy of the scales. Given that scales are used only in fisheries where there are expectations of highly accurate catch monitoring, this would not be acceptable

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No inconsistencies occur.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Comments will be solicited through a coincidental proposed rule.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No plans exist to provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The information collected under the Magnuson-Stevens Act is confidential under section 402(b). The information is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection does not involve information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Total estimated respondents: 97, up from 90. Total estimated responses: 17,896, up from 13,034. Total estimated burden hours: 11,716, up from 10,032. Total estimated personnel cost: $293,881, up from $251,781.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Total initial, one-time costs: $320,000. Total estimated miscellaneous cost: $18,697, up from $15,285.

14. Provide estimates of annualized cost to the Federal government.

Total estimated burden hours: 993, up from 926 hr. Total estimated personnel cost: 24,790, up from $23,138.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

Program change: 16 non-AFA, trawl catcher/processors regulated under the annual GRS are included in this collection of information; the 7 new respondents did not have, and were required to purchase, flow scales and observer sampling stations. All 16 are required to comply with recordkeeping and reporting (R&R) requirements regarding scales. $3,412 was added for miscellaneous expense related to scales.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information collected will not be published, and no statistical sampling of the information is planned.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

The expiration date is shown on all forms except scale printouts and at-sea scale approval report/sticker. These exceptions are in formats that are not conducive to printing this information.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

The certification statement is shown on all forms except scale printouts and at-sea scale approval report/sticker. These exceptions are in formats that are not conducive to printing this information

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

OMB Control No:. 0648-0330
Expiration Date: 11/30/2005

OBSERVER SAMPLING STATION INSPECTION REQUEST FORM	Fax or mail completed forms and diagrams to: Jason Stern North Pacific Groundfish Observer Program 7600 Sand Point Way NE, Bldg 4 Seattle, WA 98115 Ph: 206-526-4518 Fax: 206-526-4066 e-mail: station.inspections@noaa.gov
Vessel Name	
Federal Fishery Permit Number	Location of vessel including street address and city
Mailing Address	
Contact Person On Vessel	Telephone Number for Contact Person
Requested Inspection Date	Fax Number for Contact Person
Today's Date	Requesting Person's Signature

1. For scale inspections, please contact Alan Kinsolving at (907) 586-7237 for scheduling.

2. Have you received and passed a scale inspection? ☐ YES ☐ NO

3. If YES, what is the date of the most recent inspection? _____

Sample station inspections will be scheduled within ten (10) working days of receiving a request. Requests for inspections in Dutch Harbor will be scheduled within ten (10) days, but may be delayed several days due to weather or logistics.

DIAGRAMS

Please include your diagrams drawn to scale with your application.

For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station.

For all other vessels, a diagram drawn to scale showing the location(s) where catch comes on board the vessel, the location where observers will sample unsorted catch, the location of the observer sampling station, including the observer sampling scale, and the name of the manufacturer and model of the observer sampling scale.

PUBLIC REPORTING BURDEN STATEMENT

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NOAA, National Marine Fisheries Service, Alaska Region, Attn: Assistant Regional Administrator, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99802-1668 (Attn: Lori Durall).

ADDITIONAL INFORMATION

Before completing this form please note the following: 1) NMFS may not conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) This information is being used to manage the At-Sea Scales Program; 3) Federal law and regulations require and authorize NMFS to manage commercial fishing effort;
4) Submission of this information is required for scales approved by NMFS to weigh catch at sea; 5) Responses to this information request are not confidential.

Rev 1/12/2004
OMB No.: 0648-0330; Expires: 11/31/2005

INSPECTION REQUEST **At-Sea Scales**	National Marine Fisheries Service P.O. Box 21668 Juneau, AK 99802-1668 (907) 586-7228 FAX (907) 586-7465

GENERAL	
Company name:	Vessel name:
Mailing address:	Exact location of vessel:
Contact person on board:	Telephone Number for contact person:
Requested Inspection date:	FAX Number for contact person:
Today's date:	Please give a phone number on the vessel where the inspector may be contacted during the inspection:

SCALES TO BE INSPECTED		
	Manufacturer	Model
1		
2		
Will the repair company be on site at time of inspection?	Yes ☐	No ☐
Company name:	Contact person and phone:	

At the time of scale inspection please make sure that:

1) the scale is installed in a rigid and level manner,
2) the display and printer are connected and operational,
3) belts leading to the scale are connected and operational (not applicable to platform and hanging scales),
4) test weights and test weight certification documents are available for inspection (platform scales only),
5) a crew member will be available to help the inspector transport test materials and conduct the testing.

For more information contact: Alan Kinsolving, At-sea scales program coordinator,
Phone: (907)-586-7237
Email: alan.kinsolving@noaa.gov

PUBLIC REPORTING BURDEN STATEMENT
Public reporting burden for this collection of information is estimated to average 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Durall).

ADDITIONAL INFORMATION:
Before completing this form please note the following: 1) NMFS cannot conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) this information is being used to manage the At-Sea Scales Program; 3) Federal law and regulations require and authorize NMFS to manage commercial fishing effort; 4) Submission of this information is required for scales approved by NMFS to weigh catch at sea; 5) Responses to this information request are not confidential except as required under the Privacy Act.

Vessel Name:

Record of Daily Flow Scale Tests

Vessel Name:_____ Date:_____

Time test started:_____

I. Weigh Fish on Observer Platform Scale

Basket #	Wt Fish + Basket (kg)	Basket #	Wt Fish + Basket (kg)	Basket #	Wt Fish + Basket (kg)	Basket #	Wt Fish + Basket (kg)
1		8		15		21	
2		9		16		22	
3		10		17		23	
4		11		18		24	
5		12		19		25	
6		13		20		26	
7		14		Total weight all fish+baskets			0.00

II. Calculate Percent Error of Flow Scale

Scale Indicator: Begin Test: . . . . . kg

End Test: . . . . . kg

Total weight fish and baskets (kg)	- Weight of Baskets	= Platform scale weight of fish	Weight of Fish on Flow Scale (kg)	Error (B) - (A)	% Error = (C)÷(A) x 100
		(A)	(B)	(C)	

III. Sea Conditions (Beaufort Scale) at Time of Scale Test (Check One):

0 1 2 3 4 5 6 7 8 9 10 11 12

Signature of vessel operator
I observed this test and to the best of my knowledge it was conducted in accordance with 50 CFR 679.28 (b)(3) Signature of observer

INSTRUCTIONS

1. Collect approximately 400 kg of fish in baskets and weigh the baskets of fish on the platform scale. Record the weight of each basket of fish (basket plus fish) in Section I.
2. Record the total weight of all baskets plus fish in the first box in Section II.
3. Record the weight of the baskets in the second box. Subtract the weight of the baskets from the total weight of fish plus baskets to determine the weight of the fish only, record this weight in the third box in Section II. This is the platform scale weight of the fish (A).
4. Record the weight displayed on the flow scale before and after the test fish are weighed. .
5. Weigh the fish from the baskets on the flow scale. Record the weight in the fourth box of Section II (B).
6. Calculate error of flow scale by subtracting the platform scale weight (A) from the flow scale weight (B). Record the error (C) in the fifth box of Section II.
7. Calculate percent error by dividing the error (C) by the known weight of the fish (A) and multiplying by 100. Record this information in the last box of Section II. The scale is weighing within 3 percent error if the result is between -3.0% and +3.0%.
8. Record Beaufort Scale sea conditions at time of test.
9. Have form signed by vessel operator and observer..

Revision 1/12/04; OMB No.: 0648-0330; Expires: 11/30/2005

Additional Information

- ✓ A daily scale test must be conducted once every 24 hours when the scale is being used to weigh catch at-sea.
- ✓ If the scale fails the daily test, it may be re-tested at any time. However, it may not be used to weigh crab until it passes the daily test.
- ✓ This form must be maintained on board the vessel until the end of the fishing year in which it was completed. It must be retained by the vessel owner for three years, and must be made available to NMFS personnel, observers or authorized officers when requested.
- ✓ Questions or comments concerning this form or the daily test can be directed to:

Alan Kinsolving
Scales Program Coordinator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99801
Phone: (907)-586-7237
Fax: (907)-586-7465
Email alan.kinsolving@noaa.gov

PUBLIC REPORTING BURDEN STATEMENT
Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).
ADDITIONAL INFORMATION: Before completing this form please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number; 2) This information is mandatory and is required to manage commercial fishing efforts under 50 CFR part 680, under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq*.) and under 16 U.S.C. 1862(j); 3) Responses to this information request are confidential under section 104(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq*.) They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics

Automatic Hopper Scale
Record of Daily Scale Tests

Vessel Name: _____ **Vessel Operator Signature:** _____

Date				Time Test Started:			
Minimum Capacity of Scale				**Maximum Capacity of Scale**			
Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100	Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100
(A)	(B)	(C)		(A)	(B)	(C)	
Sea Conditions (Beaufort Scale) at Time of Scale Test (Circle One):							
0 1 2 3 4 5 6 7 8 9 10 11 12							

Date:				Time Test Started:			
Minimum Capacity of Scale				**Maximum Capacity of Scale**			
Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100	Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100
(A)	(B)	(C)		(A)	(B)	(C)	
Sea Conditions (Beaufort Scale) at Time of Scale Test (Circle One):							
0 1 2 3 4 5 6 7 8 9 10 11 12							

Date:				Time Test Started:			
Minimum Capacity of Scale				**Maximum Capacity of Scale**			
Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100	Test Weights	Weight on Scale Indicator	Error (B) – (A)	% Error = (C) / (A) x 100
(A)	(B)	(C)		(A)	(B)	(C)	
Sea Conditions (Beaufort Scale) at Time of Scale Test (Circle One):							
0 1 2 3 4 5 6 7 8 9 10 11 12							

INSTRUCTIONS

1. Record the date and time the scale test is started. Multiple days are provided on one page.
2. Record the weight of test weights equal to the minimum capacity of the scale (A).
3. Record the weight displayed on the scale indicator after the test weights are added to the bottom of the scale (B).
4. Calculate error of the scale by subtracting the weight of test weights (A) from the weight indicated on the scale (B). Record the error (C).
5. Calculate percent error by dividing the error (C) by the known weight (A) and multiplying by 100. Record this information in the last box. The scale is weighing within 2 percent error if the result is between -2.0% and +2.0%.
6. Repeat steps 1 to 5 for the maximum capacity of the scale.
7. Record Beaufort Scale sea conditions at time of test.
8. Have form signed by vessel operator.

Additional Information

- ✓ A daily scale test must be conducted once every 24 hours when the scale is being used to weigh catch at-sea.
- ✓ If the scale fails the daily test, it may be re-tested at any time. However, it may not be used to weigh crab until it passes the daily test.
- ✓ This form must be maintained on board the vessel until the end of the fishing year in which it was completed. It must be retained by the vessel owner for three years, and must be made available to NMFS personnel, observers or authorized officers when requested.
- ✓ Questions or comments concerning this form or the daily test can be directed to:

Alan Kinsolving
Scales Program Coordinator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99801
Phone: (907)-586-7237
Fax: (907)-586-7465
Email alan.kinsolving@noaa.gov

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Federal Register

Tuesday,
April 27, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010–4114–02; I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. This rule implements the following measures: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England (SNE) scallop dredge vessels; modifications to Vessel Monitoring System (VMS) requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank (GB); a Special Access Program (SAP) to allow increased targeting of GB yellowtail flounder; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: Effective May 1, 2004, except for § 648.80(c)(2)(v)(A)(*3*) and (B)(*3*), which are effective August 1, 2004.

ADDRESSES: Copies of Amendment 13, its Regulatory Impact Review (RIR), and the Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule. The FSEIS/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*. Copies of the Record of Decision (ROD) and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Street, Gloucester, MA 01930–2298.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Patricia A. Kurkul at the above address and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281–9347, fax: (978) 281–9135; e-mail: *thomas.warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements measures contained in Amendment 13 to the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 18, 2004. A proposed rule for this action was published on January 29, 2004 (69 FR 4362), with public comments accepted through February 27, 2004. The details of the development of Amendment 13 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested public comment on all proposed measures, but specifically asked for comment on several proposed measures for which NMFS had concern. After reviewing further Amendment 13, its supporting analysis and public comments received on the amendment and the proposed rule, NMFS, on behalf of the Secretary, has disapproved seven measures contained in Amendment 13, as submitted, based on its determination that they are inconsistent with one or more of the national standards of the Magnuson-Stevens Act or other applicable law. The disapproved measures are: The abbreviated process to implement SAPs; the Closed Area (CA) II Haddock SAP; the CA I Hook Gear SAP; the prohibition on surfclam and ocean quahog dredge gear in portions of the Nantucket Lightship Closed Area (NLCA); the exemption to allow shrimp trawl gear in the Western Gulf of Maine (WGOM) Closed Area; the GB Hook Gear Cod Trip Limit Program; and removal of the Flexible Area Action System. Further explanation of the reasons for disapproval of those measures is contained in this rule.

Disapproved Measures

Abbreviated Process To Implement SAPs

An abbreviated process to implement future SAPs was proposed in Amendment 13, whereby the Administrator, Northeast Region, NMFS, (RegionalAdministrator) would be given the authority, upon submission and review of a proposed SAP by a member of the public, to implement the SAP, provided certain conditions are met. However, the proposed abbreviated process to implement SAPs applies only to proposed SAPs that fall within the range of impacts analyzed in Amendment 13 or ''other'' management actions; therefore, it is unlikely that additional proposed SAPs will meet this criterion. Furthermore, the proposed time frame for Regional Administrator approval of additional SAPs under the abbreviated process is inadequate. It is un-likely that the proposed SAP approval process would achieve the goal of expedited approval of SAPs due to the complexity of pertinent issues and analytical burdens associated with SAP development. Because this requirement would create an administrative burden, with little resulting benefit, it is not consistent with the efficiency requirements of E.O. 12866 and

National Standard 7. Therefore, NMFS has disapproved the proposed abbreviated SAP approval process in Amendment 13. As a result, the proposed procedures are not included in this final rule and proposed SAPs must be implemented through the existing FMP framework adjustment process.

SAPs

Four SAPs were proposed in Amendment 13; however, for two of these SAPs, the CA II Haddock SAP and the CA I Hook Gear Haddock SAP, there is insufficient analysis to determine the impacts of these programs. In addition, for the CA II Haddock SAP, the Amendment 13 analysis indicates a relatively high and consistent rate of cod bycatch in the area adjacent to CA II. Although vessels in the proposed CA II haddock access program would have been required to use a haddock separator trawl (in order to reduce bycatch of cod), this SAP could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons, the proposed SAP is inconsistent with National Standard 1 and National Standard 2.

With regard to the CA I Hook Gear Haddock SAP, there is an experimental fishery currently occurring to determine the impacts of a directed hook-gear fishery for haddock in CA I. However, that experiment has not yet been completed and Amendment 13 does not include information on whether a directed fishery on haddock in CA I would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved. Should additional information be forthcoming that would justify the creation of these SAPs, such as the results from the current hook gear experimental fishery in CA I, these programs could be reconsidered for approval in a future action.

Prohibition on Surfclam and Ocean Quahog Dredge Gear in Groundfish Closed Areas

This final rule implements seven habitat areas that are closed to all bottom-tending mobile gear (a level 3 habitat closure), including surfclam/ocean quahog dredge gear. Several of these EFH Closure Areas are within portions of the currently closed groundfish areas, *e.g.*, the Nantucket Lightship Habitat Closure Area lies within a large portion of the groundfish NLCA and extends northward of this area; the Cashes Ledge Habitat Closure Area lies within the eastern portion of the Cashes Ledge Closure Area; and the WGOM Habitat Closure Area almost fully encompasses the WGOM Closure Area. In addition to excluding surfclam/ocean quahog dredge gear from the EFH Closure Areas, Amendment 13 also proposed to exclude this gear from those portions of the NLCA, the Cashes Ledge Closure Area, and the WGOM Closure Area that lie outside of the EFH Closure Areas, to further protect EFH for groundfish. Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closed areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, and there is no evidence that the exclusion of this gear is necessary to protect groundfish EFH, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

Exemption To Allow Shrimp Trawl Gear in the WGOM Closure Area

Amendment 13 proposed to exempt shrimp trawl gear from the WGOM Habitat Closure Area's prohibition on bottom-tending mobile gear. This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

GB Hook Gear Cod Trip Limit Program

The GB Hook Gear Cod Trip Limit Program, a voluntary trip limit program, was proposed in Amendment 13 for vessels fishing with hook gear on GB. This program proposed that participants make an annual declaration into this program and fish under the following seasonal trip limits and restrictions for GB cod: (1) July 1–September 15; 2,000 lb (907 kg)/DAS and no landings Friday and Saturday; (2) September 16–December 31; 600 lb (272 kg)/DAS; (3) January–March; 2,000 lb (970 kg)/DAS; and (4) April–June; no jig or demersal longline groundfish fishing on GB. In the absence of this program, Amendment 13 implements one uniform possession limit for GB cod: 1,000 lb (453 kg)/DAS; 10,000 lb (4533 kg)/trip.

The program is being disapproved principally because the potential benefits of the program are unknown. The FSEIS does not include a rationale or justification for this program, and the program is not included in the analysis of the impacts on bycatch. Furthermore, the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), the industry organization that created this program, submitted a comment requesting disapproval. The CCCHFA stated that the program would add uncertainty to the FMP because the impacts of the program are not adequately quantified, that the program is incomplete and was not meant to be implemented without a hard TAC, and that the program will be difficult to enforce. Because there is no justification provided for the GB Hook Gear Cod Trip Limit Program, this program does not comply with applicable law and NMFS is disapproving this measure.

Removal of Flexible Area Action System

Amendment 13 proposes removal of the Flexible Area Action System (FAAS) in order to streamline the regulations. The FAAS process was originally implemented in amendment 5 (40 FR 9872, March 1, 1994) and was intended to enable the Regional Administrator and the Council to take timely action in order to alleviate discard concerns. The FAAS is not perceived by the Council to be useful because past Council attempts to use the process have not been successful due to the length of time taken to implement actions. However, one commenter requested that NMFS disapprove the proposed removal of the FAAS from the regulations because it provides the Council and NMFS with the ability to respond to seasonal and area bycatch problems in the groundfish fishery in a quicker fashion than through normal rulemaking procedures. The commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected. NMFS agrees with the commenter that the FAAS should be retained because of its potential to address discard or bycatch issues in less time than would be required by a framework adjustment. In

light of the fact that Amendment 13 implements several novel management systems, including the use of B DAS, it is possible that unforeseen discarding or bycatch problems may occur. Therefore, NMFS is disapproving the removal of the FAAS because retention of the FAAS in the FMP increases the likelihood that the Council and the Regional Administrator can respond to discard and bycatch problems in a timely manner, and reinforces the ability of the FMP to comply with National Standard 1 and National Standard 9.

Approved Measures

NMFS has approved the remainder of the measures proposed in Amendment 13. In order to provide the public with the clearest information possible on the numerous changes to the groundfish regulations that result from the implementation of Amendment 13, NMFS is publishing in this final rule the entirety of the regulations in 50 CFR part 648, subpart F, that pertain to the groundfish fishery (both the existing and new regulations). A description of the new management measures resulting from Amendment 13 follows.

1. Recreational Measures

The bag limit (possession limit) for cod aboard a private recreational vessel (*i.e.*, not a charter/party vessel) fishing while in the Exclusive Economic Zone (EEZ), or caught in the EEZ, is changed to 10 cod per person per day, with no possession limit for haddock, year-round.

The possession limit for cod aboard a charter/party vessel fishing in the Gulf of Maine (GOM) is changed to 10 cod per person per day, year-round.

For charter/party vessels issued a Federal multispecies permit, and for private recreational vessels, any trip in excess of 15 hours and covering 2 calendar days will be considered a 2-day trip for purposes of calculating allowable bag limits. Allowable bag limits for recreational vessels conducting trips longer than 2 consecutive calendar days will be determined by adding 24 hours for each additional day to the 15-hour minimum, 2-day trip requirement.

The minimum size for cod allowed to be possessed by persons fishing aboard private recreational and charter/party vessels subject to these regulations is reduced from 23 inches (58.4 cm) total length (TL) to 22 inches (55.9 cm) TL. The minimum size for haddock is reduced from 22 inches (55.9 cm) to 19 inches (48.2 cm) TL.

2. Handgear Permit

A new limited access permit category, called Handgear A, is created for qualified vessels fishing with handgear (rod and reel, handline, or tub-trawl gear). To qualify for a Handgear A permit, a vessel must have been previously issued a NE multispecies open access Handgear permit, and must have landed at least a total of 500 lb (227 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit category, in at least one of the fishing years from 1997 through 2002 (fishing years are May 1 through April 30).

Vessels fishing under the limited access Handgear A permit are allowed to land up to 300 lb (136 kg) of cod, one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Handgear A permits are transferrable between vessels, with the transfers not subject to vessel size and horsepower upgrade restrictions. In addition to handline and rod-and-reel gear, open access Handgear and limited access Handgear A permit holders are allowed to fish hand-hauled tub-trawl gear, with a maximum of 250 hooks.

Vessels fishing in the open access Handgear permit category may possess up to 75 lb (34.0 kg) of cod and one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. The cod trip limit for both the limited access Handgear A permit and the open access Handgear permit will be adjusted proportional (rounded up to the nearest 50 lb (22.7 kg) and 25 lb (11.4 kg), respectively) to changes in the GOM cod trip limits for groundfish DAS vessels in the future, as necessary.

3. Northern Shrimp Exempted Fishery

The geographic restriction of the northern shrimp fishery is eliminated; all other restrictions for participation in the northern shrimp fishery remain in effect.

4. Tuna Purse Seine Access to Groundfish Closed Areas

Tuna purse seine vessels may fish in all groundfish closed areas, including CA I, CA II, and the NLCA, subject to existing restrictions for using exempted gear in those areas. Fishing under this exemption is not allowed in the CA II Habitat Area of Particular Concern (HAPC).

5. SNE Scallop Dredge Exemption Program

Unless otherwise prohibited in § 648.81, or unless prohibited under the scallop regulations, vessels with a limited access scallop permit that have declared out of the scallop DAS program as specified in § 648.10, or that have used up their scallop DAS allocations, unless otherwise restricted, and vessels issued a General Category scallop permit, are allowed to fish in statistical areas 537, 538, 539, and 613, defined as the SNE Scallop Dredge Exemption Area, when not fishing under a groundfish DAS, with certain restrictions. A vessel meeting the above requirements and fishing in the SNE Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish (as defined in the Magnuson-Stevens Act) other than Atlantic sea scallops.

6. Modified VMS Operational Requirements

A vessel using a VMS may opt out of the VMS program for a minimum period of 1 calendar month by notifying the Regional Administrator.

7. Standards for Certification of Exempted Fisheries

The following changes apply to the standards for certification of exempted fisheries:

The incidental catch standard (5 percent of the total catch, by weight) may be modified by the Council or Regional Administrator, for those groundfish stocks that are not in an overfished condition, or if overfishing is not occurring, provided that the modification would not cause a delay in a rebuilding program, would not result in overfishing of a stock, and would not result in a stock becoming overfished. Additional factors may also be considered. The incidental catch standard may be modified either through a Council action (framework adjustment) that would change the standard for all exempted fisheries, or on a case-by-case basis for specific exempted fisheries.

On a case-by-case basis, through approval by the Regional Administrator, with notification to the public through rulemaking consistent with the Administrative Procedure Act (APA), or through Council development of a framework action for NMFS's consideration, an exempted fishery in the GOM, GB, or SNE exemption areas, and a small mesh fishery in that portion of the Mid-Atlantic (MA) Regulated Mesh Area (RMA) outside of the SNE exemption area, may be authorized to possess and land certain regulated groundfish. Possession by an exempted fishery of fish from a groundfish stock under a rebuilding program may be allowed, but only if it can be determined that the catch of that stock

by the exempted fishery would not likely result in exceeding the rebuilding fishing mortality rate for that stock.

8. Periodic Adjustments to the FMP

The process to make adjustments to the FMP (§ 648.90) is changed from an annual to a biennial process. Although implementation of this change decreases the frequency of the requirement that the Plan Development Team (PDT) must perform a review of each of the regulated multispecies, Atlantic halibut, and ocean pout, and submit management recommendations to the Council, the Council may still initiate a Framework Adjustment to address management concerns at any time. The first PDT review will be in 2005, to determine necessary changes for the 2006 fishing year. For the 2005 review, an updated groundfish assessment, peer reviewed by independent scientists, will be conducted. In addition to the biennial review discussed above, the PDT will meet to conduct a review of the groundfish fishery by September 2008 to determine the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in Amendment 13 will be examined during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the Amendment 13 biomass targets are still considered valid, given the response of the stocks to the management measures in Amendment 13 that were expected to result in certain stock levels by 2008.

The Multispecies Monitoring Committee is folded into the PDT, and will cease to exist as a separate committee.

9. Rebuilding Program

Programs to rebuild all overfished groundfish stocks, primarily through effort-reduction measures that are phased in over a period of several years, are established through Amendment 13. Because several stocks are currently not overfished, others are being overfished (*i.e.*, the fishing mortality rates on these stocks are too high), and some are in need of rebuilding to the levels that can produce maximum sustainable yield (MSY) on a continuing basis, a mixture of management measures is adopted to achieve all of the objectives. The measures to accomplish this are summarized as follows:

DAS Allocations. DAS, which form the effort currency in the groundfish fishery, are reallocated, beginning in fishing year 2004. The allocation of DAS is based on historic participation in the groundfish DAS fishery. The number of DAS allocated to the fishery as a whole is based on the number that was determined to be appropriate and necessary to rebuild overfished stocks and end overfishing. The Amendment 13 DAS allocation is based on an expected DAS use rate, and takes into account additional DAS use that may result from implementation of a DAS Leasing Program. The DAS Leasing Program is described in more detail later in this preamble.

The allocation of a vessel's DAS is calculated from that vessel's DAS baseline, defined as the maximum DAS used by that vessel in any single fishing year from qualifying fishing years 1996 through 2001 (May 1, 1996, through April 30, 2002). Qualifying years are only those in which the vessel landed a total of 5,000 lb (2,268 kg) or more of regulated groundfish species. Landings must be documented through dealer reports submitted to NMFS prior to April 30, 2003. For fishing years 2004 and 2005, 60 percent of a vessel's DAS baseline are defined as its ''Category A'' DAS, and 40 percent of a vessel's DAS baseline are defined as its ''Category B'' DAS. Category B DAS are further categorized as ''regular B'' DAS and ''reserve B'' DAS, each representing 20 percent of the vessel's DAS baseline. The difference between a vessel's fishing year 2001 DAS allocation and its DAS baseline (the sum of Category A and Category B DAS) is the vessel's ''Category C'' DAS. Upon implementation of Amendment 13, either regular or reserve B DAS may be used in an approved SAP, but neither may be used outside of an approved SAP. The procedures and restrictions applying to the use of regular B DAS when fishing outside of a SAP are currently being developed by the Council in Framework Adjustment 40. Category C DAS may not be used at this time.

Because groundfish DAS vessels are allocated DAS based on their historical fishing records, the Fleet DAS permit category and the Large Mesh Fleet DAS permit category are eliminated, since these categories represented a fleet average of DAS. Vessels that fished in either the Fleet DAS or Large Mesh Fleet DAS permit categories will automatically be reissued permits in the Individual DAS and Large Mesh Individual DAS permit categories, respectively. Vessels affected by this change will have an opportunity to reapply for a different permit category.

DAS Use. Beginning May 1, 2004, Category A DAS may be used to target any regulated groundfish stock. Category B DAS (*i.e.*, regular or reserve B DAS) may be utilized to fish in approved SAPs, subject to the requirements of the SAPs.

A vessel is required to declare its intent to use a Category B DAS at the start of a fishing trip, and must specify which type of (regular or reserve) B DAS will be used on that trip. Even though regular B DAS may initially be used only while fishing within a SAP, NMFS must track the usage of both types of B DAS by each vessel. This will enable NMFS and the vessels to know how many of each type of B DAS each vessel has remaining for the fishing year, should Framework Adjustment 40 implement methods for use of regular B DAS during the fishing year.

Vessel owners should be aware that, if Framework Adjustment 40 develops a program for use of regular B DAS outside of SAPs that includes a ''flipping'' provision, and that program is implemented in the middle of a fishing year, a vessel would need to have Category A DAS available in order to fish the regular B DAS outside of a SAP during the remainder of that fishing year.

As groundfish stocks rebuild, there may be opportunities to increase the number of available Category A DAS. In that circumstance, all Category B DAS (regular and reserve) would be converted to Category A DAS before any Category C DAS would be converted to Category A DAS. If necessary to achieve rebuilding targets, Category A DAS could be changed to Category B DAS by the Council. Any DAS carried over from the 2003 fishing year into the 2004 fishing year will be classified as regular B DAS. For any DAS carried over from the 2004 fishing year into the 2005 fishing year, and for all subsequent fishing years, the carried-over DAS will be determined as follows: If a vessel has Category A DAS remaining, these will be carried over first; if the vessel has fewer than 10 A DAS remaining, then the vessel's regular B DAS will be carried over, up to a total of 10 DAS; if the vessel has fewer than 10 A DAS and regular B DAS, combined, remaining, then the vessel's reserve B DAS will be carried over, up to a total of 10 DAS, combined. For example, if a vessel ended a fishing year with 3 A DAS, 6 regular B DAS, and 10 reserve B DAS, that vessel's carry-over DAS would be 10 DAS, comprised of the following: 3 A DAS, 6 regular B DAS, and 1 reserve B DAS. Category C DAS cannot be

carried over and cannot be fished at this time.

Default Measures. Amendment 13 establishes fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates are immediately reduced to a level that ends overfishing. For several other stocks, reductions in fishing mortality rates will be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures will automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which will allow a vessel to fish up to 55 percent of its DAS baseline allocation as A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE/MA RMA, where DAS will be counted at a rate of 1.5 to 1. On May 1, 2009, there will be an additional DAS reduction of 10 percent, which will allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment will be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures will not occur if the Regional Administrator determines: (1) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or (2) that biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy). If one of the two conditions is met and all other stocks meet the fishing mortality rates specified in Amendment 13, the Regional Administrator will publish that determination in the **Federal Register**, consistent with the requirements of the APA. The criteria for avoiding default measures have been modified from the proposed rule to better reflect the intent of Amendment 13, based on comments received from the Council.

Trip Limits. The following modifications to the cod and yellowtail flounder trip limits are implemented:

GOM cod: The possession limit is increased to 800 lb (363 kg)/DAS, with a limit of 4,000 lb (1,814 kg)/trip.

GB cod: The possession limit is reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel has declared into the Eastern U.S./Canada Area.

CC/GOM yellowtail flounder, when fishing in the CC/GOM Yellowtail Flounder Area:

April 1 through May 31, and October 1 through November 30: 250 lb (113 kg)/trip; and

June 1 through September 30, and December 1–March 31: 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

SNE/MA yellowtail flounder, when fishing in the SNE/MA yellowtail flounder area (the SNE/MA stock area):

March 1 through June 30: 250 lb (113 kg)/trip; and

July 1 through February 28 (or 29): 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

Modifications to Gear Restrictions. Gear restrictions are modified as follows:

For Day gillnet vessels fishing in the GOM RMA: The minimum mesh size for flatfish nets is reduced from 7-inch (17.8-cm) mesh to 6.5-inch (16.5-cm) mesh.

For Trip gillnet vessels fishing in the GB RMA: The number of gillnets that may be used is increased from 50 to 150.

For Day gillnet vessels fishing in the MA RMA: The number of roundfish gillnets that can be used is reduced from 80 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch mesh (16.5-cm) (square or diamond); and

The number of flatfish gillnets that can be used is reduced from 160 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch (16.5-cm) mesh (square or diamond).

A summary of the revised gear requirements appears in Table 1.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
Minimum Mesh Size Restrictions for Gillnet Gear				
NE Multispecies Day Gillnet Category*	Roundfish nets: 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net Flatfish nets: 6.5″ (16.5 cm) mesh; 100-net allowance; 1 tag/net	All nets: 6.5″ (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net. Flatfish nets: 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category*	All nets 6.5″ (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5″ (16.5 cm) mesh; 150-net allowance; 2 tags/net	All nets 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 6.5″ (16.5 cm) mesh; 75-net allowance; 2 tags/net.
Monkfish Vessels**	10″ (25.4 cm) mesh/150-net allowance.			

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS—Continued

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
	1 tag/net.			
Minimum Mesh Size Restrictions for Trawl Gear				
Codend only mesh size*	6.5″ (16.5 cm) diamond or square		7.0″ (17.8 cm) diamond or 6.5″ (16.5 cm) square	6.5″ (16.5 cm) diamond or square.
Large Mesh Category—entire net	8.5″ (21.59 cm) diamond or square			7.5″ (19.0 cm) diamond or 8.0″ (20.3 cm) square.
Maximum Number of Hooks and Size Restrictions for Hook Gear* **				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6″ (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

* When fishing under a NE multispecies DAS
** Monkfish Category C and D vessels, when fishing under a monkfish DAS
*** When fishing under a NE multispecies DAS or when fishing under the Small Vessel permit

10. DAS Transfer Program

Limited access NE multispecies permit holders may transfer DAS permanently to other limited access permit holders, subject to the following restrictions and conditions:

The length overall (LOA) and gross tonnage baseline of the buyer/transferee vessel may not be more than 10 percent greater, and its horsepower may not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel must retire from all state and Federal commercial fisheries and relinquish permanently all Federal and state fishing permits. Category A and B DAS that are transferred are reduced by 40 percent; Category C DAS that are transferred are reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) may be transferred, but vessels fishing under a sector allocation are prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

11. DAS Leasing Program

This final rule implements a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term ''lease'' refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year.

Eligibility. All vessels with a valid limited access groundfish DAS permit are eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing are termed lessees; eligible vessels leasing-out DAS are termed lessors. DAS associated with a CPH may not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, are not allowed to lease DAS, and vessels participating in an approved sector under the Sector Allocation Program are not allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

Application Procedures. An eligible vessel wanting to lease groundfish DAS must submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Vessels with a VMS will likely be able to receive notification of an approved lease agreement sooner than 45 days. Upon approval of the application by NMFS, the lessor and lessee will be sent written confirmation of the approved application. Leased DAS will be effective only during the fishing year for which they are leased. A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions are complied with.

An application to lease DAS for a given fishing year may be submitted at any time prior to the fishing year in question, or anytime throughout the fishing year in question, up until March 1. Should an application be denied, the Regional Administrator will send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator is the final agency decision. There is no appeal process.

Conditions and restrictions. No subleasing of groundfish DAS is allowed. This means that, once a lease application is approved by NMFS, the leased DAS may not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (*e.g.*, a vessel sinking). Vessels are not allowed to lease carry-over DAS. Only Category A DAS may be leased, and all leased DAS must be Category A DAS.

Vessels are allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that can be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee may fish that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a person wants to lease DAS for a vessel with a limited access groundfish permit, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it may lease is 88. If the same vessel has 53 Category A DAS allocated to it in fishing year 2004, that vessel may hold and fish up to 141 Category A DAS for 2004 (the 53 A DAS allocated for fishing year 2004 plus the 88 DAS allocated to that vessel in fishing year 2001).

A lessor may not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also may not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA.

History of DAS Use and Landings. Because, in the future, DAS use and

landing history may be used to determine fishing rights, history of leased DAS use will be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS will be presumed to be attributed to the lessee vessel. However, the history of used leased DAS will be presumed to remain with the lessor only if the lessee actually fishes the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS will be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel has an allocation of 50 DAS, leased an additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel will be presumed to have used its 20 leased DAS first. This same vessel will be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings will be presumed to be attributed to the vessel that actually landed the fish (lessee).

In the case of multiple lessors, the leased DAS actually used will be attributed to the lessors based on the order in which such leases are approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 30 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 30 DAS used by lessee Vessel A during that fishing year would be attributed to lessor Vessel B, the next 20 DAS would be attributed to lessor Vessel C, and the next 50 DAS would be attributed to lessee Vessel A, for purposes of DAS-use history.

Monkfish Category C and D vessels. It is possible that a vessel with both a limited access groundfish permit and a limited access monkfish permit (monkfish Category C or D vessels), because of the groundfish DAS reductions under Amendment 13, could have more allocated monkfish DAS than groundfish A DAS. Such vessels are allowed to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Monkfish Category C and D vessels that have remaining monkfish-only DAS, and that have submitted a groundfish DAS Leasing Application that has been approved by NMFS, will be required to fish their available ''monkfish-only'' DAS in conjunction with their leased groundfish A DAS, to the extent that the vessel has groundfish A DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

If a monkfish Category C or D vessel leases groundfish A DAS to another vessel, the vessel is required to forfeit a monkfish DAS for each groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS—37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease.

12. U.S./Canada Resource Sharing Understanding

This rule implements the U.S./Canada Resource Sharing Understanding (Understanding) approved in Amendment 13. Certain changes from the proposed rule have been made in this final rule to be consistent with Amendment 13. Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder is subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

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 harvest levels and recommended management measures for the U.S./Canada Management Areas will be determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Steering Committee. The U.S. TACs in fishing year 2004 will be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. These TACs were recommended by the TMGC and adopted by the Council at its January 2004 meeting. Once any one of these TACs is reached, all vessels will be prohibited from harvesting, possessing, or landing the species for which the TAC has been reached. In addition, the Eastern U.S./Canada Area will be closed to all fishing by groundfish DAS vessels, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area will not be closed, but will have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

Amendment 13 is intended to constrain catches of the three shared stocks by U.S. vessels to ensure that they will not exceed the U.S. allocations. The management measures to implement the Understanding are as follows: All NE multispecies DAS vessels fishing on a groundfish DAS in the U.S./Canada Management Areas are required to utilize a fully functional VMS. Vessels are required to declare, through their VMS, prior to departure on a trip, the portion of the U.S./Canada Management Area they intend to fish in. For the purposes of selecting vessels for observer deployment, a vessel fishing in the U.S./Canada Management Area must provide notice to NMFS at least 5 working days prior to the beginning of any trip on which it declares into the U.S./Canada Management Area. This notification will ensure that the desired level of observer coverage can be achieved. Once declared into a specific area, a vessel may not fish outside of that area for the remainder of that fishing trip. Vessels making a trip in the U.S./Canada Management Area are required to report their GB cod, GB haddock, and GB yellowtail flounder catches (including discards) through their VMS on a daily basis. Because these are ''hard'' TACs, and any overages in a given year must be paid back in a lower TAC for that stock in the next fishing year, it is essential that catches be reported in a timely manner. Groundfish vessels not under DAS are not subject to the VMS requirement. To ensure enforceability of the Understanding, all groundfish vessels fishing with a VMS will be polled at least twice per hour when fishing in one of the U.S./Canada Management Areas.

As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS will not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in the Eastern U.S./Canada Area, but not the Western U.S./Canada Area as specified in the proposed rule, are also required to fish with, and have on board only, either a flatfish net and/or

a haddock separator trawl, which are defined in this final rule. After further review of Amendment 13 and the comments submitted by the Council, the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal. The definitions of the separator trawl and flatfish nets have been revised based on public comment.

This rule implements a cod trip limit within the Eastern U.S./Canada Area of 500 lb (227 kg)/DAS, up to 5,000 lb (2,270 kg)/trip, not to exceed 5 percent of the total catch, whichever is less, for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits will be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits will go into place: Haddock: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. When 100 percent of a shared stock TAC is projected to be caught, the Eastern U.S./Canada Area will be closed to all groundfish DAS vessels, unless a SAP allows some fishing in the area on a specific stock and under conditions specified for that SAP. The Western U.S./Canada Area will not be closed, but may have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

The U.S./Canada Management Area measures will remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, may adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments by the Regional Administrator may be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In addition, the Regional Administrator, in consultation with the Council, can withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time will remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

Other existing fisheries prosecuted in the U.S./Canada Management Areas are unaffected by the Understanding measures, except that landings of GB cod, GB haddock, and GB yellowtail flounder caught in the U.S./Canada Management Areas will be counted against the Understanding TACs, regardless of gear type used.

13. SAPs

A SAP represents a narrowly defined fishery that is prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH. Amendment 13 implements two SAPs that allow fishing for regulated groundfish without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies.

CA II Yellowtail Flounder SAP. This SAP is intended to allow harvesting of GB yellowtail flounder. Vessels may fish in the CA II Yellowtail Flounder SAP, using B DAS, under the following conditions and restrictions. From June 1 through December 31, vessels may make up to two trips per month into the CA II Yellowtail Flounder Access Area to target yellowtail flounder. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP are subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS will be counted starting when the vessel crosses the boundary into the Eastern U.S./Canada Area and will end when the vessel crosses the boundary when leaving the Eastern U.S./Canada Area. In addition, vessels are limited to 30,000 lb (13,608 kg) of yellowtail flounder per trip; the cod trip limit will be one fifth of the cod landing limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg) per DAS), not to exceed 5 percent of the total catch on board; and the total number of trips into the SAP in a fishing year will be limited to 320. The Regional Administrator has broad authority to modify possession restrictions and trip limits under this SAP.

SNE/MA Winter Flounder SAP. This SAP is intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this SAP, a vessel fishing for summer flounder west of 72°30′ W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS; may possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessel must possess a valid Federal summer flounder permit; (2) the weight of winter flounder may not exceed the weight of summer flounder on board; (3) while in the program, the vessel may not fish on a groundfish DAS; (4) all fishing must take place west of 72°30′ W. long.; and (5) possession and/or landing of other regulated groundfish species is prohibited.

14. EFH Measures

These measures are intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 designates portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Following are the EFH Closure Areas implemented by this final rule: The WGOM Habitat Closure Area; the Cashes Ledge Habitat Closure Area; the Jeffrey's Bank Habitat Closure Area; the CA I North Habitat Closure Area; the CA I South Habitat Closure Area; the CA II Habitat Closure Area; and the Nantucket Lightship Habitat Closure Area. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, are also relied upon to meet the EFH provisions of the Magnuson-Stevens Act.

15. Reporting Requirements

Dealer Reporting. Dealers are required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers will be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Electronic dealer reporting requirements for all dealers are anticipated to be implemented by May 1, 2004, through a separate rulemaking.

Vessel Reporting. Once a viable electronic system becomes available for reporting by vessels, that system will replace the current VTR system. Vessels

will be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports will be required to be submitted at least at the current statistical area level of reporting. Vessels will have the option of using any approved, viable electronic means possible to report this information. The trip identifier will be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting will be accomplished through a separate, future rulemaking.

16. Sector Allocation

Under Amendment 13, a sector of the groundfish fishery may develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector can participate in. This provides flexibility to the industry and encourages stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under this process, a self-selected group of groundfish permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector may be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desire. A primary motivation for the formation of a sector is the assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceed their target TACs). The final rule is revised, based on public comment, to provide the Regional Administrator the authority to exempt members of a sector from regulations that apply to the fishery at-large, if they are in conflict with a sector's approved operations plan.

Formation of a Sector. Participation in a self-selecting sector is voluntary. Vessels that do not choose to join a sector remain in the common pool of vessels and fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) must submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to compliance with general requirements described below and any analytical documents necessary to comply with the National Environmental Policy Act (NEPA). If the Council and NMFS publish and ultimately approve the framework action, the sector is required to submit a legally binding plan of operations (operations plan) for the sector, in accordance with the provisions specified in § 648.87(b)(2), to the Council and to the Regional Administrator. Once the operations plan is deemed complete, NMFS will solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator will approve or disapprove the operations plan through publication of a final determination consistent with the APA.

Movement Between Sectors

Each sector may set its own rules with regard to movement between sectors, which must be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel is required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside the sector allocation in a given fishing year may not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules are not eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

General Requirements for All Sector Allocation Proposals. Allocation of fishery resources to a sector is based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 must be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector may be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations will be terminated for the remainder of the fishing year. If, in a particular fishing year the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year will not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP.

GB Cod Hook Gear Sector. Amendment 13 authorizes a sector allocation for the GB Cod Hook Gear Sector. Therefore, the GB Cod Hook Gear Sector will be allocated a maximum of 20 percent of the GB cod TAC for each fishing year for which an operations plan is approved. Participating vessels will be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, will be determined by calculating the percentage of all landings of GB cod made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation will be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 will be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 will be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 will then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this will result in the percentage of the GB cod TAC for the next fishing year that will be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure will be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector will be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the fishing year. Participating vessels may only harvest groundfish in the GB Cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). Leasing of DAS during the fishing year may occur among sector participants only. The applicant is required to submit its operations plan to the Council and NMFS for approval and public

notification prior to its implementation. Because of this process, the GB Hook Sector cannot be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, will not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants may join the sector at the beginning of a new fishing year, but once in the sector, a vessel must stay in the sector for the entire duration of the sector specified in the operations plan.

17. Closed Area Rationale

When any new closed areas are adopted, the Council must define the intent and specific purpose for the closure and explicitly describe the duration of the closure, who can fish in the closed area, and who cannot fish in the closed area.

18. Frameworkable Items

The following management measures may be adjusted through a framework action, in addition to those measures previously identified as framework measures in the FMP:

Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass;

DAS allocations (such as the category of DAS under the DAS reserve program), DAS baselines, etc.;

Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

Calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures;

Sector allocation requirements and specifications, including establishment of a new sector;

Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

Changes to administrative measures;

Additional uses for regular B DAS;

Future uses for C DAS;

Reporting requirements;

The GOM Inshore Conservation and Management Stewardship Plan;

GB cod gillnet sector allocation;

Allowable percent of TAC available to a sector through a sector allocation;

Categorization of DAS;

DAS leasing provisions;

Adjustments for steaming time;

Adjustments to the Handgear Only permits;

Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH;

SAP modifications; and

Anything else analyzed with respect to Amendment 13.

19. MSY Control Rules

An MSY control rule is intended to provide management advice to the Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, is: The F calculated to rebuild the stock to Bmsy in 10 years, when ½ Bmsy<B<Btarget. For Atlantic halibut, the MSY control rule is: F = 0 until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 contains a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible. Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut.

20. Overfishing Definitions

Amendment 13 clarifies and revises the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock is considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing is considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds is increased to at least half of the target biomass levels.

21. Target TACs

The management measures implementing Amendment 13 are intended to achieve the target TACs shown in Table 2 for calendar years 2004, 2005, and 2006. The 2006 target TACs will remain in place through the remainder of the rebuilding program, unless otherwise modified through a future Council action.

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS

Species	Stock	2004	2005	2006
Cod	GB	3,949	4,830	6,361
	GOM	4,850	6,372	7,470
Haddock	GB	24,855	27,692	31,866
	GOM	4,831	4,735	4,642
Yellowtail flounder	GB	11,713	11,341	11,599
	SNE/MA	707	1,982	3,325
	CC/GOM	881	1,233	1,034
American plaice		3,695	3,625	3,015
Witch flounder		5,174	6,992	7,667
Winter flounder	GB	3,000	3,000	3,000
	GOM	3,286	2,634	2,205
	SNE/MA	2,860	3,550	4,445
Redfish		1,632	1,725	1,803
White hake		3,839	3,822	3,805
Pollock		10,584	10,584	10,584
Windowpane flounder	North	534	534	534
	South	285	273	262
Ocean pout		77	77	77

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS—Continued

Species	Stock	2004	2005	2006
Atlantic halibut		NA	NA	NA

22. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 reduces the minimum enrollment requirement for five of the six existing fishery exemption/authorization programs from 30 days to 7 days, and establishes a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/authorization programs previously contained a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00′ N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00′ N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs is revised by Amendment 13 and also has a 7-day minimum enrollment requirement.

23. Policy on Cooperative Research

Because allocation of DAS is based on a vessel's historical DAS use, Amendment 13 establishes a policy that a vessel would not lose allocated DAS due to its participation in a research project or experimental fishery, if that participation can be adequately documented. If a permit holder believes that allocation of DAS under Amendment 13 has been limited by the vessel's participation in a research project or experimental fishery, the permit holder may provide to the Regional Administrator documentation to substantiate the time the vessel spent participating in a research project(s) that was not considered in the Amendment 13 DAS allocation. The Regional Administrator will consider such requests on a case-by-case basis, review the information submitted, and consider adjusting that vessel's A DAS allocation accordingly.

Comments and Responses

A total of 4,941 comments on the proposed rule and the Amendment were received by the close of business on February 27, 2004, the majority of which were two form letters drafted principally by environmental organizations, with minor modifications and signatures added by the individual commenters. A total of 162 other comments were received from individuals and organizations. This section of the final rule lists the principal comments that pertained to Amendment 13 and the proposed rule and the responses of the NMFS. An additional 1,242 comments, submitted by the Ocean Conservancy on behalf of its members and activists, were received by NMFS on March 16, 2004. In its cover letter, the Ocean Conservancy explained that these additional letters were faxed to the Agency on February 27, 2004, but were not received due to an overload of incoming faxes. All of the issues raised in these additional comment letters were raised by others and are addressed below in the response to comments.

Comment 1: A total of 126 commenters from the charter/party or private recreational sectors supported the proposed private recreational and party/charter bag limits of 10 cod and unrestricted haddock, as well as the proposed minimum size limits for cod and haddock (22 and 19 inches (55.9 and 48.1 cm), respectively). Commenters believe that the new limits allow the opportunity to catch reasonable amounts of cod and haddock and that the recreational catch and impact is small in comparison to the impact of the commercial sector. Two commenters did not support the private recreational and party/charter bag limits, and believe they should be reduced instead of increased. One commenter did not support the reduction in minimum size for cod.

Response: The principal goals of the recreational measures are to: (1) Decrease the fishing mortality on GOM cod, and (2) enable recreational fishing vessels to benefit from the rebuilding of the haddock stock. The means of achieving reductions in fishing mortality on GOM cod by the charter/party sector is imposition of a cod bag limit in the GOM. The bag limit of 10 cod per person per day for party/charter vessels fishing in the GOM RMA is more restrictive than the no-action alternative, which would not have restricted cod catch at all for party/charter vessels. The Amendment 13 analysis indicates that the recreational measures will result in a decrease in both numbers and weight of cod landed, when compared to the no-action alternative. NMFS determined that the bag limit is appropriate because it will reduce fishing mortality on GOM cod, yet will still allow charter/party vessels to attract passengers and remain in business. Reduction of the minimum length requirements for cod and haddock to 22 inches and 19 inches (55.9 and 48.3 cm), respectively, results in the elimination of the discrepancy in minimum size restrictions applied to the commercial sector, the charter/party sector and the private recreational sector. A 10 cod/person/day limit for the charter/party sector in the GOM makes the cod limit in the GOM the same for both the charter/party and the private recreational sectors. The impact of implementing the GOM cod bag limit on a per-person-per-day basis could not be evaluated using available data. Because recreational data for haddock are minimal, recreational fishing mortality of haddock is not included in the total estimates of fishing mortality for haddock.

Comment 2: One commenter did not agree with the definition of multiple day trips as any trip in excess of 15 hours and covering 2 consecutive calendar days.

Response: NMFS considers the definition of a multiple-day trip to be appropriate because it reflects current industry practices, it includes relevant criteria (trip duration and calendar days fished), and it specifies reasonable values for those criteria, such that recreational landings will be kept within acceptable levels.

Comment 3: One commenter did not support the creation of the limited access Handgear A permit and two commenters supported its creation. One commenter did not support allowing limited access Handgear A permits to be transferred without size restrictions. One commenter did not support the reduction in trip limit for cod for the open access handgear category. One commenter felt that the handgear permit rules should be subject to change through a framework action.

Response: NMFS has concluded that the creation of the limited access Handgear A permit is justified. The objective of the creation of the limited access Handgear A permit category is to control participation in the handgear fishery in order to limit its potential expansion, and therefore limit the potential for an increase in fishing effort. Amendment 13 states that, although relatively few open access Handgear vessels landed cod, haddock, or pollock, and very few landed more than 500 lb (226.8 kg), there exists the potential for the total effort associated with such vessels to increase due to the large numbers of permits, the fact that the fishery has been open access, and the fact that the activity by open access permits has been increasing. Allowing limited access Handgear A permits to be transferred without size restrictions is not likely to increase fishing power significantly. Therefore this action would not undermine the objectives of the permit category, due to the relatively small number of vessels that are expected to qualify for a limited access Handgear A permit, and because such vessels are restricted to using handgear, for which effort is not highly correlated to the size of the vessel. The reduced cod trip limit for open access Handgear A vessels is justified due to the need to reduce fishing mortality on both the GOM and GB stocks of cod. Under Amendment 13, the trip limit restrictions for regulated multispecies (other than cod) that apply to vessels with an open access Handgear permit are the same as the restrictions that apply to vessels with a limited access Handgear A permit. The restrictions associated with the handgear permits can be changed by a framework action.

Comment 4: One commenter supported the elimination of the area restriction for the northern shrimp fishery, one commenter did not support elimination of the area restriction, and one commenter stated that the assessment of bycatch in the northern shrimp fishery in Amendment 13 is inadequate.

Response: The Amendment 13 analysis of the bycatch in the northern shrimp fishery is based on research conducted by the Maine Department of Marine Resources (which quantifies the bycatch of regulated species and whiting), and concludes that, although the impacts of eliminating the area restriction on this fishery cannot be estimated with certainty, they should be minimal. The required use of the Nordmore grate, which remains in effect, minimizes the catch of regulated multispecies in this fishery. Although the bycatch of whiting may be significant, the northern stock of whiting is rebuilt and the removal of the area restriction on the northern whiting fishery is not likely to impair management of that species.

Comment 5: One commenter did not support providing access for vessels fishing with tuna purse seine gear to CA I, CA II, and the NLCA, and one commenter supported such access.

Response: The objective of this measure is to provide greater flexibility to tuna purse seine vessels while still protecting groundfish. The Amendment 13 analysis concludes that, although groundfish bycatch may increase very slightly, the impacts will not be significant due to the low numbers of vessels in the fishery (five), the limited fishing season, and the method of fishing. Fishing in these areas by tuna purse seine vessels may shift the location of where bycatch in this fishery is caught, but not increase bycatch over recent levels. Several years of experimental fishing by tuna purse seiners in groundfish closed areas has supported the conclusion that such access will have minimal impacts on non-target species.

Comment 6: Four commenters felt that the proposed addition of clam dredges to the list of gears excluded from the NLCA was not justified because of the value of the surfclam and ocean quahog resource in the NLCA, and their belief that exclusion of the gear from this area would not have positive benefits for either groundfish EFH or the rebuilding of the groundfish fisheries. The commenters support full access to the NLCA based on best scientific information. One commenter felt that the exclusion of dredge gear from the area gives preference to the groundfish fishery over the surfclam and ocean quahog industry and is therefore a violation of National Standard 4.

Response: The effect of the measures in the proposed rule would have been to exclude clam dredges from all portions of the NLCA. NMFS agrees that the Amendment 13 does not analyze the prohibition of clam dredges in the NLCA outside of the Nantucket Lightship Habitat Closure Area and that there is no evidence that the proposed exclusion would provide meaningful positive benefits to groundfish, and consequently has disapproved the measure excluding clam dredges in the portion of the NLCA closed exclusively to protect groundfish. However, Amendment 13 does analyze the prohibition of clam dredges in the habitat closed areas as part of a level 3 closure (closed to all bottom-tending mobile gear). This prohibition is part of the strategy for protecting vulnerable EFH located within the habitat closed area and is not for bycatch reduction purposes. The best available science was utilized in the analysis supporting this measure. The conclusion of the Northeast Gear Effects Workshop was that hydraulic clam dredges have a high impact on physical and biological structure of benthic habitat in sandy substrates. It was determined that recovery of physical structures could range from days to months, and that recovery of biological structures could range from months to years, depending upon the background energy of the environment. These conclusions are supported by existing research, as summarized in the fishing gear effects section of Amendment 13. In terms of overall regional priorities for management of fishing impacts on EFH, it was concluded that otter trawls and scallop dredges are a higher overall priority because of their wider geographic use over a wider variety of substrate types. However, it was agreed that localized effects could be very significant if the dredged area is productive habitat for one or more managed fish resources, or if the area coincides with strong settlement of larval fish. The EFH vulnerability analysis conducted for Amendment 13 shows that 9 New England managed species, comprising 17 distinct life stages, are moderately or highly vulnerable to hydraulic clam dredges. Vulnerability was based upon the known impacts of the gear type, the potential for lost habitat function, the sensitivity of the habitat to disturbance, and the overlap of gear usage with EFH. In addition, Amendment 13 concludes that adverse and potentially adverse impacts from hydraulic clam dredges occurs primarily in the Mid-Atlantic and secondarily in southern New England, on sand substrates. The Nantucket Lightship Habitat Closed Area contains vulnerable EFH for most of these species. Prohibition of all types of bottom-tending mobile gear in this closed area is necessary to provide the most effective protection to this vulnerable EFH. Exemption of clam dredges in the habitat closed area would negate most, if not all, of the habitat benefits, rendering the closed area strategy ineffective and therefore impracticable. The environmental and socio-economic impacts of the habitat closed areas were analyzed as part of Amendment 13 and were considered in the approval decision. The exclusion of clam dredges from the Nantucket Lightship Habitat Closure Area is not a violation of National Standard 4 because

it is necessary to achieve the desired EFH protection and since other bottom-tending mobile gear is also prohibited in all of the habitat closure areas.

Comment 7: One commenter recommended disapproval of a portion of the Nantucket Lightship Habitat Closure Area that is subject to a level 3 habitat closure (closed to bottom-tending mobile gear). Specifically, the commenter was concerned about the trapezoid-shaped area that lies outside of the current NLCA.

Response: Disapproval of a portion of the proposed Nantucket Lightship Habitat Closure Area would constitute a modification to the configuration of that area and undermine the objectives of providing EFH protection. Although Amendment 13 analyzed the aggregate economic and biological impacts of various combinations of habitat closure areas, the configuration that the commenter supports was not part of the alternative adopted by the Council, analyzed in Amendment 13, and considered by the public and, therefore, there is no basis to support the commenter's claims. Therefore, the measure is consistent with applicable law.

Comment 8: One commenter supported the proposed exemption that would allow fishing by shrimp trawl vessels in the WGOM Habitat Closure Area.

Response: NMFS has disapproved the measure that would allow shrimp trawlers to fish in the WGOM Habitat Closure Area, as discussed and justified in the preamble to this final rule under ''Disapproved Measures.''

Comment 9: Five commenters supported approval of all four proposed SAPs in order to provide economic opportunity to the industry to harvest groundfish stocks at a more optimal level.

Response: NMFS agrees that allowing for SAPs is important for the reasons stated. However, in order for a SAP to be approved, it must comply with the objectives of the FMP, National Standards, and all applicable laws. The premise for a SAP is that, if specific fisheries for healthy stocks of groundfish can be identified that do not undermine achievement of the goals of the FMP, fishing under certain restrictions within a SAP can be allowed. Prior to NMFS approval, a SAP must be fully developed and the analysis of its impacts must demonstrate that the SAP is consistent with the objectives of the FMP, as well as enforceable. The CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP meet these criteria, and were therefore approved in Amendment 13 and implemented by this final rule. The CA II Haddock SAP and the CA I Hookgear Haddock SAP, however, do not meet one or more of these criteria and were, therefore, disapproved, as discussed more fully in the preamble to this final rule under ''Disapproved Measures.''

Comment 10: The Council submitted comments of a technical nature suggesting clarifications to the proposed regulations. The U.S. Coast Guard also submitted a technical comment. These included suggested additional definitions of terms, and clarifications to or additions of additional regulatory language.

Response: NMFS agrees with most of the suggested clarifications and has made these changes in this final rule. The specific changes are identified in this preamble under ''Changes to the Proposed Rule.''

Comment 11: Three commenters noted that the proposed rule would alter the frequency of VMS polling to twice per hour (from once per hour) for groundfish DAS vessels, once a vessel has elected to fish in the U.S./Canada Management Areas, regardless of whether or not the vessel is fishing in the U.S./Canada Management Areas. The commenters stated that this is not an Amendment 13 requirement, and is therefore not justified. A commenter further stated that polling twice per hour in the U.S./Canada Management Areas only is unjustified, given that vessels must declare into these areas, and that the areas are large.

Response: NMFS agrees that groundfish DAS vessels that are required to utilize VMS should not be required to pay for being polled twice per hour when not fishing in the U.S./Canada Management Areas, and has removed this restriction in this final rule. However, the requirement that vessels must pay for polling twice per hour when fishing in the U.S./Canada Management Areas has not been removed to enhance enforcement of the Understanding. Despite the large size of the U.S./Canada Management Area, there remains the potential for vessels fishing near the perimeters of this area to fish in both portions of this area (Eastern and Western) and/or to fish outside the area. In order to monitor the TAC in the U.S./Canada Management Area, it is critical that NMFS has a system to track the location of fishing vessels. Decreasing the time interval between polls paid by vessels enhances NMFS's monitoring of the fishing activity in his area.

Comment 12: The Council commented that, should the cod possession limit for vessels fishing under a limited access Handgear A permit be adjusted in proportion to a change in the GOM trip cod trip limit for DAS vessels, as allowed under this final rule, this adjustment should be rounded up to the nearest 50 lb (22.7 kg) in order to facilitate compliance with, and enforcement of, the adjusted trip limit. The Council also recommended that, if the cod possession limit for open access Handgear permits is adjusted in proportion to a change in the GOM cod trip limit for DAS vessels, this adjustment be rounded up to the nearest 25 lb (11.3 kg).

Response: NMFS has made these revisions to this final rule.

Comment 13: Two commenters did not support a provision in the proposed rule that would require DAS leasing applicants to include on the lease application the amount of money for which the DAS are being leased. The commenters felt that disclosure of such information is an infringement on the privacy of the applicants.

Response: Information about the value of a leased DAS is very important to future efforts to understand the impacts of the DAS Leasing Program and to evaluate whether the program is successful in providing flexibility to the industry. A more thorough understanding of the economics of the groundfish fishery will enable managers to analyze the economic impacts of fishery regulations more accurately. This requirement is consistent with Secretarial authority under the Magnuson-Stevens Act. Only aggregated information on the price paid for DAS leased will be made public. Specific information contained in an application will remain confidential.

Comment 14: One commenter suggested that, after a DAS lease has been approved by NMFS, a provision should be created to allow a lessee to return DAS to the lessor(s) in the event of exceptional circumstances, such as the sinking of the lessee vessel.

Response: Amendment 13 did not propose such a provision. Furthermore, such a provision would require NMFS to incur additional costs to develop and maintain additional data management capabilities and administrative procedures to support a DAS transaction that is expected to be relatively rare and, therefore, not justified under National Standard 7.

Comment 15: Four commenters did not support the requirement that vessels fishing in the U.S./Canada Management Area be prohibited from fishing outside this area on a particular trip. Some suggested that vessels be allowed to fish in both the Western and Eastern areas on the same trip, while others suggested

that the restriction apply only to the Eastern U.S./Canada Area.

Response: The requirement that a vessel fish in either the Eastern or Western U.S./Canada Area, and no other area on a particular trip, is necessary to monitor and enforce the catches of cod, haddock, and yellowtail flounder accurately and to attribute these catches to the particular area in which they were caught. If a vessel were allowed to fish both outside and inside one of the U.S./Canada Management Areas, it would be extremely difficult to assess the amount of each species caught in the respective areas and to enforce related measures. Catches must be accurately attributed to either the Eastern or Western U.S./Canada Area because the TACs are area-specific. In addition, because the Eastern and Western U.S./Canada Areas are subject to different trip limits and gear restrictions, allowing vessels to fish in both areas on a single trip would make enforcement of these restrictions impossible.

Comment 16: Five commenters noted that the requirement to use either a haddock separator trawl or a flounder net should apply only to the Eastern U.S./Canada Area and not to both the Eastern and Western U.S./Canada Areas, because the intent of the requirement is to achieve, but not exceed, the cod, haddock, and yellowtail TACs under the U.S./Canada Understanding. They noted that the cod and haddock TACs apply only to the Eastern U.S./Canada Area. One commenter noted that the requirement to utilize these gears in the Western U.S./Canada Area would result in large losses of flounders, monkfish, pollock, and other species.

Response: NMFS has made the suggested change in this final rule. Although Amendment 13 includes conflicting information with regard to the scope of the net requirements, it is clear from Amendment 13 and comments submitted by the Council that the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.

Comment 17: Four commenters stated that the requirement that vessels intending to fish in the U.S./Canada Area Management Area must notify the observer program of their intent to fish 5 days prior to the start of the trip is excessive and does not reflect the way vessels operate. The commenters suggested that the notification requirement be reduced to 2 days prior to the start of the trip.

Response: NMFS believes that the 5-days notice is necessary for vessels that intend to fish in the U.S./Canada Management Area, in order to provide NMFS adequate time to plan and execute observer deployments, based on the level of observer coverage required in the fishery. NMFS must assess observer availability, contact observers, and allow time for the observer to travel to the port of departure. Frequently, an observer is already deployed on another vessel and is not immediately available.

Comment 18: Three commenters believed that the closure of the Eastern U.S./Canada Area should apply only to vessels fishing on a groundfish DAS, and not to all vessels fishing with gear capable of catching groundfish. The commenters stated that this is inconsistent with Amendment 13.

Response: NMFS acknowledges that the intent of Amendment 13 was to limit the scope of the Eastern U.S./Canada Area closure to vessels fishing on a groundfish DAS. This final rule reflects that change. This change alleviates an unintended impact on non-groundfish fisheries.

Comment 19: One commenter stated that the Sector Allocation regulations that authorize the Council to allocate DAS to a Sector is not consistent with Amendment 13 and should be removed.

Response: Although the Amendment 13 document does not include specific criteria related to the allocation of DAS to a Sector, in section 3.4.16.1.2 (where criteria for allocation of TAC is described), the discussion of Sector allocation in Amendment 13 includes numerous references to the concept of DAS allocations to a Sector. The regulations include a reference to DAS allocations in order to be consistent with the Amendment and to make clear that the Council has the authority to allocate DAS and/or develop criteria for the allocation of DAS to a Sector. No such allocation is being proposed in the final rule and any future allocation of DAS to a sector would have to be analyzed and justified in the action authorizing such future allocations.

Comment 20: One commenter believed that the 500 lb (226.8 kg) GB cod trip limit was inconsistent with the intent of Amendment 13 and should apply only to the Eastern U.S./Canada Area, and not to the Western U.S./Canada Area as the proposed rule states.

Response: NMFS agrees that Amendment 13 intended that the GB cod trip limit should apply only to the Eastern U.S./Canada Area and has made this change to the final rule. This proposed restrictive cod trip limit is consistent with Amendment 13, as it is applicable to the U.S./Canada Area specific to cod, *i.e.*, the Eastern U.S./Canada Area.

Comment 21: One commenter noted that, according to the proposed rule, when the U.S. TAC for GB yellowtail flounder is attained, the prohibition on possession applies only to the Western U.S./Canada Area, but felt that this is inconsistent with the intent of the Council and Amendment 13. The commenter suggested that the prohibition instead apply both to the Western and the Eastern U.S./Canada Area, in order to be consistent with Council intent.

Response: NMFS agrees that the intent of Amendment 13 and the Understanding was to prohibit retention of GB yellowtail flounder in both the Western and Eastern U.S./Canada Areas. Upon attainment of the U.S. yellowtail flounder TAC, the Eastern U.S./Canada area will close to vessels fishing under a groundfish DAS, except if fishing in an open SAP. For all other vessels, prohibition of retention of yellowtail flounder in the Eastern U.S./Canada Area, as well as the Western U.S./Canada Area, is necessary to comply with the Understanding.

Comment 22: One commenter felt that vessels fishing under an A DAS in the U.S./Canada Management Area should be subject to less restrictive measures.

Response: The suggested measure is not consistent with or included in Amendment 13, and therefore cannot be considered for inclusion in this final rule.

Comment 23: One commenter stated that he believed that there were too many restrictions associated with fishing in the U.S./Canada Management Areas, and that vessels would refocus their fishing efforts in the near shore waters instead.

Response: The restrictions associated with fishing in the U.S./Canada Management Area result primarily from the management strategy chosen to implement and ensure compliance with the Understanding and Amendment 13 objectives. The strategy selected was a system of hard TACs associated with specific geographic areas. In order to implement this hard-TAC system, there must be a means to monitor the amount of catch by species and by area, as well as a means to curtail catch when the TACs are attained. The measures associated with the U.S./Canada Management Area provide a means to monitor the TACs and curtail fishing, as necessary to ensure that the TACs are not exceeded. As an incentive to fish in the Eastern U.S./Canada Area, vessels will not be charged DAS while steaming

to and from that area. The Council may consider recommending additional incentives in a framework action as provided for Amendment 13.

Comment 24: The Mid-Atlantic Council commented that it does not support the reductions in Category A DAS, and expressed concern that there may be increased participation in Mid-Atlantic fisheries, such as the squid fishery, as a result of groundfish vessels that attempt to recover lost groundfish revenue (as a result of the DAS reductions). The Mid-Atlantic Council indicated that the Amendment 13 analysis is inadequate because it does not include specific information on the increased landings that result in Mid-Atlantic fisheries, or the species composition of such landings. Because of the perceived shortcomings in the Amendment 13 analysis, the Mid-Atlantic Council concluded that the proposed DAS measures are inconsistent with National Standard 8.

Response: The DAS measures are not inconsistent with National Standard 8. The quantitative analysis in sections 4.6 and 4.7 of Amendment 13 provides extensive discussions and considerations of impacts on fishing communities as required by National Standard 8. Further, section 5.4.13.1.3 of the Amendment provides information on the number of permits in other fisheries held by NE multispecies limited access permit holders, their reliance on groundfish revenue, and the level of participation of such permit holders in other fisheries. Although the analysis does not predict landings, it provides useful information that describes the relative scope and nature of the potential effort shift relating to different ports and communities. The economic analysis indicates that the vessels that will be most affected by Amendment 13 are those that are dependent on groundfish for 75 percent or more of their gross revenue. A large number of these vessels have monkfish, spiny dogfish, General category scallop, or bluefish permits, and less than 10 percent have limited access squid permits. Much of the ability to shift into other fisheries is limited to trawl gear. Therefore, Amendment 13 has taken into account impacts of measures and ways to minimize such impacts consistent with National Standard 8.

Comment 25: A total of 3,236 commenters, consisting mostly of form comments did not support the phased reduction rebuilding strategy, which, for some stocks, implements a rebuilding program that begins with a fishing mortality rate that is above the threshold rate, and further reduces the target fishing mortality rate in the future. The principal concerns were that, under this strategy, overfishing for some stocks is not being ended immediately; the rebuilding of the stocks would take an excessive amount of time, and requiring additional time to rebuild stocks, is more risky, and therefore a threat to the health of the stocks and the ecosystem; and overall, the Amendment 13 rebuilding plan is not consistent with the Magnuson-Stevens Act and National Standard guidelines issued by NMFS. Approximately half of these commenters felt that the proposed rebuilding plans were not adequately evaluated, and that Amendment 13 should set rebuilding schedules and rebuilding targets on a species-by-species basis. One commenter supported implementing a phased reduction strategy for all stocks. One commenter supported the rebuilding strategy and noted that combining the adaptive and phased mortality reduction strategies mitigates the economic impacts of the high biomass targets.

Response: NMFS has concluded that the proposed phased strategy in fishing mortality reduction is consistent with the Magnuson-Stevens Act and the National Standards. The Magnuson-Stevens Act sets out requirements for preventing or ending overfishing and rebuilding fish stocks at 16 U.S.C. 1851(a)(1) (National Standard 1), 1853(a)(1) and (10), and 1854(e). NMFS promulgated National Standard guidelines relating to these requirements specifically at 50 CFR 600.310. Although the Magnuson-Stevens Act, at 16 U.S.C. 1854(e)(3), requires a management plan to be prepared by the council within a year after stocks are identified as being overfished, there is nothing in the Act or the guidelines that require that overfishing be ended immediately upon implementation of such a plan, as argued by commenters. The only timing requirement in the Magnuson-Stevens Act and guidelines, regarding the time necessary to end overfishing and rebuild fish stocks, is that rebuilding must be achieved as soon as possible, not to exceed 10 years, after taking into account various factors, including the status and biology of the stock and the needs of fishing communities. *See* 16 U.S.C. 1854(e)(4). To require the ending of overfishing immediately would establish a rigid standard that could result in an unnecessarily short rebuilding time frame, without consideration being given to the factors mentioned above. This result would be inconsistent with 16 U.S.C. 1854(e)(4), because it would undermine the ability of the Secretary to exercise his discretion in determining how long a rebuilding schedule should be, in consideration of the factors that the Magnuson-Stevens Act deems important. It is entirely consistent, therefore, with the Magnuson-Stevens Act that the ending of overfishing can be achieved at any time during the prescribed rebuilding schedule, as long as the ability to rebuild is not jeopardized.

To put Amendment 13 in perspective, only 8 of the 19 groundfish stocks are experiencing overfishing. Overfishing will continue to occur for only 5 of the stocks being managed under the phased approach. Nevertheless, severe decreases in current fishing mortality are scheduled for the first year of the rebuilding plan, and overfishing on all stocks is expected to end by year 5. Amendment 13 also contains provisions (*e.g.*, default measures to reduce DAS in 2006 and 2009) designed to ensure that further reductions in fishing mortality will take place if, after future assessments, stocks are not projected to rebuild within their specified rebuilding periods.

NMFS has concluded that it is unlikely this strategy will jeopardize the rebuilding of any stock. The NE multispecies fishery is comprised of 19 stocks, many of which co-occur in the same geographic areas, and are subject to fishing by a great diversity of commercial and recreational fishers. The complexity of the fishery and the co-occurrence of stocks of concern and stocks that are not overfished is one of the reasons Amendment 13 utilizes both the adaptive and phased strategies to reduce fishing mortality to rebuild stocks. Immediate cessation of overfishing on all stocks does not adequately take into account and allow for variations among, and contingencies in the fishery, and would cause more severe economic consequences than those projected under the selected fishing mortality reduction strategy. The selection of a phased mortality reduction strategy for some stocks, and an adaptive approach for the remainder of stocks, represents a balancing of the objectives of reducing fishing mortality and minimizing economic impacts, while achieving the goal of rebuilding all overfished stocks of groundfish.

For two of the five groundfish stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 49 percent and 59 percent (American plaice and SNE/MA yellowtail flounder, respectively), and will subsequently be reduced to Fmsy, thus ending overfishing completely in 2 years. For three of the

five stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 45 percent, 65 percent, and 37 percent, (GB cod, CC/GOM yellowtail flounder, and white hake, respectively), and subsequently reduced to at or below Fmsy in 5 years. These reductions in fishing mortality assume that 85 percent of allocated DAS will be used. In all cases, Amendment 13 contains management measures designed to rebuild the 12 overfished stocks. The time periods required to rebuild the 12 overfished stocks described in Amendment 13 do not exceed the criteria described in the National Standards guidelines and are in accordance with the ''Constraints on Council action'' in § 600.310(e)(4).

NMFS disagrees that the rebuilding plan was not adequately analyzed. The Amendment 13 analysis of the rebuilding strategies includes expected trajectories of the spawning stock biomass of overfished stocks for both the proposed and the alternative rebuilding strategies. The analysis shows the increase in biomass over time, and in relation to the target biomass (*i.e.*, rebuilt biomass), and is, therefore, sufficient to determine the adequacy of the rebuilding strategy with respect to both the magnitude of rebuilding and the amount of time rebuilding will take. The three rebuilding strategies (constant fishing mortality, phased reduction fishing mortality, and the adaptive approach), which are compared in section 5.2.1.8 of Amendment 13, are all designed to achieve the target biomass within the rebuilding period with a 50 percent probability.

Comment 26: A total of 4,779 commenters, consisting of mostly form comments, felt that Amendment 13 needs to include stock specific catch limits to control fishing mortality.

Response: Stock-specific catch limits (hard TACs) were among those alternatives that were analyzed in Amendment 13 and considered by the Council, but they were not recommended in Amendment 13. The Amendment 13 states, and NMFS concurs with, the following rationale for this decision: ''The Council is concerned that this alternative would lead to a derby fishery, and either excessive discards (if possession of a species is prohibited when a TAC is reached) or a sacrifice in yield from healthy stocks (if groundfish fishing is prohibited when a TAC is reached). In addition, managing 19 stocks, with overlapping geographic ranges, would be administratively difficult. A past Council attempt to manage the fishery with a hard TAC was an abject failure.'' Although the Council determined that stock-specific catch limits are not an appropriate management tool to be applied to all stocks, Amendment 13 implements such limits for the GB stocks that are shared with Canada (cod, haddock, and yellowtail flounder).

In addition, Amendment 13 contains various measures to reduce fishing mortality. The implementation of DAS reductions, trip limits and closed areas are all designed to achieve the majority of the fishing mortality reduction. Furthermore, gear restrictions serve as an additional means of controlling fishing effort, as well as enhancing stock structure.

Comment 27: A total of 1,549 commenters, consisting mostly of form comments, felt that Amendment 13 represents an important opportunity to reform the FMP, and should therefore incorporate the commenters' suggested revisions.

Response: Amendment 13 represents an important opportunity to improve the FMP and contains various conservation and management measures for the Northeast groundfish fishery. A partial list of the novel types of management programs that Amendment 13 implements includes the following: Control of latent effort and refinement of the use of DAS through the DAS baseline and categorization of DAS; coordination of management of shared GB stocks with Canada in order to maximize benefits from shared stocks; real-time dealer electronic reporting, habitat closure areas to protect EFH, DAS leasing and transfer to programs provide flexibility under reduced DAS allocations, and selective use of hard TACs.

Comment 28: One commenter requested clarification of justification for the starting date of the rebuilding periods.

Response: The rebuilding periods begin in 2004 because the Amendment 13 management measures are expected to be implemented in 2004. The National Standard Guidelines state: ''A rebuilding program undertaken after May 1, 1998, commences as soon as the first measures to rebuild the stock or stock complex are implemented.'' Prior to implementation of Amendment 13, there were no formal rebuilding programs for the overfished stocks. In 1999, Amendment 9 to the FMP implemented status determination criteria, but did not implement rebuilding programs. An amendment to the FMP was necessary to develop and implement a comprehensive rebuilding strategy for the FMP. To retroactively impose a 1999 start date 5 years later would make it virtually impossible for the agency to reasonably take into account all of the National Standards and other required provisions of the Magnuson-Stevens Act, because rebuilding would have to be accomplished for all stocks in a truncated time period. The measures in Amendment 13, beginning in 2004, will rebuild the groundfish stocks, while at the same time ensuring that other considerations required by the law regarding impacts on the industry are fully considered and accounted for. NMFS has concluded, therefore, that its decision to start the rebuilding clock in 2004 is more consistent with the applicable law and is more appropriate than starting it in 1999.

Comment 29: One commenter felt that the GB stock of yellowtail flounder should be under a rebuilding program.

Response: The GB stock of yellowtail flounder is neither overfished, nor has the stock previously been declared overfished. Therefore, there is no requirement for a rebuilding program. Amendment 13 measures are designed to maintain the GB stock of yellowtail flounder at a level consistent with optimum yield.

Comment 30: One commenter believed that Alternative 1B in Amendment 13 should have been selected because this alternative would have the least economic impacts. The commenter compared the estimates of numbers of jobs affected, the amount of lost revenue, and the loss in personal income associated with the proposed alternative and those associated with Alternative 1B and concluded that the proposed alternative would produce the same long-term results, yet at a much larger first-year cost.

Response: NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B would yield a reduction of $28 million in first year revenues compared to $40 million for the selected alternative. However, analysis of Alternative 1B did not substantiate that it would result in higher economic benefits over the long-term. Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent on 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. In other words, the model used to evaluate both biological and economic impacts only produces a short-term, one year forecast. DAS reductions for years 2005–

2007 could not be estimated given the limitations in the modeling. Even assuming projections were made for these years, the projections would likely be overestimated, and would not be representative of likely impacts. Presumably, at least part of the economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. Applying the area closure model to the full 65 percent reduction in DAS would have misrepresented the year 4 impacts. Alternative 1B also contains the 2:1 DAS counting in SNE/MA and the raised footrope trawl in the CC/GOM stock area. It is important to note that, in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10 percent reduction in DAS. NMFS believes that it is more likely that the negative cumulative impacts of 4 years of DAS reductions would exceed that of the selected alternative, especially since the difference between the two alternatives in 2004 is only about $12 million in revenues. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, Amendment 13 notes that the negative impacts attributable to the selected alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the selected alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction. A thorough breakdown of economic impacts by industry and by port is provided in Volume 1, section 5.4.6, of Amendment 13. Results of that analysis fulfill the requirements of E.O. 12866, which requires the Agency to take into account all economic impacts to the Nation resulting from the proposed rulemaking.

Comment 31: One commenter felt that NMFS must revise the recovery rate analysis in the fishing gear habitat impact assessment because there are contradictions in certain sections that do not comply with National Standard 2.

Response: Amendment 13, in Section 9.3.1.8.4.2, Potential Adverse Impacts of Bottom Trawls and Dredges, states that the recovery rate for damaged sponges and soft corals is 12 months, based upon the literature that was reviewed in section 9.3.1.2.4.2. Forty-four relevant peer-reviewed and non-peer-reviewed publications were included in the literature review and comprise the best available science on the subject. Recovery rates were provided when reported by the authors of the scientific studies. Discrepancies between recovery rates listed in tables 453–455 and those reported by the 2001 Gear Effects Workshop are due to the subjective nature of the responses provided by the Workshop participants compared to the research results published by various authors. NMFS is confident that the best available science was utilized in the fishing gear effects analysis and that the document is in compliance with National Standard 2.

Comment 32: One commenter felt that NMFS range of habitat closure alternatives is inadequate.

Response: The Amendment 13 considers a wide range of reasonable alternatives to minimize the adverse effects of fishing on EFH to the extent practicable. The alternatives range in terms of the type of management tool used, and are analyzed in terms of the practicability standard prescribed by the Magnuson-Stevens Act and implementing regulations. There are several alternatives considered representing each of the three identified management tools (effort reduction, gear modification, and closed areas). There are 11 distinct alternatives described using the closed area tool. These alternatives range from use of existing area management scenarios to expansion of existing area management scenarios, to development of new closed areas not dependent upon any previous area closures. Specifically, the National Research Council (NRC), as well as an international panel of experts convened for the 2001 Northeast U.S. Fishing Gear Effects Workshop, have recognized that there are three fishery management tools available to mitigate the effects of trawls and dredges on seafloor habitats: Fishing effort reduction, gear modifications, and area closures. The NRC stated that effort reduction is the cornerstone of managing the effects of fishing on habitat, but typically some combination of these three measures will be most effective. Amendment 13 utilizes this concept and analyzes a range of reasonable alternatives under each one of the tools listed below in the context of practicability of the measures.

Effort Reductions: The major goals of Amendment 13, as described in section 2.2, Purpose and Need for Action, is to rebuild overfished fisheries, end overfishing where it occurs, minimize bycatch to the extent practicable, and to provide options for reducing harvesting capacity. Approximately 35 management measures will be implemented to achieve these goals. These non-habitat measures are described and analyzed in sections 5.3.6.7 and 5.3.8.2 as Habitat Alternative 2 (Benefits to EFH of Other Amendment 13 Measures). The analysis concludes that the net effect of these measures are positive or provide a benefit to habitat.

Gear Modifications: Several alternatives have been developed related to otter trawl gear or fishery modifications to mitigate impacts to bottom habitats to the extent practicable. Habitat Alternative 8 (Restrictions on the use of rockhopper and/or roller gear) provides five specific alternatives (Alternatives 8a–8e) to minimize potential adverse effects of otter trawls on habitat. Habitat Alternative 9 would require the use of VMS on all groundfish vessels to provide high resolution data on the distribution of fishing effort.

Area Closures: The majority of the alternatives developed to minimize or mitigate adverse impacts of fishing on habitat to the extent practicable revolve around closed areas. Eleven distinct closed area alternatives were developed and analyzed. Three alternatives were developed specifically to protect hard-bottom areas (Habitat Alternatives 3a, 3b, and 4). Four alternatives were developed to balance EFH protection with fishery productivity (Habitat Alternatives 5a, 5b, 5c, and 5d). Three alternatives were developed to utilize existing groundfish mortality closure areas to gain additional habitat protections (Habitat Alternatives 6, 10a, and 10b), and one alternative (Habitat Alternative 7) was developed to prohibit additional fishing gear in the groundfish mortality closure areas.

Comment 33: A total of 1,550 commenters, consisting mostly of form comments, stated that Amendment 13 fails to protect sensitive cod nursery grounds from trawling and weakens protection for juvenile cod (no action protects 22.9 percent of juvenile cod EFH, and the proposed action (Alternative 10b) protects 15.3 percent of juvenile cod EFH).

Response: NMFS disagrees. The Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH. The Amendment 13 FSEIS concludes (section 9.3.1) that there are 23 managed species, comprising 42 distinct life stages, that have EFH that is vulnerable to the effects of bottom-tending mobile gear. Therefore, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on the EFH of these 42 species/life stages, not all of which utilize or require the same habitat type (FSEIS Table 161). Amendment 13 undertook an approach to balance EFH protections among all 42 species/life stages, instead of targeting minimization measures on one species/life stage. Amendment 13 implements a series of management measures that represent several major strategies for providing direct and indirect protection to a wide variety of vulnerable EFH. Implementation of Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibit the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages is, afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition to these closed areas, Amendment 13 implements many management measures aimed at achieving major reductions in the overall fishing effort within the groundfish complex (*See* section 5.3.6.7 and 5.3.8.2 describing Habitat Alternative 2). These fishing effort reductions relate to reduced impacts on benthic habitats, thereby providing more indirect protections to vulnerable EFH.

In comparison to the No Action Alternative, Habitat Alternative 10b provides direct protection to 15.3 percent of the juvenile cod EFH and to the EFH of 38 other species/life stages, compared to the temporary and intermittent protections afforded under the No Action Alternative (section 5.3.6.1.2.1). Although the No Action Alternative is listed in various tables in section 5.3.8 as a point of reference for closed area alternatives, it is not directly comparable because of the type of closure it represents. The values provided under the No Action Alternative represent the existing groundfish mortality closures, which are not closed for habitat protection purposes and are available to access by various bottom-tending mobile gears. This is why section 5.3.8.3.2, Summary of EFH Benefits of Area Closure Options, does not compare the No Action Alternative to the 10 closed-area alternatives. Amendment 13 shows that Habitat Alternative 10b is superior and practicable, providing permanent or indefinite protection to 15.3 percent of the juvenile cod EFH, compared to no permanent or indefinite protection provided by the No Action Alternative. Alternative 10b does not weaken EFH protections for any species. In considering these alternatives, the Council and NMFS also determined that Alternative 10b met the practicability standard of 50 CFR 600.815(a)(2)(iii) (*See* section 5.3.10 of Amendment 13).

Comment 34: One commenter felt that the majority of the habitat alternatives were developed in 2000 and 2001, prior to the reinitiation of scoping in 2001, and over a year before the completion of the gear impacts assessment in the fall of 2002. Thus, the commenter stated the record shows that these alternatives were not based on the best available scientific information and violate National Standard 2.

Response: The scoping for the EFH components of Amendment 13 commenced on February 1, 2001 (66 FR 8568) and continued through April 4, 2001 (66 FR 13281). At the conclusion of the scoping period, the public comments, including all recommended alternatives, were compiled and discussed by the Council's Habitat Technical Team in April 2001, with recommendations forwarded to the Habitat Committee and the Council. It was not until after the conclusion of the public scoping period that alternatives were considered for analysis by the Council. In fact, reasonable alternatives were considered by the Council through 2003. Recommended alternatives that were not analyzed were classified as considered but rejected, and can be found in section 4.2 of Amendment 13.

In terms of the gear impacts assessment, the 1998 EFH Omnibus Amendment concluded that bottom-tending mobile gear may adversely effect EFH, particularly complex bottom habitats. This conclusion has not changed over time, but has been further supported by more recent scientific studies. Therefore the basis for development and selection of alternatives to minimize adverse effects of fishing on EFH has not changed since 1998. The Gear Effects Evaluation provided in Amendment 13 (Section 9.3.1.2) reflects this newest science and therefore complies with National Standard 2.

Comment 35: One commenter stated that Amendment 13 fails to separate EFH protections for GOM juvenile cod EFH and GB juvenile cod EFH, since these stocks are managed separately.

Response: EFH is designated by species and by life stage over the entire range of the species. There is no requirement to designate EFH by species, by life stage, and by stock. Presently, EFH is not described by stock, and analysis of habitat impacts by stock would create significant managerial and scientific difficulties, without concomitant benefit to the species. NMFS has determined, therefore, based upon the best available science, that the EFH of both GOM and GB cod stocks are protected to the extent practicable under current management practices.

Comment 36: One commenter felt that NMFS must develop alternatives to designate habitat areas of particular concern (HAPC) to comply with the *AOC* v *Evans* Court Order (Civ. No. 99–00982 GK (D.D.C)).

Response: Amendment 13 meets legal requirements of the Magnuson-Stevens Act and the AOC Joint Stipulation. The groundfish FMP already has established one HAPC in Closed Area 2. The Council has established a process for further consideration of HAPCs and is currently seeking public comment on this issue as part of the development of EFH Omnibus Amendment 2.

Comment 37: One commenter felt that NMFS should reject Habitat Alternative 2.

Response: Habitat Alternative 2 includes approximately 35 measures to achieve the non-habitat-related goals of Amendment 13, and provides indirect net benefits to EFH (*see* analysis in section 5.3.8.2 of Amendment 13). Habitat Alternative 2 is not the only alternative that is being relied upon to minimize the adverse effects of fishing on EFH. The EFH final rule (67 FR 2343) specifically requires that the evaluation of fishing effects must list management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The response to Comment 32 also contains pertinent information in response to this comment.

Comment 38: Two commenters suggested that NMFS partially reject Habitat Alternative 10b, and instead select Alternative 3a, because they felt it protects more gravel habitats.

Response: While Habitat Alternative 10b is an industry-developed alternative, it was subjected to the same environmental analysis as all the other closed area alternatives. The analysis shows that it ranked relatively high for

EFH protection and protection of other ecosystem properties when compared to the other closed area alternatives, including Habitat Alternative 3a, and that it represents the most practicable alternative. Habitat Alternative 10b was shown to be the most effective in protecting EFH that is highly vulnerable to the effects of bottom-tending mobile gear (section 5.3.8.3.2.2 of Amendment 13). As stated in Response 33, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH, not just the EFH of one species or life stage. Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibits the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH, (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages, is afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition, because the EFH protections are more effective than most of the other alternatives, and since this alternative has a relatively low economic cost to the fishing industry and port communities, Alternative 10b was shown to be the most practicable alternative to implement (Amendment 13 Section 5.3.10.3.4.10). In comparison, Alternative 3a, while providing a good degree of EFH protection, has high economic costs to the industry and disproportional community impacts. Alternative 3a was shown not to be practicable. The Magnuson-Stevens Act and EFH Final Rule require that actions to minimize the adverse effects of fishing on EFH be practicable. The practicability analysis considered the costs and benefits of the alternative on EFH, associated fisheries, and the Nation, as required by § 600.815(a)(2)(iii) and is consistent with National Standard 7.

Comment 39: Three commenters felt that the habitat closed areas protect mainly sand habitats instead of more valuable complex gravel habitats.

Response: Amendment 13 concludes that complex hard bottom (gravel) habitats are vulnerable to the adverse effects of bottom-tending mobile gear. However, Amendment 13 also shows that hard bottom sediments are not the only vulnerable EFH. The EFH for other species described as sand, soft sediments, silt, mud, and soft mud have also been determined to be highly vulnerable to the adverse effects of bottom-tending mobile gear (Table 161 of Amendment 13). Amendment 13 provides a balanced approach to EFH protection and protection of these substrate types.

The substrate analysis provided in Amendment 13 (section 5.3.8.3.1.2) shows the percent composition within each closed area based upon six sediment characteristics: Bedrock, gravel, gravelly sand, sand, muddy sand, and mud. Table 141 in Amendment 13 shows that, out of the 83,550 sq nm included in the Northwest Atlantic analysis area, 53,856 sq nm are composed of sand/gravelly sand, representing 64 percent of the entire area. Less than 1 percent of the Northwest Atlantic analysis area has been mapped as gravel or bedrock. These complex hard bottom areas of bedrock and gravel are not uniformly distributed (*see* Figures 160 and 162 of Amendment 13) and are difficult to encompass in closed areas without including large amounts of sand and other substrates. The closed area alternatives analyzed in Amendment 13 encompass anywhere from 3 to 32 percent of the mapped gravel areas. Habitat Alternative 10b includes all substrate types representing vulnerable EFH. Compared to the Northwest Atlantic analysis area, Alternative 10b includes 2 percent of the bedrock, 19 percent of the gravel, 11 percent of the gravelly sand, 3 percent of the sand, 2 percent of the muddy sand, and 2 percent of the mud (Table 141 of Amendment 13).

Comment 40: One commenter felt that NMFS should implement Habitat Alternative 8d in Amendment 13, which prohibits the use of rock hopper and roller gear.

Response: The analysis in Amendment 13 is inconclusive as to whether this alternative provides additional habitat protections, and as to the costs to the industry (section 5.3.10.3.4.8) in implementing this alternative. Direct benefits to EFH under this alternative would have to be demonstrated and better understood before it could be adopted. NMFS has concluded that implementation of habitat closed areas (Alternative 10b) is a more effective way of protecting vulnerable EFH based on best available science.

Comment 41: One commenter was concerned that Amendment 13 contains no measures specifically designed to protect deep water corals.

Response: Amendment 13 does not contain any measures specifically designed to protect deep-water corals because the use of bottom-tending mobile gear associated with the NE multispecies fisheries has not been identified as having an adverse effect on deep-water corals. NE multispecies fisheries are not typically conducted in these deep waters (section 9.3.1.2.3.4.4 of Amendment 13).

Comment 42: An industry group strongly opposed the measures in Amendment 13 and the proposed rule that would exclusively preclude access by bottom-tending mobile gear to specific geographical areas of the fishing grounds. The commenter felt this represents an unacceptably disproportionate measure and inequitable allocation of access to the groundfish resource among sectors of the fishery.

Response: The Magnuson-Stevens Act and the EFH Final Rule require that the adverse effects of fishing on EFH be minimized to the extent practicable. An evaluation of the potential adverse effects of each fishing activity on EFH was conducted as part of Amendment 13 (section 9.3.1). This evaluation concluded that bottom-tending mobile gears can have a potential adverse effect on the EFH of 42 species/life stages within the geographic bounds of the NE multispecies fishery. Amendment 13 must minimize, to the extent practicable, those adverse effects on EFH that are occurring as a direct result of the use of bottom-tending mobile gears in that fishery. Habitat closed areas, or areas where bottom-tending mobile gear are prohibited, are the most effective way of minimizing those adverse effects. The areas selected as habitat closures (Habitat Alternative 10b) are 81 percent within the existing groundfish mortality closures where the harvest of groundfish is currently prohibited. The practicability analysis (section 5.3.10.3.4.10) shows that Habitat Alternative 10b results in the least economic cost to the industry (except for Habitat Alternative 6). In addition, this alternative provides the most effective protection to EFH, making Habitat Alternative 10b the most practicable alternative to implement. Alternatives that provided equally as much protection to EFH, but that would be more costly to the industry, were determined not to be practicable and, therefore, are not being implemented.

Comment 43: One commenter suggested that the final rule make it clear that EFH closures are frameworkable.

Response: The 1998 EFH Omnibus Amendment added frameworkable actions for the conservation and protection of EFH, which includes changes to the boundaries of EFH and HAPC designations, gear restrictions, area closures, and establishment of special management areas or zones. In

addition, this final rule includes gear requirements or gear changes in order to reduce impacts on EFH.

Comment 44: One commenter expressed support for exclusion of trawlers from sensitive habitats.

Response: Although the scope and exact meaning of the term ''sensitive'' is unclear, Amendment 13 does address the concept being supported by the commenter. Specifically, Amendment 13 and this final rule implement a series of habitat closed areas (Habitat Alternative 10b) as level 3 closures (closed to all bottom-tending mobile gear) to protect EFH that is vulnerable to the effects of bottom-tending mobile gear.

Comment 45: Three commenters did not support the default measures that will make further reductions to fishing mortality in 2006 and 2009, unless certain criteria are met. One commenter believed that the default measures are not consistent with National Standard 6, another commented that the proposed measures were not approved by the Council, and a third was concerned that the impacts of the default measures were not adequately analyzed.

Response: The default management measures were developed because the phased and adaptive rebuilding strategies implemented by Amendment 13 require future reductions in fishing mortality beyond the levels of fishing mortality reductions that will be implemented in 2004. Both the phased and adaptive rebuilding approaches use a strategy where a higher rate of fishing mortality (landings and discards) are permitted during the initial years of the rebuilding program, but lower fishing mortality rates are therefore required in subsequent years in order to rebuild to the appropriate level (Bmsy) within the required timeframe.

The default criteria were developed because it is possible that, at the time the default measures are scheduled to be implemented (2006 and 2009), the stock status situation will have improved such that the scheduled default mortality reductions (*i.e.*, management restrictions) will not be necessary. The goal of the default criteria is to implement measures of success and have a relatively swift means to avoid the default measures if they are not necessary. More specifically, if in 2006 the stock assessment indicates that either the fishing mortality rates and/or the stock sizes are more favorable than currently predicted, and the default criteria are met, the default management measures would not need to be implemented. Full regulatory action would not be necessary in order to prevent the default management measures from being implemented, and therefore, both time and work would be saved. If however, there were no default criteria in Amendment 13, and the situation is favorable at the time the default measures are scheduled to be implemented, the Council would have to develop, and NMFS would have to implement new regulations to prevent the default measures from being implemented.

The default measures and criteria are consistent with National Standard 6, which requires ''Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.'' These default criteria are specifically designed to allow for the contingency that the default measures are not necessary.

With respect to the commenter's concern about the adoption and analysis of the default measures, the Council approved the default measures at its meeting on November 6, 2003, and both the default measures and the default criteria are included and analyzed in Amendment 13. The amount of DAS reductions specified by the default measures is proportional to the percentage reduction in fishing mortality necessary for the targeted stocks, and was calculated by the Plan Development Team based upon the analyses of DAS reductions associated with Alternative 1B, in the DSEIS. The full schedule of DAS reductions was not evaluated because the area closure model used to evaluate the alternatives is not a dynamic model. Applying the area closure model to the 2006 and 2009 DAS reductions would have misrepresented the impacts, so it was not done.

Comment 46: Four commenters noted that the criteria in the proposed rule that specify the conditions under which the default management measures would not be implemented, which are contained in 50 CFR 648.82(d)(4), are inconsistent with Amendment 13 and Council intent. One commenter stated that the default criteria should be different for the 2006 and the 2009, and that the criteria should only contain references to fishing mortality.

Response: NMFS agrees that the criteria in the proposed rule do not completely reflect those proposed in Amendment 13. NMFS abridged the criteria in the proposed rule in an attempt to make them more succinct, but will modify the criteria in the final rule in order to more precisely reflect the intent of those listed in Amendment 13. NMFS disagrees that the 2006 and 2009 default criteria should be different, and disagrees that the criteria should include only references to fishing mortality. As described in the response to comment number 45, the default criteria are intended to describe potential conditions under which the default measures would not be necessary. If the stock is rebuilding well and existing management measures are achieving the required fishing mortality rate (or the stocks are not overfished), additional management measures to further reduce the fishing mortality would not be necessary.

Comment 47: One commenter felt that the amendment fails to address potential impacts to the infrastructure of ports.

Response: The economic analysis in Amendment 13 makes it possible to identify economic impacts on specific industrial sectors on a regional and subregional level. However, data were not available on fishing and fishing-related infrastructure, either in terms of physical features or business entities at a port level. The aggregation of data by region makes it difficult to trace impacts to specific ports within a specific region. Furthermore, defined industrial sectors contain aggregations or combinations of distinct businesses based on the primary product. Thus, while seafood processing is identified as a distinct sector, a distributor of commercial fishing gear would be included in a wholesale trade sector; along with a myriad of other wholesalers, most of which have nothing to do with fishing. Similarly, a trucking company that specializes in seafood would be grouped in with other trucking companies so the impact on the one or more businesses that transport seafood could not be identified.

Comment 48: One commenter noted that the analysis of impacts on vessels is incomplete due to a lack of comprehensive data on the fleet, most notably costs.

Response: NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action, but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions, and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in Amendment 13.

Comment 49: One commenter stated that the amendment does not address community impacts beyond vessels.

Response: Amendment 13 does provide information on revenue impacts on vessels with homeports from selected ports (*i.e.*, the port groups identified in the Affected Human Environment as being primary groundfish ports) and provides more aggregated regional impacts for sub-regions that contain multiple ports. The commenter is correct in the sense that neither of these analyses provide detailed information at a community level. Data were available, and analyses prepared, that would have made it possible to report revenue changes at a port-level. Such analyses have been a staple of economic analyses prepared for other management actions. However, without additional information on the composition of the shore-side economies of each affected community, merely reporting revenue changes by port provides only limited information on community impacts. Reporting impacts at a larger, sub-regional level permits full exposition of directly and indirectly affected economic sectors, but does so at the expense of losing specificity at the community level. Future reporting of management impacts would provide more information at a community level if both port-level revenue changes and sub-regional impacts on coastal economies are developed. More detailed community impact assessments will require systematic data collection, as well as additional research to identify the key components of community impacts.

Comment 50: The Council's social science advisory committee expressed concern about the adequacy of social and economic analysis in Amendment 13.

Response: Adequacy addresses whether the analyses provided for Amendment 13 were based on the best available data and whether these data were used in a manner consistent with professional standards. The panel of experts that reviewed the social and economic analyses concluded that they were adequate both in terms of the use of available data and the choice of the analytical methods applied to evaluate the impacts of specific management decisions.

Comment 51: A total of four commenters did not support the definitions of gear required for vessels fishing in the U.S./Canada Area. Some suggested minor revisions to the haddock separator trawl, as well as alternative definitions to the flatfish net, that would more closely resemble nets used in experimental research within the area. All commenters indicated that the flatfish net, as defined in the proposed rule, was impracticable.

Response: NMFS has made the necessary changes to the haddock separator trawl measure in this final rule. The definition has been changed to require that the mesh in the separator panel be composed of 6-inch (15.2-cm) diamond mesh, rather than 6.5-inch (16.5-cm) square or diamond mesh. This mesh would maintain consistency with the regulations at § 648.80(a)(4) and would minimize the retention of cod in the upper portion of the net compared to square mesh. Little guidance was provided in Amendment 13 defining flatfish gear. Accordingly, the proposed flatfish net was defined using available scientific research and consultations with gear experts. NMFS maintains that the proposed flatfish net definition would reduce cod bycatch while allowing vessels to target flatfish. Based upon suggestions from the public and additional available research, NMFS has included an alternative flatfish net definition that more closely resembles nets used in experimental research within the US/Canada Management Area.

Comment 52: A total of 11 commenters stated that management measures implemented by Amendment 13 will fail to achieve the desired fishing mortality rates. Their principal concerns are that categorization of DAS into A, B, and C days will not reduce DAS fished, that the overall DAS allocation is excessive and will not end overfishing, and the B and C DAS categories will increase opportunity in the fishery. Two of these commenters stated that the analysis of fishing mortality includes A DAS only and, therefore, fails to account for all sources of fishing mortality. One commenter stated that the stocks of GOM cod, white hake, and witch flounder will not meet the mortality goals. One commenter believes that the rules do not serve the public interest, but instead serve the commercial fishing industry because they are too lenient.

Response: Category A DAS are the principal effort control mechanism in the FMP, that, in combination with the other management measures (*e.g.*, closed areas, gear restrictions, and trip limits), will reduce the fishing mortality in the fishery in order to rebuild the groundfish stocks. However, because DAS are a non-specific management tool, they limit fishing effort on both overfished stocks and those stocks that are not overfished. The concept of Category B DAS was developed in order to address the fact that non-specific cuts in DAS, based upon the most severely depleted stocks, unnecessarily limits the ability of fishers to fish for stocks that are not overfished. The purpose of allocating Category B DAS is to provide limited potential to target stocks that are not overfished.

Category C DAS may not be used upon implementation of Amendment 13, and their future use will depend upon both the rebuilding of stocks and capacity of the fishery.

Upon implementation of Amendment 13, the only DAS that may be used in the fishery unrestricted are Category A DAS. Table 81 in Amendment 13 indicates that the total number of DAS used will be decreased by between 39 and 50 percent when compared with the no action alternative (depending upon the rate of DAS use). Such a decrease in DAS use does not represent an increase in fishing opportunity. Table 81 also provides a summary of the anticipated fishing mortality reductions that the management measures will achieve, based upon the allocation of A DAS in combination with other management measures, and assuming 3rates of DAS use. With few exceptions, the calculations indicate that the management measures are sufficient to achieve the necessary reductions in fishing mortality.

Based upon the information contained in Table 81, the commenter's concern about the achievement of the mortality goals for the stocks of GOM cod and witch flounder (two of the ''exceptions'' noted above) are justified, because the table indicates that the expected reduction in fishing mortality may be less than the needed reduction in fishing mortality for these stocks. NMFS' determination that the management measures have been demonstrated to be sufficient to meet the mortality objectives is based on both Table 81, and other information contained in Amendment 13. The pertinent information in Amendment 13 includes not only the results of the data analysis, but also the limitation of the model. According to Section 5.1.1, the closed area model, the principal analytical component of the fishing mortality calculations, has the following limitations: ''The model is a simulation of behavioral responses to changes in fishery regulations. It should not be interpreted as a precise calculation of future fishing mortality. While the model output results in apparently precise numerical estimates, it is better to interpret these as broad indicators of relative changes, rather than as precise prediction of mortality impacts. Small percentage changes, for example, should be viewed as less likely relative outcomes than large percentage changes. For stocks where the Council is implementing measures to make large reductions in fishing mortality, it

should be clear that the results of the measures will have to be carefully monitored to make sure the objectives are achieved. The model may not capture the exact response of fishermen to the regulations and as a result may over or under estimate the realized impacts.'' In light of the limitations of the model, the determination of the sufficiency of the rebuilding program should not be based solely upon small percentage differences between the desired and the achieved mortality reductions in stocks such as GOM cod. With respect to witch flounder, the management measures achieve approximately 75 percent of the necessary mortality reductions. If necessary, the default measures in 2006 will further reduce fishing mortality. NMFS will carefully monitor the results of the management measures through daily dealer reporting, and other means to ensure that the model did not overestimate the predicted impacts.

In contrast to Category A DAS, Category B DAS may only be used in approved SAPs upon implementation of Amendment 13. Amendment 13 provides for an allocation of B regular and B reserve DAS in order to allow limited opportunity in SAPs, and enable the Council to develop additional opportunities to utilize B DAS. Only two SAPs are being approved in Amendment 13, both of which are projected to have insignificant impacts on species of concern. NMFS agrees that the analysis of fishing mortality does not include B DAS in a global way, and that B DAS represent an additional source of fishing mortality. However, NMFS disagrees that the allocation of B DAS, their use in SAPs, and their potential use outside SAPs, necessarily mean that the fishing mortality on stocks of concern will be excessive. Amendment 13 demonstrates that the SAPs implemented by Amendment 13 will not undermine the fishing mortality objectives, based upon the status of the stocks that will be harvested and the restrictions to strictly limit bycatch of species of concern. Approval by NMFS of additional opportunities to utilize B DAS, in addition to those opportunities provided by Amendment 13, will be contingent upon B DAS targeting appropriate stocks and the development of measures that carefully consider bycatch of species of concern.

Since only two SAPs, only one of which utilizes B DAS, are being approved in Amendment 13, with insignificant impact on species of concern, NMFS has determined that allocating B DAS is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

Comment 53: A total of 7 commenters did not agree with the various trip limits as proposed. One stated that low trip limits and inadequate gear restrictions promote discards. Two commenters stated that the GB cod trip limit is too high, creating an incentive to target cod. One commenter suggested that the GB cod trip limit mirror the GOM cod trip limit. One commenter stated that the 250-lb (113-kg) seasonal trip limit for yellowtail flounder in the SNE/MA RMA should be implemented on a year-round basis. One commenter supported possession limits for American plaice, white hake, and SNE/MA winter flounder. Finally, one commenter stated that the GOM cod trip limit should be reduced by 50 percent.

Response: NMFS agrees that trip limits may promote discards if set at a low level in relation to the amount of fish encountered, and discards may be exacerbated by non-selective gear. The cod and yellowtail trip limits are set at levels in order to optimize the effect on fishing mortality. The GB cod trip limit may be more successful in achieving this objective than the SNE/MA yellowtail flounder trip limit. The analysis in Amendment 13 indicates that the GB cod trip limit is set at a level that minimizes the potential for regulatory discards, as well as reduces fishing mortality. The reduction of the trip limit from 2,000 lb (907 kg) per DAS to 1,000 lb (454 kg) per DAS decreases the incentive to target GB cod. With respect to GOM cod, NMFS disagrees that the trip limit should be reduced. The higher trip limit for GOM cod is designed to reduce bycatch during the period that cod aggregate for spawning. The analysis concludes that the change in trip limit to 800 lb (363 kg) per DAS will significantly reduce the ratio of fish discarded to fish kept, without jeopardizing mortality goals. Imposition of the SNE/MA yellowtail flounder trip limits will likely increase discards when compared with the no action alternative; however, this is justified given the low biomass of the stock and the fact that overall mortality on this stock should be significantly reduced compared to the no action alternative. The fact that the SNE/MA yellowtail flounder trip limit varies on a seasonal basis (250 lb (113 kg) per trip to 750 lb (340 kg) per trip) may mitigate the amount of discarding by limiting fishing on aggregations of flounder. Imposition of the 250 lb (113 kg) trip limit for the entire year would increase discards. In the future, as the stock rebuilds, this trip limit should be raised. The Council chose not to implement trip limits in order to reduce fishing mortality for American plaice, white hake, and SNE/MA winter flounder, but instead decided to rely solely on the combined effects of DAS reductions and closed areas and gear (*see* Response to Comment 83 for further discussion). The continuation of a least 5 percent observer coverage on groundfish vessels should provide adequate monitoring of whether the trip limits are effective regarding reducing fishing mortality and bycatch. If data indicate that the trip limits are not effective, the Council can recommend necessary adjustments.

Comment 54: One commenter objected to the fact that the alternative being implemented was developed relatively late in the regulatory process.

Response: NMFS agrees that Alternative 5 was developed after the other 4 alternatives were developed, but believes that the development of Amendment 13 was consistent with applicable laws. The selected alternative was based largely on components that were contained in the DSEIS and discussed during the public hearing process, and the full alternative is contained in Amendment 13. Furthermore, pursuant to the Magnuson-Stevens Act, the public had an additional 60-day comment period on Amendment 13 and all of the alternatives presented, including the selected alternative. Finally, the proposed rule allowed for a 30-day public comment period on the proposed Amendment 13 measures. In view of the numerous opportunities for comment, NMFS believes that the public was informed of, and could comment on each of the proposed alternatives in Amendment 13, including the selected alternative. All appropriate comments received on the Amendment, the NEPA document and the proposed rule have been evaluated by NMFS in order to make a decision whether to approve, disapprove or partially approve Amendment 13.

Comment 55: One commenter objected to the continuing use of ''rolling'' closure areas in the FMP because of the belief that a derby fishery is created when the closed areas are opened.

Response: The GOM Rolling Closure Areas provide important protection to spawning aggregations of the GOM cod stock. Although there may be the potential for a derby fishery upon opening of these areas, there are no data indicating that this has been a problem. In any event, the derby affect is likely limited in duration and scope. The impact of the rolling closure areas on GOM cod remains positive.

Comment 56: Three commenters did not support the restriction that DAS

carried over from the 2003 fishing year into the 2004 fishing year will be available only as Category B DAS, due to the belief that this creates a safety concern.

Response: The classification of fishing year 2003 carry-over DAS as Category B DAS in fishing year 2004 does not represent a safety concern. Although this restriction may provide additional incentive for vessels to fish their DAS in the 2003 fishing year prior to implementation of Amendment 13, due to the different restrictions associated with a Category A DAS and a Category B DAS (as discussed in the response to comment number 52), the regulations do not require a vessel owner to make an unsafe decision regarding whether or not to fish on a particular day.

Comment 57: One commenter noted that the concept of B DAS are missing from Amendment 13.

Response: Amendment 13 explains the concept of B DAS in section 3.6.1.1. The final rule provides for an allocation of B DAS (both Regular and Reserve), and implements, in a limited fashion, opportunity for their use within SAPs, as well as some associated restrictions (*e.g.*, carry over, leasing of, *etc*.). Although Amendment 13 describes the concept of B DAS, and anticipates the possible future use of Regular B DAS outside of an approved SAP, the amendment only partially describes the conditions under which the Reserve B DAS may be used. The final rule, therefore, does not include the restrictions associated with Regular B DAS that are discussed in the amendment. The Council is currently developing such restrictions through a framework adjustment.

Comment 58: One commenter was opposed to inclusion of the 2001 fishing year in the calculation of the DAS baseline. The commenter believed that this results in a higher total number of DAS defined by the baseline, due to the inclusion of DAS that are not associated with any landings. One commenter supported the inclusion of the 2001 fishing year in the DAS baseline calculation for the following reasons: (1) Allows all fishing effort predating the Settlement Agreement to be treated fairly; (2) broadens the total qualified pool, which is reduced by the minimum landing requirement associated with the baseline DAS allocation; and (3) yields the desirable economic result of higher DAS allocations to all qualified permit holders.

Response: The Amendment 13 proposed DAS baseline alternative was selected because it is the alternative that most fairly distributed DAS based on recent groundfish fishing activity. NMFS disagrees that inclusion of the 2001 fishing year results in a higher DAS baseline. Amendment 13 indicates that the selected baseline results in a lower total number of DAS than does the baseline alternative that does not include the 2001 fishing year. The selected alternative, which includes the 2001 fishing year, also includes a requirement that a qualifying year is one in which the vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies. NMFS agrees with the reasons stated in support of the baseline that includes the 2001 fishing year.

Comment 59: One commenter stated that Amendment 13 should include information on the closed area model.

Response: NMFS believes that Amendment 13 provides adequate information on the closed area model. The closed area model, which was utilized to estimate the biological impacts of the closed areas, trip limits, and DAS reductions, is described in Section 5.1.1. of Amendment 13. This section describes the inputs to the model, its weaknesses, its advantages, and well as advice to the reader regarding interpretation of the results of the model (*see* Response to Comment 52). The model itself is an analytical computer program that has been discussed in public fora, and is not appropriate for inclusion in Amendment 13.

Comment 60: One commenter suggested that the GB Hook Gear Cod Trip Limit Program be disapproved because it adds uncertainty to the management regime, is incomplete, and difficult to enforce.

Response: NMFS has disapproved this program as further described in the preamble of this final rule under the section called ''Disapproved Measures.''

Comment 61: One commenter stated that NMFS should reconsider Amendment 13 if scientific information becomes available that indicates the stocks are in better shape. One commenter supported the biennial adjustment process described in the amendment.

Response: Pursuant to the Magnuson-Stevens Act, conservation and management measures established for the Northeast groundfish FMP should be based on the best available scientific information available. The process outlined in the NE multispecies regulations under § 648.90 will be the method utilized to incorporate new information into the FMP. The biennial adjustment extends the duration of time between each required periodic review and adjustment, but does not limit the ability of the Council to develop management measures at any time necessary.

Comment 62: Two commenters expressed support for the biological reference points. One commenter opposed setting the biomass threshold at 50 percent of Bmsy and thought the appropriate level should be 25 percent of Bmsy. One commenter believes that, for certain stocks (*e.g.*, Acadian redfish), the biomass threshold should be set at greater than 50 percent of Bmsy. One commenter stated that the biological reference points should not be modified through framework action.

Response: NMFS believes that the amendment sets the biological reference points (status determination criteria) at appropriate values, based upon the National Standard guidelines (NSGs) and the best available scientific information. The NSGs require that the biomass threshold be set at no lower than 50 percent of Bmsy, therefore, setting the threshold at 25 percent of Bmsy would be inconsistent with the NSGs. Although the National Standard guidelines allow for the biomass threshold to be set at a level greater than 50 percent of Bmsy based upon the biological characteristics of a stock, the NEFSC has certified that the Amendment 13 overfishing definitions comply with the National Standard 1 Guidelines. With regard to the process of making changes to the status determination criteria, Amendment 13 differentiates between the process of making changes to the parameters, and the process of making changes to the values of such parameters. Amendment 13 notes that it is the Council's responsibility to recommend status determination criteria, and states that changes to the parameters require Council action, whereas changes to the values do not. Finally, status determination criteria may be adjusted through the use of a framework so that the best available science can be incorporated into the FMP in a timely manner. This process will ensure that NMFS is satisfying its Magnuson-Stevens Act mandates, specifically, National Standard 2.

Comment 63: One commenter did not support the sector allocation requirement that allocations of TAC be based upon the catch history during a specific 5 year period, because the requirement would not allow for development of a sector if vessels did not have recent catch history. Another commenter did not support the approval of sectors unless the sectors are subject to a hard TAC.

Response: NMFS agrees that, under the sector regulations, those vessels without recent fishing history would not

be able to form a sector. This restriction is consistent with the Goals and Objectives of Amendment 13 (Goal 2): ''Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fleet.'' Allowing vessels that have not been active in the fishery recently may have the effect of increasing fishing capacity, which would be inconsistent with this goal. As NE multispecies stocks rebuild, the Council may consider removing such restrictions on sector allocations. NMFS agrees that the amendment specifies allocation of a hard TAC or DAS to sectors.

Comment 64: Three commenters supported the GB Cod Hook Sector allocation. Two of these commenters believe that participants in the GB Cod Hook Sector should not be regulated by many of the requirements of the FMP, and that the final rule should allow the Regional Administrator to waive specific measures for sector vessels. One commenter stated that the reference in the preamble to the proposed rule regarding the 5-year enrollment period in the GB Cod Hook Sector was incorrect. One commenter stated that the cod TAC for the GB Cod Hook Sector should be allocated based upon an amount of GB cod that includes the Canadian share of the stock. One commenter stated that the DAS for sector vessels should be considered fully utilized (in the event that the sector did not fish under the DAS system).

Response: Amendment 13 discusses the potential for a sector to be exempt from specific regulations that would still apply to non-sector vessels and that the Regional Administrator should have the authority to exempt sectors from specific regulations, if the sector's Operating Plan justifies such exemption and the regulation being exempted is not necessary for the achievement of FMP objectives in light of sector measures. The final rule is corrected to reflect this authority. NMFS will consider granting such exemptions through the procedure defined under § 648.87(d), that describes the process for approval of a sector by the Regional Administrator. The approval process includes solicitation of public comment and consultation with the Council. With regard to the requirement that participating vessels stay in the sector until the end of the five year period, NMFS agrees with the commenter that this requirement in the preamble of the proposed rule is incorrect and removes this language from the preamble. Although Amendment 13 includes a requirement to remain in a sector for the duration of a particular fishing year, the amendment does not discuss the requirement to participate for a five year period. NMFS disagrees that the cod TAC for the GB Cod Hook Sector should be based upon a total amount of cod that includes the Canadian share. Allocation of the hook sector's GB cod TAC in the manner suggested by the commenter could result in allocating an amount of cod that exceeds the sector's historic share of the U.S. fishery, and would therefore be inconsistent with Council intent. Lastly, Amendment 13 did not include a provision that the DAS for vessels participating in a sector be considered fully used. The discussion of such a provision should be included in a sector's Operations Plan.

Comment 65: Two commenters stated that the Regional Administrator should have the authority to implement other restrictions at the time the default measures are scheduled to be implemented. One commenter believed that the Regional Administrator should have the authority to adjust management measures in the middle of the fishing year in order to decrease fishing mortality.

Response: Neither the Amendment nor the proposed rule included provisions to grant such authority to the Regional Administrator. Without specific criteria in Amendment 13 for making such adjustments, this final rule cannot provide this authority. The Council, however, may develop and recommend an adjustment to management measures at any time through the framework adjustment process.

Comment 66: One commenter stated that the final rule should contain the status determination criteria, including definitions of OY, as well as Table 10 from Amendment 13, (proposed rebuilding trajectories; fishing mortality rates for the rebuilding program).

Response: The Magnuson-Stevens Act and the National Standard Guidelines require that every fishery management plan contain certain components, such as an identification of OY and stock status determination criteria. However, there is no requirement that all of these items be codified by a regulation. NMFS typically does not include every measure in a fishery management plan or its amendments in codified regulations because it adds to the complexity, length, and costs of publication and such inclusion is not necessary for enforcement or compliance purposes. NMFS has included in this final rule regulatory language for all of the approved measures in Amendment 13 that require public compliance, as opposed to measures in the amendment that guide or constrain Council action.

Comment 67: One commenter supported the provision that allows vessels with VMS to opt out of the VMS program for a minimum period of 1 calendar month.

Response: NMFS agrees and is implementing that measure in this final rule.

Comment 68: One commenter suggested that NMFS disapprove the proposed removal of the FAAS from the regulations. The commenter stated that the FAAS was implemented to provide the Council and NMFS with the ability to quickly respond to seasonal and area bycatch problems in the groundfish fishery. Furthermore, the commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected.

Response: NMFS agrees with the commenter and disapproved the proposed removal of the FAAS, as explained in the preamble to this final rule under ''Disapproved Measures.'' NMFS will continue to seek ways to expedite implementation of regulatory actions.

Comment 69: One commenter requested clarification on whether the target TACs listed in Table 11 of Amendment 13 are in relation to the calendar year or fishing year.

Response: The targets TACs are for the calendar year. The preamble of this final rule has been revised to make this clear.

Comment 70: One commenter requested explanation on how the control rules will govern management measures.

Response: Section 3.1.8 of Amendment 13 explains how control rules will be applied to the FMP. The control rules are meant to be consistent with fishing mortality thresholds that define when overfishing is occurring.

Comment 71: One commenter was opposed to the implementation of any of the Amendment 13 SAPs, stating that there are no stocks that could support an increase in effort.

Response: NMFS has approved two Amendment 13 SAPs and disapproved two SAPs. Regarding the approved CA II Yellowtail Flounder SAP, the target species, GB yellowtail flounder, is currently not overfished, nor is overfishing occurring. Since the Amendment 13 DAS reductions are intended to reduce fishing mortality to appropriate levels for the stocks of greatest concern, additional effort directed on GB yellowtail flounder,

through the use of B DAS as well as steaming time deduction, is not likely to undermine the fishing mortality objectives for this stock. Furthermore, GB yellowtail flounder is one of the three shared stocks managed under the U.S./Canada Resource Sharing Understanding and, therefore, is subject to a hard TAC, *i.e.*, a quota specified for a stock, whereby, once attained, the possession limit would be zero. In addition, the Regional Administrator has authority to reduce the GB yellowtail flounder trip limit to ensure that this TAC is not exceeded. Should the TAC be exceeded, the overage would be deducted from the next fishing year's TAC. (For further information, see Comment 77 below.) Vessels electing to fish in the CA II Yellowtail Flounder SAP are required to fish with either a haddock separator trawl or flatfish net to mitigate bycatch of cod. In addition, a cod trip limit of 100 lb (45.4 kg) is proposed when fishing in this area to prevent vessels from circumventing the regulations.

The approved SNE/MA Winter Flounder SAP, which allows vessels directing on summer flounder to retain up to 200 lb (90.7 kg) of winter flounder is intended as a measure to reduce bycatch. Currently, vessels in the summer flounder fishery that catch small amounts of winter flounder are required to discard this species at sea when they are fishing outside of the groundfish DAS program. The SNE/MA Winter Flounder SAP allows these vessels to keep the winter flounder that they would normally be discarding. The fishing mortality on the SNE/MA winter flounder stock will, consequently, not likely be affected, since overall effort is not expected to increase. Winter flounder that otherwise would have been discarded can, instead, be landed.

Comment 72: One commenter expressed support for the abbreviated SAP approval process.

Response: The proposed abbreviated SAP process has been disapproved, as explained in to the preamble of this final rule under ''Disapproved Measures.''

Comment 73: One commenter noted that there are no proposed SAPs in the near-shore waters of Maine and noted that small vessels from Maine would be unable to physically access the SAPs proposed in offshore waters.

Response: Although there are no Amendment 13 proposed SAPs within the near-shore waters of Maine, the Council may develop and recommend an inshore GOM SAP to NMFS through the framework adjustment process. Small vessels from Maine that are unable to physically access the CA II Yellowtail Flounder SAP may indirectly benefit from this approved SAP should larger vessels that fish Maine's inshore waters redirect their fishing efforts in the CA II Yellowtail Flounder SAP. Because SAPs are designed to target fishing on the healthiest stocks of groundfish, their locations necessarily must reflect the distributions of those stocks. As more stocks rebuild, there will be more opportunities for SAPs.

Comment 74: One commenter expressed opposition to the two trip per month restriction in the CA II Yellowtail Flounder SAP, stating that this would create a derby fishery and concentrate landings in the summer months when prices are low.

Response: The two-trip-per-month restriction is designed to avoid a derby fishery. In 2002, 117 vessels reported fishing for yellowtail flounder in the waters adjacent to CA II. If this same number of vessels participate in the CA II Yellowtail Flounder SAP, this fishery would be expected to last 4 to 6 weeks into its June through December season before the 320 maximum number of trips were taken. However, there are many new restrictions in the U.S./Canada Management Area where the CA II SAP resides (such as VMS, and reporting requirements, and gear restrictions) and it is, therefore, difficult to predict how many vessels will actually participate. However, the two-trip-per-month restriction in the CA II Yellowtail Flounder SAP should help avoid a derby fishery.

Comment 75: Two commenters suggested that the trip limits for stocks within the SAPs be under the Regional Administrator's authority to adjust.

Response: This final rule implements a maximum 30,000 lb (13,608 kg) yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP and a restriction on retaining more than one-fifth of the daily GB cod possession limit specified for the Eastern U.S./Canada Area, which would equate to 100 lb (45.4 kg). In addition, because this SAP is located within the U.S./Canada Management Area, the Regional Administrator has the authority, under the regulations implementing the Understanding (§ 648.85(a)(3)(iv)(D)), to further adjust the trip limit to prevent over-harvesting or under-harvesting of the shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder. The regulations implementing the SNE/MA Winter Flounder SAP restrict vessels from landing more than 200-lb (90.7-kg) of winter flounder. Although the Regional Administrator does not have the authority to modify the 200 lb (90.7 kg) trip limit, there is little need for the Regional Administrator to have adjustment authority because the limit is already set very low.

Comment 76: One commenter noted that the cod trip limit within the SAPs needs to be clarified.

Response: In response to this comment, NMFS has modified the regulations under § 648.85(b)(3)(viii) to specify that the cod trip limit within the approved CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area, as intended in Amendment 13. Because the Eastern U.S./Canada Area trip limit is 500 lb (226.8 kg) of cod per DAS, the cod trip limit in the CA II Yellowtail Flounder SAP is 100 lb (45.4 kg), until such time that daily cod trip limit for the Eastern U.S./Canada Area is revised through another action.

Comment 77: One commenter opposed providing steaming time credit to and from the Eastern U.S./Canada Area, stating that it was unwarranted due to the proposed allowance of B DAS use within the proposed SAPs.

Response: Steaming time to and from the Eastern U.S./Canada Area, as well as the allowance of B DAS in this fishery, is provided as an incentive for vessels to fish on the relatively healthy stock of GB yellowtail flounder. Landings of yellowtail flounder have recently leveled of to approximately 3,000–4,000 mt. Because of the large effort reductions implemented through this final rule, landings of GB yellowtail flounder are expected to decline further from this level. However, because this stock is estimated to be able to support a harvest of approximately 12,000 mt, the steaming time incentive has been provided as a mechanism to allow vessels to redirect onto this stock, while removing effort directed at groundfish stocks of concern.

Comment 78: One commenter suggested that the CA II Yellowtail Flounder SAP should include hard TACs to control the catch.

Response: This final rule implements the U.S./Canada Resource Sharing Understanding, which incorporates the CA II Yellowtail Flounder SAP, including hard TACs for the three shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder.

Comment 79: One commenter stated that NMFS should control bycatch of non-groundfish species and account for mortality of these species within the SAPs.

Response: The Council and NMFS must consider minimizing bycatch for all non-targeted groundfish and non-groundfish species, to the extent

practicable, when developing and approving a SAP. NMFS recognizes that bycatch of skate, in particular, may be of concern in the CA II Yellowtail Flounder SAP; however, it is not clear that bycatch of skate will be any greater for vessels fishing in CA II than when they are fishing outside of this area. Overall, bycatch is likely to be greatly reduced by amendment 13 due to the large reductions in fishing mortality and the required gear modifications when fishing within the Eastern U.S./Canada Area, which incorporates the CA II Yellowtail Flounder SAP.

Comment 80: Three commenters opposed the CA II Haddock SAP, stating that cod and haddock are caught in equal amounts in this area, and that the document does not contain any information on bycatch for this SAP.

Response: NMFS agrees that the analysis for the CA II Haddock SAP is insufficient and has disapproved this SAP, as explained in the preamble to this final rule under ''Disapproved Measures.''

Comment 81: One commenter stated that NMFS should not rely on historical information to determine access for the CA II Yellowtail Flounder SAP because of its uncertainty.

Response: The Amendment 13 document analyzes this measure in light of the best scientific information available, including the most recently available observer data for both experimental trips within, and commercial fishing trips adjacent to, the southern portion of CA II, as well as preliminary information from the recent CA II yellowtail flounder experimental fishery conducted in September through December 2002. Therefore, this measure is consistent with National Standard 2, which requires all measures to be based on the best scientific information available.

Comment 82: One commenter stated that access to the CA I Haddock Hookgear SAP should be provided only to the GB Cod Hookgear Sector, and that the coordinates for this SAP should be those coordinates reflected in the experimental fishery that has been approved by NMFS.

Response: NMFS disapproved the CA I Haddock Hookgear SAP for the reasons stated in the preamble to this final rule under ''Disapproved Measures.'' In any case, NMFS does not have the authority to change the management measures proposed by the Council in Amendment 13. Bycatch

Comment 83: Approximately 3,230 commenters, consisting mostly of form comments stated that Amendment 13 should adopt enforceable measures to minimize bycatch and waste.

Response: National Standard 9 requires bycatch and bycatch mortality to be minimized to the extent practicable. NMFS has determined that bycatch and the unavoidable mortality of bycatch in the NE multispecies fishery are being addressed adequately and consistent with applicable law. The minimum mesh size restrictions, gillnet gear reductions, running DAS clock to account for cod overages, and the exempted fishery program are the primary bycatch reduction measures in the FMP. Other measures such as DAS reductions, and other gear modifications, such as the rockhopper gear restrictions in the GOM, also contribute to bycatch reduction. The exempted fishery program, implemented in Framework 9 and expanded in Amendment 7, virtually eliminated all fisheries in the GOM, GB, and SNE RMAs when fishing outside of the NE multispecies and scallop DAS programs, unless it can be determined that the fishery can operate with less than a 5 percent bycatch of regulated species. Amendment 13 contains several additional management measures that will likely reduce bycatch. These include: An increased reduction in fishing effort; mesh size increases; additional gillnet gear reductions; hookgear reductions that include a restriction on the number of allowable hooks; a requirement to fish with circle hooks only; and a prohibition on the use of de-hookers with less than 6-inch (15.2-cm) spacing between the fairlead rollers; an increase in the GOM cod daily trip limit; the allowance of 200 lb (90.7-kg) of winter flounder in the SNE/MA Winter Flounder SAP; an expansion of the exempted fisheries program; and the requirement to use either a flounder net or haddock separator trawl are designed to affect cod selectivity while fishing in the Eastern U.S./Canada Management Area. In light of the substantial reductions in fishing effort and consequent costs to fishermen resulting from Amendment 13, the Council and NMFS have determined that, on balance, the measures in the FMP, as amended by Amendment 13, have reduced bycatch and bycatch mortality to the extent practicable.

Comment 84: Four commenters fault Amendment 13 for not promoting selective fishing gear that is consistent with the groundfish trip limits.

Response: Because of the relatively low hard TAC specified for GB cod within the Eastern U.S./Canada Area, this final rule implements a 500-lb (226.8-kg) trip limit for GB cod when fishing in this area and requires that vessels fish with either a haddock separator net or a flatfish net; fishing gears are designed to reduce bycatch of cod. Although there are no specific gear requirements that would ensure that vessels do not exceed the GOM cod daily trip limit of 800 lb (362.9 kg), or the GB cod daily trip limit of 1,000 lb (453.6 kg), vessels would be allowed to retain an additional day's worth of fish, should they exceed the trip limit, provided the vessel operator does not call out of the DAS program until the additional time equating to this overage has elapsed (this is referred to as the ''running clock''). This measure is intended to reduce discards of cod. There are no selective fishing gears proposed for the SNE/MA yellowtail flounder trip limit; however, because some of the seasonal trip limits are so low (250 lb (113.4 kg) per trip), many vessels will likely choose to direct on other stocks, at least during the seasons with these very low trip limits.

Comment 85: One commenter stated that Amendment 13 does not contain an adequate assessment of bycatch, since it uses fishing year 2001 as the baseline for evaluating bycatch effects of the proposed measures, and that the proposed measures should be evaluated against a baseline of no fishing. The commenter further stated that fishing year 2002 provides the most recent and reliable bycatch data and those data should be incorporated into Amendment 13.

Response: All the proposed measures were evaluated based on a comparison to the no action alternative, *i.e.*, the management measures in place in 2001, prior to the Court-ordered measures implementing the Settlement Agreement (Interim Action). Amendment 13 uses bycatch information from the most recent completed assessments. Although additional bycatch information has been collected since the most recent assessments were completed (2002 fishing year), it has not been analyzed or reviewed through the stock assessment process and therefore is not considered the best scientific information available.

Comment 86: One commenter stated that there should be scheduled bycatch reviews required for all exempted fisheries.

Response: The regulations under the exempted fishery program (§ 648.80(a)(8)) provide for additions as well as deletions of exempted fisheries, should there be concern that an exempted fishery is jeopardizing fishing mortality objectives. In addition, should there be concern regarding bycatch in an exempted fishery, the Council, at any time, may consider developing a framework adjustment to address this.

Observers

Comment 87: Approximately 4,780 commenters, consisting mostly of form comments, stated that Amendment 13 should provide adequate observer coverage to monitor target and non-target species. Some of these commenters suggested that 10 percent coverage would be adequate; others suggested 20 percent coverage for all groundfish fisheries (including SAPs), with as much as 50 percent coverage for fisheries encountering protected species.

Response: NMFS intends to maintain its observer coverage in the groundfish fishery at a minimum level of 5 percent. NMFS has conducted an analysis of the relative precision of discard estimates using observer coverage and landings data for the year 2000 for all stocks of regulated species in the NE multispecies fishery. This analysis focused on vessels fishing under the NE multispecies DAS program. Based on this analysis, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. The criteria for statistical robustness include comparability with similar studies worldwide, consistency with Atlantic Coastal Cooperative Statistical Program (ACCSP) standards, and comparability with other variance components in the stock assessments. A 5-percent observer level represents a 5.6-fold increase in the number of trips observed in 2000. Additional coverage, although not required for statistical adequacy in the groundfish fishery, could be implemented if dedicated resources are available, *e.g.*, an allowance for 10-percent coverage as provided for in the Omnibus Bill for fishing year 2004. Additional coverage would exceed levels considered statistically adequate for the groundfish fishery, but may allow expanded coverage of other fisheries where it may not be possible to achieve a particular target coverage level but where some possibility of groundfish bycatch exists, *e.g.*, the Atlantic herring midwater fishery. It would also allow flexibility to cover some potentially new components of the fishery, such as the use of B DAS, at higher rates as part of a pilot program. The Northeast Fisheries Science Center receives separate funding annually to place observers on vessels in fisheries that have the potential to take protected species. This coverage is directed annually by staff of the Northeast Regional Office's Protected Resources Division to address species of concern. Coverage levels are determined by computing the sample size needed for a specific degree of precision in the estimate of take, not by percentage coverage.

For Fiscal Year (FY) 2004, NMFS intends to provide 10 percent level of observer coverage to estimate the amount and type of discards for the Northeast multispecies fishery as mandated by Congress in the FY 04 budget appropriation. As stated above, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. This 5 percent level of observer coverage will resume in FY 05 and beyond, absent a similar appropriation requiring a greater level of observer coverage.

Comment 88: Four commenters stated that there is no standard methodology to account for and minimize bycatch.

Response: In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology (SBRM) for fisheries under the jurisdiction of the agency. Consistent with this protocol, the NE Multispecies FMP and Amendment 13 have measures in place that satisfy the elements of an SBRM being developed by NMFS. These include comprehensive reporting requirements on dealers and fishermen. In addition, Amendment 13 requires daily electronic dealer reporting when such a program is available. NMFS intends to implement such a program through a separate rulemaking anticipated to be in place on May 1, 2004. Amendment 13 also requires that, once a viable electronic system becomes available, vessels will be subject to electronic reporting on a trip-by-trip basis. As stated in the response to Comment 86, NMFS intends to maintain its observer coverage in the groundfish fishery at no less than 5 percent. This coverage will be provided through the appropriate statistical design for each of the major gear types used in the NE multispecies fishery and will be distributed throughout the geographic range of the fishery. For groundfish DAS vessels fishing within the proposed U.S./Canada Management Area, real-time information on bycatch for the GB stocks of cod, haddock, and yellowtail flounder will be corroborated through the observer program. Should funds become available, NMFS also intends to increase observer coverage on non-groundfish vessels to better assess bycatch of groundfish.

Comment 89: One commenter stated that NMFS should revise Amendment 13 to provide for a reasonable range of alternatives for adequate observer coverage.

Response: As the Amendment 13 document points out, the Council does not manage the observer program and, therefore, did not consider a range of alternatives for observer coverage in this program. NMFS has determined through statistical analysis what level of coverage is adequate, as explained in the response to Comment 86. This analysis also considered other levels of observer coverage.

DAS Transfers

Comment 90: Two commenters stated that they support the DAS Transfer Program because it will allow some vessels to survive.

Response: NMFS agrees and has approved this program.

Comment 91: Three commenters opposed the 40-percent conservation tax specified in the DAS Transfer Program, stating that it was excessive, provided little incentive to participate in the program, and that the program should have controls similar to the DAS Leasing Program. Two commenters believe that the requirement to surrender all permits is too punitive.

Response: The intent of the proposed DAS Transfer Program is to provide the fishing industry with greater economic opportunity and flexibility by allowing vessels to permanently transfer their DAS, albeit at a cost in the form of a conservation tax (*i.e.*, Category A and B DAS would be reduced by 40 percent and Category C DAS would be reduced by 90 percent). This ''tax'' is intended to provide a means to achieve some long-term reduction in fishing effort through the removal of active and inactive DAS from the groundfish fishery. Although the Council is currently considering modifying the conservation tax through a separate framework action, NMFS has determined that Amendment 13 sufficiently analyzes the conservation tax and has approved this measure.

U.S./Canada

Comment 92: Six commenters spoke in support of the Understanding, stating that this program will help mitigate the economic impacts of Amendment 13. One commenter specifically supported the gear requirements in the Eastern and Western U.S./Canada Areas.

Response: NMFS supports the Understanding, as it will allow the U.S. and Canada to better coordinate

management of the U.S./Canada shared stocks of cod, haddock, and yellowtail flounder on GB. Upon reviewing the Amendment 13 document and the Council's intent in adopting the gear requirements (haddock separator trawl and flatfish net) included in the Understanding, NMFS has modified the final rule such that vessels would be subject to the gear modifications only when fishing in the Eastern U.S./Canada Area. Additional information on this issue may be found in the Response to Comment 16.

Comment 93: One commenter opposed the use of hard TACs proposed for the U.S./Canada shared resources of cod, haddock, and yellowtail flounder, stating that hard TACs do not work.

Response: NMFS believes that the hard TACs proposed for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder on GB are necessary to ensure compliance with the Understanding. Under the measures implementing the Understanding, groundfish DAS vessels fishing on a groundfish DAS within the U.S./Canada Management Areas are required to fish with a VMS and report their daily catches (both landings and discards) of cod, haddock, and yellowtail flounder. This real-time monitoring will provide timely information to make needed adjustments to ensure that these TACs are not exceeded.

Comment 94: One commenter requested that both the haddock separator trawl and the flatfish net be allowed on board when fishing in the U.S./Canada Management Areas.

Response: NMFS has modified the final rule to reflect this change.

Electronic Reporting

Comment 95: A total of 4,779 commenters, consisting mostly of form comments, supported daily electronic dealer reporting.

Response: NMFS has approved this measure and is currently developing a rule to implement the daily electronic dealer reporting requirement.

Comment 96: A total of 4,779 commenters, consisting mostly of form comments, supported a mandatory VMS requirement.

Response: Amendment 13 requires that groundfish DAS vessels that have opted to fish under a groundfish DAS in the U.S./Canada Management Area be required to fish with a VMS for the remainder of the fishing year, regardless of where they are fishing. This is anticipated to affect approximately 400 vessels, which makes up a large percentage of the groundfish DAS fleet. Implementing a mandatory VMS program for all groundfish vessels at this time was not considered as a management option in Amendment 13, largely because of the costs to smaller vessels. As costs come down for VMS units, NMFS and the Council intend to reconsider a universal VMS requirement.

Comment 97: Seven commenters either supported or opposed the DAS Leasing Program. Four commenters supported the program, with two suggesting extending the program for a total of 5 years, instead of the proposed 2 year duration. Supporters indicated that the program would enable some vessels to continue to fish, maintain shoreside infrastructure, and prevent increases in fishing effort and large-scale effort shifts. One supporter of the program commented that the 120-day block out of the fishery requirement for day gillnet vessels prevents these vessels from participating in the program. One commenter opposed the program, stating that there was insufficient analysis of the impacts of the program on fishing mortality. Three commenters suggested that NMFS should disapprove the program if it results in increased DAS use rates and prevents the attainment of mortality goals. Finally, three commenters suggested implementing a leasing conservation tax, while an additional commenter suggested that NMFS closely monitor the leasing program for consolidation of effort.

Response: The DAS Leasing Program will enable some vessels to continue fishing, despite reductions in allocated DAS, as well as help maintain shoreside infrastructure by ensuring a continuous supply of groundfish. NMFS also agrees that the DAS Leasing Program may increase the use rate of DAS. The allocation of A DAS took this fact into consideration. The DAS Leasing Program is one of many factors in the Amendment that may either increase or decrease the DAS use rate. The Amendment 13 analysis assumes that the rate of DAS use will increase over recent levels; however, it is not possible to determine precisely the affect of individual management measures or programs on the rate of use of DAS. NMFS agrees with commenters that support a 2-year duration of the program. Reevaluation of the effects of the DAS Leasing Program on fishing mortality and industry consolidation in 2005 will allow the Council to propose changes, as necessary, to address concerns and maintain the rebuilding schedule. Amendment 13 does not change the regulations governing Day gillnet vessels. While the 120 DAS block requirements limit the time available to participate in the DAS Leasing Program, these regulations do not prohibit participation in the program. Amendment 13 does not contain a DAS leasing tax. However, the Council is considering such a tax in Framework Adjustment 40.

Comment 98: Two commenters supported the proposed size restrictions of lessee vessels, with one commenter preferring a horsepower conversion factor proposed in the April 24, 2003, proposed emergency rule (68 FR 20096) instead of the upgrade provisions proposed under Amendment 13.

Response: The size restrictions for lessee vessels are intended to ensure that any increase in the DAS use rate resulting from a leasing program will not also result in an increase in fishing capacity. These size restrictions are consistent with the vessel upgrade provisions specified at § 648.4. Therefore, the size restrictions maintain fishing capacity within the limits assessed in Amendment 13. The horsepower conversion factor preferred by one commenter and specified in the proposed emergency rule was withdrawn on July 14, 2003 (68 FR 41549) based upon public comments.

Comment 99: Two commenters opposed the proposed method for assigning DAS leasing history. One commenter suggested that the DAS use and landings history should be assigned as determined by the lease participants, while the other commenter suggested that both the DAS use and the landings history should accrue to the lessor.

Response: The attribution of DAS use and landings history is necessary to account for DAS usage and landings and is consistent with the provisions governing DAS use and landings outside of the DAS Leasing Program. This method is also consistent with current data tracking methods and more accurately reflects vessel activity within the program. Further, at this time, the NMFS data tracking programs are not capable of assigning DAS use and landings history based upon an agreement between lease participants. Because the method for accounting for DAS is based on a presumption of what information the Council may require later, the Council may recommend other accounting methods in future actions, provided such methods are adequately justified and consistent with applicable law.

Comment 100: Two commenters addressed the ability to lease DAS from permits held in Confirmation of Permit History (CPH). One commenter indicated there is no justification to disallow the leasing of CPH DAS, while the other commenter supported the

proposed prohibition of leasing CPH DAS.

Response: Restrictions prohibiting permits held in CPH from leasing DAS were proposed to reduce the amount of latent effort entering the fishery resulting from the leasing program. Currently, there are 68 permits held in CPH that would qualify for a total of 1,482 Category A DAS under Amendment 13. Under the DAS Leasing Program, these DAS will be unavailable for leasing and represent a reduction in potential effort increases. However, these DAS may be leased if permits are taken out of CPH and placed upon another vessel. The DAS associated with such vessels were included in the analysis of biological impacts in Amendment 13. This is consistent with the CPH regulations specified at § 648.4(a)(1)(i)(J).

Comment 101: One commenter suggested that the procedure for correcting a DAS baseline specified in the regulations should include a reference to consideration of requests for DAS baseline corrections that result from participation in a cooperative research project.

Response: NMFS disagrees that additional regulatory language is required. The procedure to correct an incorrect DAS baseline addresses a separate issue than the Council's policy statement on the loss of DAS due to participation in a cooperative research project. The Regional Administrator has the authority to implement the Council's policy if appropriate.

Comment 102: One commenter suggested additional regulatory text that would clarify the time period when DAS leasing applicants could submit applications for the following fishing year, and suggested that NMFS accept applications as of March 15.

Response: NMFS has clarified the pertinent regulations in this final rule, although NMFS did not restrict the time period that an applicant may submit an application for the following fishing year.

Comment 103: One commenter supported defining OY as 75 percent of Fmsy, but was concerned that the management measures allow F to exceed OY. The commenter questioned how such measures comply with the requirements of the Magnuson-Stevens Act that OY be achieved on a continuing basis.

Response: The Magnuson-Stevens Act defines OY as the yield from a fishery that provides the greatest overall benefit to Nation, is prescribed based on MSY and, for an overfished fishery, provides for rebuilding to a level consistent with producing MSY. The management measures contained in Amendment 13 have been designed to meet all these requirements and, in NMFS's opinion, have at least a 50 percent probability of doing so.

Comment 104: An environmental organization expressed concern regarding bycatch of migratory striped bass in the groundfish fishery, particularly by trawl vessels, and requested that the final rule implementing Amendment 13 take action to reduce seasonal bycatch of striped bass. The commenter also requested that at-sea observer coverage be used to closely monitor and report striped bass bycatch.

Response: The measures to reduce bycatch in the groundfish fishery that were proposed in Amendment 13 were approved; NMFS does not have the authority to implement measures that were not proposed in Amendment 13 in this final rule. An initial examination of information on striped bass bycatch in the NMFS at-sea observer database indicates that, while striped bass bycatch in the groundfish trawl fishery has been observed, significant catches appear to be infrequent and limited in time and area. NMFS will continue to collect and analyze data on all species caught in the groundfish fishery through the at-sea observer program, which will provide information on bycatch that could be used by the Council to develop future measures to further reduce bycatch.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of several management measures proposed in Amendment 13. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions are added for: ''Circle hook,'' ''Stocks targeted by the default measures,'' ''Transboundary Management Guidance Committee,'' ''Transboundary Resource Advisory Committee,'' and ''U.S./Canada Steering Committee,'' to clarify these terms in the regulations.

In § 648.4(a)(1)(i)(A)(*2*), the date until which reported landings to qualify for the limited access Handgear A permit will be accepted is corrected to be consistent with the date described in the preamble of the proposed rule.

In § 648.4, paragraph (a)(1)(i)(A)(*3*) is added to further define the application criteria for the limited access Handgear A permit.

In § 648.4, paragraph (a)(1)(ii) is added to further define what types of vessels may qualify for open access multispecies, hand gear or charter/party permits.

In § 648.4, paragraph (c)(2)(iii)(B) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.9, paragraph (c)(1)(ii) is revised to clarify that double polling of the VMS unit for groundfish DAS vessels will occur only when the vessel is fishing under a groundfish DAS within the U.S./Canada Management Areas.

In § 648.10(b)(2)(i), the reference to § 648.85(a)(2)(iii) is corrected to read § 648.85(a)(3)(ii).

In § 648.10(b)(2)(v), the inadvertent reference to paragraph (b)(2)(v) is removed.

In § 648.14, paragraph (a)(132) is revised to reflect the application of the gear requirement to the Eastern U.S./Canada Area.

In § 648.14, paragraph (a)(134), and paragraphs (a)(142) through (152) are revised as a result of the disapproval of the CA II Haddock SAP and the CA I Hook Gear SAP.

§ 648.14, paragraph (c)(24) is revised to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.14, paragraph (c)(30) is revised to reflect disapproval of the exemption of shrimp trawls from the WGOM Habitat Closure Area.

In § 648.14, paragraph (c)(50) is removed to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.80, paragraphs (a)(8)(i), (ii), and (iv) are revised to replace the word ''bycatch,'' with ''incidental catch,'' to reflect the definition of bycatch used in the Magnuson-Stevens Act.

In § 648.80, paragraph (a)(8)(iii) is revised to correct an omission in the proposed rule regulatory text, but referred to in the preamble to the proposed rule, by including language that provides the Council with the ability to recommend to the Regional Administrator, through a framework adjustment, an exemption that would allow vessels to retain and land regulated multispecies.

In § 648.80, paragraph (b)(11) is revised to include language referencing 50 CFR part 648, subpart D.

In § 648.80, paragraph (i)(4) is revised to clarify that the requirement to send a letter to the Regional Administrator is annual.

In § 648.81, paragraph (c)(2)(iii) is added to reflect the disapproval of the provision that would have excluded

surfclam and ocean quahog dredge gear from those portions of the NLCA that reside outside the Nantucket Lightship Habitat Closure Area.

In § 648.81(d)(2), the reference to paragraphs (b)(2)(ii) and (iii) is corrected to read paragraphs (f)(2)(ii) and (iii).

In § 648.81, paragraph (h)(1)(i) is revised to reflect the disapproval of the shrimp trawl exemption from the WGOM Habitat Closure Area.

In § 648.82, paragraph (b)(6) is revised, as requested by the Council, to include language to round up to the nearest 50 lb (22.7 kg) an adjustment to the cod trip limit for limited access Handgear A permitted vessels for ease of administration and enforcement. This paragraph is also revised to reflect that the cod trip limit adjustment is dependent on changes to the GOM cod trip limit, rather than the cod trip limit.

In § 648.82(c)(1), the date for reported landings to determine a vessel's baseline DAS allocation is corrected to be consistent with the date in the preamble of the proposed rule.

In § 648.82, paragraphs (c)(1) and (d) are revised to clarify the permit categories for which a DAS baseline shall be defined and a DAS allocation made available, respectively.

In § 648.82, paragraph (c)(1) is revised to clarify that a vessel's Amendment 13 used DAS baseline should never exceed the vessel's annual DAS allocation prior to August 1, 2002.

In § 648.82, paragraph (d)(4) is revised, as requested by the Council, to more accurately reflect the criteria and procedure for not reducing DAS allocations and modifying DAS accrual.

In § 648.82, paragraph (e) is respecified as paragraphs (e)(1) and (e)(2) for clarification.

In § 648.82, paragraph (k)(3) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that vessels may submit a DAS lease application prior to the start of a fishing year.

In § 648.82, paragraph (k)(3)(i) is revised, as requested by the Council, to include the following language: ''Aggregate data may be used in the analysis of the DAS Leasing Program.''

In § 648.82, paragraph (k)(3)(iv) is revised, as requested by the Council, to clarify that additional DAS associated with a limited access Large Mesh permit may not be counted towards a vessel's 2001 fishing year allocation when determining how many DAS a vessel may lease.

In § 648.82, paragraph (l)(1)(ii) is revised to include a restriction on gross tonnage that was omitted from the proposed rule in error. This change makes the regulations consistent with the intent of the Council.

In § 648.85, paragraph (a)(3)(i) is revised to clarify that VMS double polling per hour would occur in the U.S./Canada Management Areas only for groundfish DAS vessels declaring a groundfish DAS in this area.

In § 648.85, paragraph (a)(3)(ii) is revised to clarify that groundfish DAS vessels must declare into the U.S./Canada Management Areas only when intending to fish under a groundfish DAS.

In § 648.85(a)(3)(ii), the incorrect reference to paragraph (b)(4) is removed.

In § 648.85, paragraph (a)(3)(iii) is revised to be consistent with Amendment 13, as requested by the Council, to indicate that the gear requirements under the Understanding are specific to the Eastern U.S./Canada Area only. In addition, a reference to paragraph (a)(1) is corrected to read paragraph (a)(1)(i), and a reference to paragraphs (a)(6)(i) and (ii) is corrected to read paragraphs (a)(3)(iii)(A) and (B).

In § 648.85, paragraphs (a)(3)(iii) and (b)(3)(x) are clarified to read that a vessel fishing in the Eastern U.S./Canada Area may fish with both a haddock separator trawl and a flatfish net on the same trip.

In § 648.85, paragraphs (a)(3)(iii)(A) and (B) are revised to reflect changes made to the gear requirements under the Understanding based on public comment received.

In § 648.85, paragraph (a)(3)(iv)(A) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that the 500-6lb (227–kg) daily cod limit is a landing limit rather than a possession limit and includes a maximum trip limit of 5,000 lb (2,270 kg). This paragraph further clarifies that this trip limit is specific to the Eastern U.S./Canada Area only.

In § 648.85, paragraphs (a)(3)(iv)(A)(*1*) and (*2*) are added to include language that the Eastern U.S./Canada Area will close upon attainment of 100 percent of the cod TAC.

In § 648.85, paragraphs (a)(3)(iv)(A)(*1*), (B)(*3*), and (C)(*3*) are revised to reflect that all vessels will be prohibited from retaining cod, haddock, and yellowtail flounder, respectively, once 100 percent of the respective TACs are projected to be attained.

In § 648.85, paragraph (a)(3)(iv)(B) is revised to reflect that the haddock limit is a landing limit rather than a possession limit.

In § 648.85, paragraphs (a)(3)(iv)(B)(*3*) and (C)(*3*) are corrected, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraphs (a)(3)(iv)(C)(*1*) and (*2*) are revised to reflect that the only yellowtail flounder trip limit in the U.S./Canada Management Areas, prior to any adjustment, is within the CA II Yellowtail Flounder SAP.

In § 648.85, paragraph (a)(3)(iv)(E) is corrected to be consistent with Amendment 13, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraph (a)(3)(v) is revised to clarify the daily reporting requirements for cod, haddock, and yellowtail flounder for vessels declared in the U.S./Canada Area.

In § 648.85, paragraphs (b)(1) and (2) are revised to reflect the disapproval of the abbreviated SAP process proposed in Amendment 13.

In § 648.85, paragraph (b)(3)(v) is revised and paragraphs (b)(3)(v)(A) and (B) are removed to reflect a change to the VMS declaration regulations resulting from disapproval of the CA II Haddock SAP.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify that the cod trip limit in the CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession specified for the Eastern U.S./Canada Area.

In § 648.85, paragraph (b)(4) is revised and paragraph (b)(6) is removed to reflect disapproval of the Closed Area II Haddock SAP. In addition, paragraph (b)(4) has been clarified to indicate that only limited access NE multispecies vessels are allowed to fish in the SNE/MA Winter Flounder SAP. Also, paragraph (b)(4)(iv) is modified to replace phrase ''NE multispecies'' with ''regulated species.''

In § 648.85, paragraph (b)(5) is removed to reflect disapproval of the CA I Hook Gear SAP.

In § 648.85, paragraph (c)(2)(iii)(C) is revised, as requested by the Council, to specify that the GB TAC referred to is the GB cod TAC.

In § 648.86, paragraph (b)(2)(iii) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.87, paragraph (b)(1)(i) is corrected to refer to a sector allocation instead of a framework adjustment.

In § 648.87, paragraphs (b)(1)(vii), (b)(1)(ix), (b)(2)(x), (c)(1), (c)(2), (c)(3), and (d)(1) were modified, and a new paragraph (b)(1)(xv) was added in order to ensure effective administration and enforcement of the sector allocation program. These changes, edits and additions clarify what requirements sector participants must comply with, that sector participants may be charged jointly and severally pursuant to 15 CFR

Part 904, and that sector participants must possess a Letter of Authorization issued by NMFS which authorizes participation in the sector and exempts them from certain fishery regulations necessary to fish in accordance with an Operations Plan.

In § 648.87, paragraph (b)(1)(xvi) was added, consistent with Amendment 13, to specify the NE multispecies management measures that all Sectors, fishing under a TAC allocation, must abide by.

In § 648.87, paragraph (b)(2) is revised to clarify that both an Operations Plan and a Sector Contract must be submitted to the Regional Administrator.

In § 648.87, paragraph (c) is modified to add Regional Administrator authority to exempt members of an approved sector from Federal fishing regulations.

In § 648.87(c)(1), the reference to paragraph (c)(1) is corrected to read paragraph (b)(2).

In § 648.87, paragraph (c)(4) was added in order to ensure effective administration and enforcement of the sector allocation program. This change indicates that the Regional Administrator may withdraw approval of a Sector, after consultation with the Council based on a Sector participants noncompliance with the Sector's Operation Plan or if the Operations Plan undermines the achievement of fishing mortality objectives of the NE Multispecies FMP.

In § 648.87(d)(1), the reference to paragraphs (e)(1)(ii) and (d) are corrected to read paragraphs (d)(1)(ii) and (c), respectively.

In § 648.87, paragraph (d)(1)(i) is revised to correct the definition of the GBCHSA to include the Eastern U.S./Canada Area, which was incorrectly omitted from the definition in the proposed rule.

In § 648.87(d)(1)(iii)(A), paragraph (b)(1)(i) is corrected to read (b)(2).

In § 648.88, paragraph (a)(1) is revised, as requested by the Council, to include language to round up to the nearest 25 lb (11.4 kg) an adjustment to the cod trip limit for open access Handgear permitted vessels for ease of administration and enforcement.

In § 648.89, paragraph (e)(3)(ii) is corrected to be consistent with the letter of authorization requirements of the other closed areas.

In § 648.90, paragraph (d) is revised and paragraph (e) is added to reflect disapproval of the removal of the Flexible Area Access Program.

Classification

The Regional Administrator determined that the FMP amendment implemented by this rule is necessary for the conservation and management of the NE multispecies fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

A notice of availability of the FSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on February 6, 2004 (68 FR 5856). Through the FSEIS, NMFS has analyzed project alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS has also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's preferred alternative. NMFS also concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A copy of the ROD for Amendment 13 is available from the Regional Administrator (*see* **ADDRESSES**).

As described in the preamble to the proposed rule, this action is being taken consistent with the Court Order issued in *CLF* v. *Evans*, which requires implementation of Amendment 13 no later than May 1, 2004. NMFS has been developing the implementing regulations for Amendment 13 since January 2004 with goal of implementing Amendment 13 on May 1, 2004. However, a provision (Div. H, section 105) in the Consolidated Appropriations Act of 2004 precluded NMFS from expending any funds authorized for Fiscal Year 2004 to ''implement any measures to reduce overfishing and promote rebuilding of fish stocks managed under the Management Plan [Northeast Multispecies FMP] other than such measures set out in the final rule.'' This language prevented NMFS from implementing Amendment 13 as a final rule on time to be in compliance with the *CLF* court order unless it was repealed before May 1, 2004. However, on April 13, 2004, President Bush signed into law H.R. 2584, which contains a provision repealing Section 105 of division H of the Consolidated Appropriations Act of 2004, thus enabling NMFS to implement Amendment 13.

To comply with the Court-ordered May 1,2004 implementation of Amendment 13, the Assistant Administrator for NMFS, under 5 U.S.C. 553(d)(3) finds good cause to waive the 30-day delayed effectiveness for the management measures contained in Amendment 13. Although NMFS is waiving the 30-day delay in effectiveness, the implementing regulations for Amendment 13 will not take effect until May 1, 2004, or as otherwise stated in the ''Dates'' section above.

This rule contains 21 new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648–0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648-0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648–0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648–0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648–0202, (1 hr/response);
6. 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);
7. VMS proof of installation, OMB Control Number 0648–0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648–0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648–0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648-0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648–0202, (5 min/response);
12. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648–0202, (5 min/response);
13. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern

Yellowtail Trip Limit Area, OMB Control Number 0648–0202, (5 min/response);

14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648–0202, (5 min/response);

15. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648–0202, (5 min/response);

16. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648–0202, (5 min/response);

17. Submission of a sector allocation proposal, OMB Control Number 0648–0202, (50 hr/response);

18. Submission of a plan of operations for an approved sector allocation, OMB Control Number 0648–0202, (50 hr/response);

19. Daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs, OMB Control Number 0648–0212, (0.25 hr/response);

20. Annual reporting requirement for sectors, OMB Control Number 0648–0202, (6 hours/response); and

21. Trip notification for vessels participating in the Eastern U.S./Canada Area for the purpose of observer coverage, OMB Control Number 0648–0202, (5 min/response). Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared this FRFA in support of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The FRFA describes the economic impact that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the initial RFA (IRFA) for the proposed rule to implement Amendment 13 (69 FR 4362, January 29, 2004) and the corresponding economic analyses prepared for Amendment 13 (*e.g.*, the FSEIS and the Regulatory Impact Review (RIR)). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and the FSEIS are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (*see* **ADDRESSES**). A description of the reasons why this action is being considered, the objectives of, and legal basis for, the final rule is found in the preamble to the final rule.

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

The final rule implements changes affecting any vessel holding a limited access groundfish permit, an open access handgear-only permit, and vessels that hold an open access Party/Charter permit. Based on fishing year 2002 (FY 2002) data, the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 Handgear permit holders, and 685 Party/Charter permit holders. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a Handgear or a Party/Charter permit was 2,250 of which 1,565 held only a Handgear permit, 306 held only a Party/Charter permit, and 379 held both a Handgear and a Party/Charter permits. The Small Business Administration size standard for small commercial fishing entities is $3.5 million in gross receipts, while the size standard for small Party/Charter is $5.0 million in gross receipts. The commercial fishing size standard would apply to limited access permit holders, as well as open access Handgear only permits. Available data based on 1998–2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was $1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. In addition, since all Party/Charter vessels have gross receipts of under $5.0 million, these also fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial and recreational fishing entities, there will be no disproportionate impacts between small and large entities.

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

Reporting and Recordkeeping Requirements

The measures approved under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Management Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) expedited submission of a proposed SAP; (10) request to power down VMS for at least 1 month; (11) request for an LOA to participate in the GOM Cod Landing Exemption; (12) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (13) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (14) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (15) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (16) submission of a sector allocation proposal; (17) submission of a plan of operations for an approved sector allocation; (18) daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Management Area and/or the associated SAPs; and (19) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs. Individual vessel owners or groups of vessel owners will be impacted by these

requirements. There will not be a need for professional skills to comply with these requirements, although groups of vessel owners applying for a sector allocation may be advised to seek outside consulting services in preparing and submitting a plan for a sector allocation. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on or about February 10, 2004.

Other Compliance Requirements

All groundfish DAS vessels participating in the U.S./Canada Understanding, including all participants in the CA II Yellowtail Flounder SAP, with the exception of the SNE/MA Winter Flounder SAP, must use VMS within these programs. Any vessel that does not currently possess a VMS must obtain one prior to fishing in the U.S./Canada Management Area. The cost of purchasing and installing VMS, along with the associated operational costs is currently estimated at $3,600 per vessel.

The required changes to mesh size relative to the no-action 2001 baseline (pre-court order and settlement agreement fishery) were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be $1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be $7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was $9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be $18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be $8,800. However, most requirements to purchase new nets to be in compliance with mesh regulations implemented by this final rule also have appeared in a series of emergency rules to implement the Court Order and subsequent Settlement Agreement. Therefore, for the majority of vessels that have continued in the fishery, these compliance costs have already been met.

The average cost for vessels fishing in the eastern US/Canada Management Area to replace their nets with a flatfish net was estimated to be $7500, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately $747. The modification of an existing flatfish net to meet the requirements of the final rule is estimated to be $550.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received forty-nine hundred and forty-one comments on the proposed rule. Of these, there were eleven comments on the IRFA and several comments that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 13.

One commercial fishing group submitted a number of comments on the IRFA. Those comments and NMFS's responses follow:

Comment A: The Agency's economic analysis (referring to the IRFA) focuses exclusively on fishing vessels, neglecting a review of the impacts on shoreside infrastructure, accessory businesses, and most importantly, the consumer. The analysis fails to address the magnitude of the effects on port infrastructure, including but not limited to dock owners, processors, gear, fuel and ice suppliers. Without this data and analysis, the review lends itself to more commentary about the analysis that is missing as opposed to the analysis that is present.

Response: The IRFA contained in the proposed rule fulfills the requirements of the RFA which directs Federal agencies to analyze economic impacts to small business entities resulting from implementing regulations. Neither the RFA, nor Federal caselaw require Federal agencies to analyze the expected economic impacts resulting from their regulations on small entities *indirectly* affected by the agency's actions. Instead, the RFA analysis is limited to small entities which will be *directly* regulated by a Federal agency. In this case, the analysis is focused on vessels that comprise the affected NE multispecies fleet. The Council's economic analysis contained in Amendment 13 and the RIR address the commenter's concerns. A thorough breakdown of economic impacts by industry, by port, is provided in Volume 1, Section 5.4.6 of Amendment 13. Results of that analysis fulfills the requirements of E.O. 12866 which requires the Agency to take into account all economic impacts to the Nation resulting from rulemaking. *See also* response to comment 47.

Comment B: The Agency's analysis of the economic impacts is incomplete and not entirely helpful. The Agency itself writes, regarding its primary evaluation for vessels, ''Change in gross revenues provides an *incomplete picture* of the impact of the proposed action on vessel profitability making it difficult to determine whether any given vessel may cease business operations.'' Without knowing the complete impact on fishing vessels how can one attempt to realize the full effect of the proposed rule?

Response: The economic analysis for evaluation of vessels in Amendment 13 is not incomplete. In the section cited by the commenter, the analyst is explaining why the Council did *not* use changes in gross revenue as a proxy for profitability, although it is not unusual to use this technique for fishery management actions where cost data is incomplete or unavailable. Instead, the Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed.

Comment C: NMFS states that no data collection system exists to collect cost data comparable to the permit database which collects information on landings and revenues, and there are no means to directly provide a reliable numerical estimate of current profit levels or how many vessels may be able to remain profitable once the proposed action is implemented. The commenter states that these statements only reinforce our frustration regarding economic impacts to communities.

Response: NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions,

and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in the FSEIS. *See also* response to comment 48.

Comment D: We are troubled by NMFS's admission that the DAS leasing model is incomplete. Incomplete analysis and modeling does not give a clear picture of the socio-economic effects of leasing, making it difficult to comment effectively on the impact to the industry and fishing communities.

Response: NMFS does not believe the mathematical programming model used to determine the profitability of DAS leasing is incomplete. There is no admission of an incomplete analysis found in the IRFA accompanying the proposed rule. Rather, NMFS has described the likely socio-economic impacts resulting from a DAS leasing program in the section entitled ''Steps Taken to Minimize Economic Impacts.''

The Office of Advocacy, U.S. Small Business Administration (Advocacy) submitted the following comments on the IRFA:

Comment E: Advocacy notes that NMFS discusses the economic impacts of the various proposed rule requirements individually, and there is no discussion on what the final overall impact of all of the actions and compliance requirements will be on small fishers. Advocacy believes that the transparency and usability of the impact assessment would be improved for use by interested small entities if the costs were presented in a summary table. It is difficult to discern the total cost of the rule on any particular vessel even if one knows all of the data regarding the vessels size and operation location. Advocacy would like to see an introductory statement regarding total impacts to the industry.

Response: NMFS has concluded that the approach used in the analysis does not lend itself easily to a broad interpretation of total impacts or impacts to a typical or average multispecies vessel. In many analyses, profitability is assumed to be shared equally among vessels regardless of different geographic areas, gear type, vessel size, etc. In the Amendment 13 economic analysis, the Council was able to specify a more exact estimate of profitability depending upon the socio-economic description of vessels, specifically in regard to vessel size, gear, and port of landing in terms of profitability. This allows a vessel owner of a specific sized vessel, from a specific geographic area, using a specific gear type, to ascertain the impact of the final rule on a particular vessel. However, in response to Advocacy's request, NMFS has produced a summary table of economic impacts to small vessels resulting from this rule. This table appears as an appendix to the FRFA, which can be obtained from NMFS, Northeast Regional Office and on the Northeast Regional Office Web site (*see* **ADDRESSES**).

Comment F: An additional change to the presentation of costs that would improve transparency of the analysis would be a detailed description of which compliance requirements are included in the revenue loss and business closure analysis described on pages 4377 to 4379.

Response: The Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. Specific compliance costs, such as required gear changes, cannot be gleaned from this model. Therefore, the contribution of these costs in determining profitability cannot be accounted for because they are implicit to the economic model. In addition, it is important to note that the replacement of nets occurs on a regular basis regardless of required replacements due to changes in regulated mesh size, and these costs are captured by the economic model.

Comment G: NMFS distinguishes between small vessels, medium size vessels, and large vessels in terms of expected economic impact. With the exception of an explanation of what would be classified as a small trawl vessel, there is no information about how NMFS has determined what is a small vessel, medium vessel, or large vessel.

Response: In the economic analysis accompanying Amendment 13, large vessels are defined as greater than 70 ft (21.35 m) in total length, medium vessels as 50 ft (15.25 m) to 70 ft (21.35), and small vessels less than 50 ft (15.25 m).

Comment H: NMFS states that the costs associated with the reporting and recordkeeping requirements are minimal and consist only of postage and copying costs without providing an estimate of those costs. Moreover, the estimated time for completing the paperwork is approximately 82 hours. There is no indication that the level of expertise for completing forms has been considered. If these forms require the professional services, complying with the paperwork requirements of the rule would be costly. Even if the forms can be filled out by the business owner, it is time that is being spent that the business owner could spend concentrating on something else. Were these things considered when NMFS concluded that the cost would be minimal? Advocacy encourages NMFS to provide an estimate of what the additional costs may be, as well as a better explanation of its conclusion that the costs will be minimal.

Response: The analysis of costs of recordkeeping and reporting contained in the IRFA is consistent with OMB guidance on burden estimates under the PRA. NMFS recognizes that, in the past, burden hours were costed out a certain rate suggested by OMB. However, recent OMB guidance requires that only costs of postage and copying should be considered. Postage costs are assumed to be $0.37 per submission and copying costs are assumed to be $0.10 per page.

Comment I: In the description and estimate of the number of small entities subject to the proposed rule, NMFS gives a thorough discussion of the commercial fishing industry. However, in terms of recreational Party/Charter vessels, NMFS merely states the size standard for a small Party/Charter vessel and the number of Party/Charter permits that it has issued in the past. There is no information about how many of the recreational vessels would qualify as small business under the 100 employee size standard.

Response: Advocacy is correct. NMFS assumed that the public was aware that Party/Charter vessels have relatively small crews, usually 3 to 4 persons. None of the 685 Party/Charter vessels cited in the IRFA have a crew size greater than 100 employees. In addition, the SBA definition of a small Party/Charter vessel is one which has gross receipts under $5M. Under this definition, none of the Party/Charter vessels affected by this rule are considered small entities under the RFA.

Comment J: NMFS asserts that the majority of the Party/Charter vessels earn at least 75 percent of fishing income from passenger fees. However, no basis is provided for that statement. There is also no information regarding average vessel income.

Response: The percentage of fishing income from passenger fees for vessels

with a Charter/Party permit, whether they fish exclusively Party/Charter or fish commercially part of the year, is derived directly from the NMFS dealer database. Average income per vessel was not estimated since this would have most likely required a unique survey of Party/Charter vessels to account for refreshment, rental of fishing gear, etc. However, NMFS maintains that the relaxation of the bag limit will increase profitability in the Party/Charter business because it is likely to lead to greater passenger demand and increased frequency of party/charter trips.

Comment K: Advocacy states that some members of the fishing industry maintain that the proposed rule includes provisions that were not intended by Amendment 13, including fishing area closures that were not intended by the Council. Specifically, they contend that the closure of the GB Eastern U.S./Canada Management Area when the cod quota is reached may jeopardize Amendment 10 to the Sea Scallop FMP, and they are concerned about the extension of cod trip limits and gear requirements to the Western U.S./Canada Management Area. Advocacy is concerned that these inconsistencies may increase the burden on small entities and that they may not have been considered fully in determining the economic impact of the rule, as required by the RFA.

Response: NMFS has fully responded to industry comments regarding inconsistencies with Amendment 13 in the final rule. (see responses to Comments 16 through 18 and 20 through 23 in the preamble to this rule). NMFS, in responding to these comments, has modified the proposed rule as it applies to the U.S./Canada Management Area. Specific changes made in this final rule and their economic impacts to vessels are discussed in the following section, *Economic Impacts Resulting from Disapproved Measures and Changes to the Proposed Rule.*

Comment L: One commenter noted that, under the proposed alternative, there would be an impact in New England ports of $135 million in lost revenue, $54 million in lost personal income, and 1,900 affected jobs, contrasted with $95 million in lost revenue, $38 million in lost personal income, and 1,300 affected jobs associated with the stepped reduction alternative (Alternative 1B) and questioned why NMFS chose to implement an alternative that would produce the same long-term goals, yet at a much larger first-year cost.

Response: NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B is estimated to yield a reduction of $28 million in first year revenues compared to $10-40 million for the preferred alternative. However, Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. Therefore, profitability losses and gains could not be compounded, but only considered on a year-to-year basis. Applying the area closure model to the full 65-percent reduction in DAS would have misrepresented the year-4 impacts, so it was not done. Alternative 1B also contains the 2:1 DAS counting in SNE and the raised footrope trawl in the CC/GOM stock area. Presumably, at least part of the negative economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. It is important to note that in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10-percent reduction in DAS. NMFS believes that it is more likely that cumulative negative economic impacts of 4 years of DAS reductions under Alternative 1B would exceed that of the preferred alternative, especially since the difference between the two alternatives in 2004 is only about $12 million in gross sales. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, the FSEIS notes that the negative impacts attributable to the preferred alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the preferred alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction.

While much of the discussion above focuses on impacts to vessels, it is important to note that changes in impacts on revenues earned by the NE multispecies fleet would mirror impacts to the general economy, *e.g.*, revenues earned by non-fishing sectors, personal income, job growth, etc. The Council estimated impacts to the general economy by observing changes in harvest rates and utilizing an input-output model (IMPLAN).

Economic Impacts Resulting From Disapproved Measures and Changes to the Proposed Rule

As discussed in the preamble of this final rule, NMFS has disapproved seven proposed management measures in Amendment 13, including: An abbreviated application process for SAPs; the CA II Haddock SAP; the CA I Hookgear Haddock SAP; a prohibition on the use of surfclam and ocean quahog dredges in the NLCA; the exemption to allow shrimp trawl gear in the WGOM Closure Area; the GB hookgear cod trip limit program; and the removal of the FAAS. In addition, as discussed in the preamble, NMFS has modified proposed measures regarding the U.S./Canada Management Area of GB, on the basis of public comments received.

The disapprovals of the proposed SAPs in CA I and II will reduce economic benefits vis-a-vis the proposed rule. However, since these SAPs were not implemented during the 2001 baseline period, these disapprovals will have no economic impact on NE multispecies vessels resulting from the final rule, as would be expected under a no action alternative. In the IRFA, under the Category B DAS discussion, NMFS noted that fishing under Category B DAS in these programs will enhance the profitability of participating vessels. However, the management of the SAPs must also meet the requirements of NEPA, the Magnuson-Stevens Act, and other applicable laws, as explained in the preamble of this final rule. It was concluded that the CA II haddock access program could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons the proposed SAP is inconsistent with National Standard 1 and National Standard 2. Amendment 13 does not include information on whether a directed fishery on haddock in CA I

would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved.

The disapproval of the expedited process for issuance of SAPs is administrative in nature and should not affect the profitability of any particular SAP.

Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closed areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

The disapproval of the prohibition of surfclam and ocean quahog dredges in portions of the NLCA that are not contained in the Nantucket Lightship Closed Habitat Area will increase economic benefits to vessels participating in these fisheries vis-a-vis the proposed rule. However, when compared to the 2001 baseline, the disapproval will have no economic impact to these vessels resulting from the final rule, since they are already engaged in fishing in the NLCA, tantamount to a no action alternative. Nevertheless, as discussed in the IRFA, surfclam and ocean quahog vessels currently utilizing the NLCHA are expected to undergo a decrease in revenues of 0.9 percent resulting from the prohibition on fishing in that area. See the response to Comment 6.

The disapproval of an exemption for shrimp trawlers to fish in the WGOM Closed Area will reduce economic benefits vis-a-vis the proposed rule. However, the exemption in all other areas outside the small mesh exemption line will allow shrimp trawlers to expand their harvest, and thus, the net economic impact of the exemption will increase profitability of individual vessels relative to the 2001 baseline. This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

The disapproval of the GB hookgear cod trip limit program is likely to have a negative economic impact on individual vessels relative to the proposed rule, since this would have allowed for a higher trip limit under certain spatial and temporal conditions. However, when compared to the 2001 baseline, there is no economic impact from disapproving this measure because it is identical to a no action alternative.

The disapproval of the Council's recommendation to eliminate the FAAS will have no economic impact to vessels. The FAAS represents a rarely used administrative procedure to implement rules quickly.

The changes to the proposed rule regarding the U.S./Canada Management Area are an allowance for vessels other than groundfish DAS vessels to continue to fish in the Eastern U.S./Canada Management Area, and the relaxation of the cod limit and gear restrictions, as described in the preamble of this final rule, for groundfish DAS vessels fishing in the Western U.S./Canada Management Area. Removing the prohibition on fishing by other gears in the Eastern U.S./Canada Management Area will increase economic benefits to those vessels relative to the proposed rule, in which all gears capable of catching groundfish would have been prohibited. However, since those vessels cannot retain NE multispecies when the TACs are reached, as they could in 2001, there will be a negative impact on revenues compared to the 2001 baseline period, but limited by the fact that NE multispecies is a limited incidental catch associated with a relatively large catch of scallops or monkfish by category A and B vessels. Relaxation of the cod limit and the removal of the restriction to use flatfish nets or separator trawls in the Western U.S./Canada Management Area will yield positive economic impacts to affected DAS groundfish vessels vis-a-vis the proposed rule. The cod trip limit would increase from 500 lb (1,102 kg) to 1,000 lb (2,204 kg) and cost savings will be realized because gear modification will not be required in the Western U.S./Canada Management Area. However, when compared to the 2001 baseline, the reduction in the cod limit from 2,000 lb (4,408 kg) to 1,000 lb (2,204 kg) would continue to negatively impact revenues of individual vessels participating in the Western U.S./Canada Management Area. The removal of the requirement to use a haddock separator trawl or flatfish net when fishing in the Western U.S./Canada Management Area represents a decrease in compliance costs and concomitant increase in profitability for certain vessels, relative to the proposed rule, that would otherwise have had to obtain a new flatfish net or modify existing haddock or flatfish nets at costs estimated to be $7,500, $747, and $550, respectively. Relative to the 2001 baseline, however, this represents no change in fishing requirements and, hence, there is no economic impact to vessels fishing this area. In response to public comment, this final rule will also allow a modification of existing flatfish nets for use in the Eastern U.S./Canada Management Area. The cost of this modification is estimated to be $550 (*see* compliance costs).

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

This final rule contains a number of measures that will provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional B DAS, leasing of DAS, DAS transfer, and sector allocation. This final rule is expected to achieve target fishing mortality rates for stocks that are most adversely affected.

Category B DAS

Category B DAS will be subdivided into two categories, one which would be used in SAPs (reserve B DAS), while the use of the remaining B DAS (regular B DAS) will be determined in a future framework action. The primary purpose of B DAS is to provide access to and increased yield from stocks that may be fished at higher levels. These opportunities would enhance profitability for vessels that may be able to participate in any one or more of these special fisheries.

DAS Leasing or Transfer

Particularly for vessels with few alternative fisheries, reductions in profit may be offset by the ability to acquire more DAS either through leasing or DAS transfer. The former would make DAS available to a vessel for a single fishing season whereas the latter would be a permanent transfer of DAS from one vessel to another. Transferred DAS would be subject to a 40-percent conservation tax on the transfer of active DAS, and a 90-percent conservation tax on inactive (Category C) DAS, but vessels would be able to acquire both Category A and Category B DAS. By contrast, a DAS lease would not be subject to a conservation tax, but vessels would be only allowed to acquire Category A DAS. It is not known which option any given vessels may choose to pursue, but analysis clearly suggests that making DAS available in some form of exchange can improve overall profitability for both buyer and seller. The following describes this analysis.

The economic impact of a DAS leasing program was estimated by simulating a quota market using a math programming model. The model maximized industry profits by choosing the days each vessel will fish (if any) of their own allocation, days they will lease from other vessels, and the number of their days they will lease to other vessels. Each vessel can only fish a maximum number of DAS, which is the sum of their Amendment 13 Category A DAS allocation and their FY 2001 allocation. Days fished above their allocation of days must be leased from other vessels. In the model, vessels were constrained to be either a lessee or lessor, although in a real-world situation a vessel could be a lessee and a lessor simultaneously. Restrictions were placed on the model, which did not allow days to be leased by larger vessels from smaller vessels, consistent with the restrictions of this program. Results from the model yielded a very efficient outcome in terms of maximizing industry profit with as few vessels as possible. In reality, the actual leasing of DAS among industry participants may not be as profitable as projected by the math programming model. An individual vessel's activity level chosen by the model is determined by its productivity, the maximum allowable days it can fish, the lease price for DAS, daily fishing costs, and the prices of each species, and a restriction that prohibits leasing of days from smaller vessels by bigger vessels. The model doesn't differentiate between areas fished, where vessels land their fish, and a variety of other factors that will influence the amount of DAS leased, including other fisheries in which the vessel can participate, and it assumes perfect information among participants.

Vessels were grouped together, regardless of gear type, and then stratified into fleets of 100 vessels. Each fleet was then paired with itself, and then with every other fleet to simulate trades between all 1,345 vessels that could potentially lease quota. For each sector pair, the model was run 50 times in order to incorporate a stochastic lease price, which was generated based on results from a previous linear programming model. Lease prices used in the model ranged from $218 to $2,093, with a mean of $1,029. Results from the simulations were used to examine changes in profitability which would occur from allowing DAS leasing.

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 ft (15.25 m); class 2 vessels were between 50 ft (15.25 m) and 69 ft (21.04 m), and class 3 vessels were 70 ft (21.35 m) and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease DAS, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish. However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation. Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels that choose to lease all their DAS can greatly enhance their profit, since the owner is getting all the revenue from the lease without incurring any costs, and in particular by not having to pay labor costs. The decision from a vessel perspective on whether to lease DAS to other vessels is based on whether they can lease their DAS for more then they would earn after paying expenses, including payments to the crew. If a vessel decides to lease DAS from other vessels, it is based on whether it can earn more from a leased DAS than what it will pay for the lease, plus what it will pay to the crew and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 ft (15.25 m) in length were projected to use more DAS than in 2002 under a DAS leasing scheme. Trawl and gillnet vessels greater than 50 ft (15.25 m) were projected to have their DAS usage decline from 2002 levels. Hook vessels were projected to see their DAS increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. The analysis concludes that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was $68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was $31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was $41,111 using 31.9 days of effort under DAS leasing, while their 2002 average profit was $12,271, and their average DAS was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

Additionally, the average profit levels were projected to be higher under DAS leasing than if the vessels fished at their allocated 2004 levels. This demonstrates DAS leasing could provide substantial regulatory relief to these vessels compared with no leasing (no action alternative).

Handgear A Permit

The final rule converts the existing open access handgear permit into a limited access category and creates an open access category for Handgear A permits. Vessels that qualify for a limited access Handgear A permit will benefit from a relaxation of the cod trip limit and will not be subject to trip limits on any other species. Vessels that do not qualify for limited access Handgear A permit will still be able to obtain an open access permit, but the cod trip limit will be much lower than current Handgear only permit holders may retain. Available data show that, even though a large number of open access handgear permits have been issued in the past, less than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels will qualify for a limited access Handgear A permit. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The

no action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no action.

Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery

The northern shrimp fishery will no longer be restricted to the area shoreward to the small mesh fishery exemption line. However, vessels will continue to be prohibited from fishing in the WGOM Habitat Closure Area. While this prohibition will reduce economic benefits vis-a-vis the proposed management measure, which would have allowed fishing in a much larger area, the lifting of the restriction to fish shoreward of the small fishery exemption line will yield an increase in the profitability of shrimp vessels, albeit smaller than originally proposed. The no action alternative would have yielded no economic benefits and would not have changed the economic conditions in the shrimp fishery. Therefore, this management measure is favorable when compared to the no action alternative.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

Tuna purse seine gear is defined as exempted gear for the purposes of the FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This will benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the NE multispecies fisheries.

SNE General Category Scallop Vessel Exemption Program

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in statistical areas 537, 538, 539, and 613—defined as the SNE General Category Scallop Exemption Area—when not under a NE multispecies DAS. This relieves a restriction and allows scallop vessels to enter expanded areas for the harvest of scallops, allowing those vessels to increase profits, if available. The no action alternative would yield no economic benefits, because vessels would be precluded from participating in this program. Therefore, the proposed alternative is favorable when compared to the no action alternative.

Modified VMS Operation Requirement

A vessel using a VMS can opt out of the fishery for a minimum period of 1 calendar month by notifying the Regional Administrator. Notification must include the date a vessel will resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator can stop sending VMS reports. During the period out of the VMS program, the vessel cannot engage in any fisheries until the VMS is turned back on. This will reduce operating costs associated with VMS operation (*see* section 3.4.11 of Amendment 13). The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

Revised Standards for Certification for Incidental Catch/Exempted Fisheries

The standards for certification of a incidental catch/exempted fishery that were implemented through Amendment 7 would continue to be used. However, this measure allows the Regional Administrator to modify the 5-percent incidental catch rule and make additional modifications on a one-to-one basis under an accepted set of conditions. The economic benefits or costs of this measure are uncertain, since the Regional Administrator could decrease the percentage used in the incidental catch rule, as well as increase it. However, the measure is intended to allow a very controlled expansion of fishing areas, thus, benefitting vessels economically while conserving species of concern. The effect of the no action alternative would depend on the Regional Administrator's determination on a case-by-case basis, *e.g.*, if the Regional Administrator lowered the acceptable incidental catch percentage, the no action alternative would have a beneficial impact, but if the acceptable incidental catch percentage were increased, the no action alternative would have a negative impact.

Periodic Adjustment Process

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every 2 years. This will tend to have a positive effect on profitability of individual vessels, since it expands their planning horizon, making their fishing operations more efficient and profitable. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

U.S./Canada Resource Sharing Understanding

Management of GB cod, haddock, and yellowtail flounder is subject to the terms of the Understanding. The Understanding specifies an allocation of GB cod, haddock, and yellowtail flounder for each country. The management objective is for the U.S. fishery to harvest the shared stocks of cod, haddock, and yellowtail flounder at, but not above, the U.S. allocation. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish GB. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on GB, thus, increasing the profitability of individual vessels engaged in the fishery. The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

Sector Allocation

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS), with target TACs specified for each sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels if they desire. One of the major benefits of self-selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the formation of a sector is assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector, since they would be able to

better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, Amendment 13 creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action alternative.

GB Hook Sector

The final rule creates a voluntary sector for longline/hook vessels on GB. This provides an opportunity for vessels to mitigate the impacts of the management alternatives. By organizing into a cooperative, vessels may be able to develop more efficient ways to harvest groundfish and minimize the inefficiencies that result from the regulations. While it is not possible to estimate the economic impacts of a sector until the actual participants are known, the pool of participants will probably be the vessels that have used longline gear to fish on GB in the past.

The are significant alternatives included in this final rule associated with the choice of the rebuilding measures and the disapproval of SAPs and other mitigating factors. In addition to the No-Action alternative which leaves the fishery unchanged, the phased-reduction alternatives 1B and 1D would have a lesser negative impact on multispecies vessels than the proposed alternative in the first year of the rebuilding period; $28.3M and $33M, respectively, compared to $40M for the proposed alternative. All other rebuilding alternatives would have a higher negative economic impact on vessels during the first year. The non-selection of the No-Action alternative results from a Court Order which required the agency to pursue a rebuilding plan for overfished stocks in the Northeast multispecies complex. The rationale for not selecting Alternative 1B is discussed above and in the response to Comment 30 in the preamble. Both 1B and 1D are phased-reduction alternatives; the difference being a hook limit for cod on Georges Bank for Alternative 1D yielding a greater economic impact than 1B. However, the point is that both phased-reduction strategies could yield greater rewards in the first year but at a much higher economic risk in the following three year period. It is this risk that the Council considered when deliberating on a preferred alternative. In addition, the preferred alternative consists of a B DAS program for fishing in the SAPs, which will potentially yield greater economic benefits for those fishers able to participate in this program. The phased-reduction alternatives do not include B DAS. The mitigating alternatives would all yield a higher economic benefit, primarily because they represent either the removal of current fishing restrictions or opportunities for expanded fishing. Therefore, the disapproval of 2 SAPs and the exemption for shrimp trawlers in habitat closed areas, specifically the WGOM habitat closed areas, actually constitute the non-selection of significant alternative since the proposed alternatives for these management measures would have yielded higher economic impacts to fishing vessels. A discussion of the rationale for these disapprovals appears in this final rule under ''Disapproved Measures''.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available at NMFS, Northeast Region (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2004.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, new definitions for ''Bottom tending mobile gear,'' ''Circle hook,'' ''DAS Lease,'' ''DAS Lessee,'' ''DAS Lessor,'' ''Handgear,'' ''Sector,'' ''Static gear,'' ''Stock of concern,'' ''Stocks targeted by the default measures,'' ''Sub-lease,'' ''Transboundary Management Guidance Committee,'' ''Transboundary Resource Advisory Committee,'' ''Tub-trawl,'' ''Tuna purse seine gear,'' and ''U.S./Canada Steering Committee,'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Bottom-tending mobile gear, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

Circle hook, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use

of DAS to another NE multispecies limited access vessel.

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Handgear, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

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Sector, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

* * * * *

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

Stock of concern, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

Stocks targeted by the default measures, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

* * * * *

Transboundary Management Guidance Committee (TMGC), with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

Transboundary Resource Advisory Committee (TRAC), with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

* * * * *

Tub-trawl, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

Tuna purse seine gear, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

* * * * *

U.S./Canada Steering Committee, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

* * * * *

■ 3. In § 648.4, paragraph (a)(1)(i)(A), paragraph (a)(1)(i)(E) introductory text, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(*1*) and (a)(1)(i)(M), (a)(1)(ii) and paragraph (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(*1*) and (*2*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(*3*) *Application/renewal restrictions.* The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(G) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

* * * * *

(I) * * *

(*1*) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

* * * * *

(M) *Appeal of denial of permit—(1) Eligibility.* Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(3) *Status of vessels pending appeal.* A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(ii) *Open access permits.* A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access mulitspecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

* * * * *

■ 4. In § 648.7, paragraphs (a)(1) introductory text, (a) (1)(i), and (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) *Detailed weekly report.* Until otherwise required by the Regional Administrator, federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, and a report of all fish purchases, except for surfclam and ocean quahog dealers or processors, who are required to report only surfclam and ocean quahog purchases. Once authorized in writing by the Regional Administrator, all dealers must submit daily reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surfclam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, ''small'' (*i.e.*, less than 23 inches (58.4 cm), total length) or ''large'' (*i.e.*, 23 inches (58.4 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

■ 5. In § 648.9, paragraphs (b)(5) and (c) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(b) * * *

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification,

''real time'' shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

* * * * *

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) At least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas.

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 1 calendar month by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times.

(ii) *Letter of exemption*—(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

* * * * *

■ 6. In § 648.10, paragraphs (b), (c), and (f) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified in § 648.58;

(iii) A scallop vessel fishing under the Small Dredge program specified in § 648.51(e);

(iv) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section.

(v) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) A Part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required

by paragraphs (b)(2)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii) of this section, to provide the notifications required by this paragraph (b), or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

(ii) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section.

(iii) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification.* Owners of vessels issued limited access NE multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, and scallop vessels qualifying for a DAS allocation under the Occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish Category C or D permit, unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C or D permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(ii), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, port of landing and permit number, and that the vessel has ended a trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iv) of this section.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(j)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using

the procedure described in paragraph (f)(1) of this section.

■ 7. In § 648.14, paragraphs (a)(39), (40), (43), (47), (52), (55), (90), (104), (116), (126); (b)(1) through (4); (c)(1), (c)(3), (c)(7), (c)(10) through (c)(15), (c)(21), (c)(24), (c)(26), (c)(29) through (c)(31), and (c)(33); the introductory text to paragraph (d); and paragraph (d)(2) are revised; paragraphs (c)(18), (c)(23), and (c)(32) are removed and reserved; and paragraphs (a)(128) through (162) and (c)(34) through (50) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

* * * * *

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17.

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), or (f)(2)(iii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

* * * * *

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

* * * * *

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, or enter or exit the declared area more than once per trip.

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (x).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) [*Reserved*]

(143) [*Reserved*]

(144) [*Reserved*]

(145) [*Reserved*]

(146) [*Reserved*]

(147) [*Reserved*]

(148) [*Reserved*]

(149) [*Reserved*]

(150) [*Reserved*]

(151) [*Reserved*]

(152) [*Reserved*]

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the

restrictions and conditions under § 648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as otherwise provided under § 648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(b) * * *

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(c) * * *

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

* * * * *

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (g), and (h), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit.

* * * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(i).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS will gillnet gear, fail to comply with gillnet tagging requirements specified in § 648.80(a)(3)(iv)(A)(*4*), (a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(A)(*3*), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(C), (b)(2)(iv)(F), (c)(2)(v)(A)(*2*), and (c)(2)(v)(B)(*2*), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C), without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

* * * * *

(18) [Reserved]

* * * * *

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

* * * * *

(23) [Reserved]

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii) or (iii).

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) [Reserved]

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

* * * * *

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

* * * * *

■ 8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

(iv) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

■ 9. Section 648.80 is revised to read as follows:

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

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The intersection of the Cape Cod, MA, coastline and 42°00′ N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12	(1)	70°00′
G11	40°50′	70°00′
NL1	40°50′	69°40′
NL2	40°18.7′	69°40′
NL3	40°22.7′	69°00′
	(2)	69°00′

[1] South facing shoreline of Cape Cod.
[2] Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller

than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*—(1) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) Number of nets. A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(*3*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*4*) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(*1*) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(*2*) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or

hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels*—(*1*) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150 in accordance with § 648.23(b).

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(*2*) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh

multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of incidental catch of regulated species, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as incidental catch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental catch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce incidental catch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time

and area, and the possibility of expansion in the fishery.

(iv) Incidental catch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′

SMALL MESH AREA I—Continued

Point	N. lat.	W. long.
SM1	43°03′	70°27′

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6′	69°55′
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40′
SM16	42°41.5′	69°40′
SM17	42°36.6′	69°55′
SM13	43°05.6′	69°55′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of ⅜-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5⁄16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
Cl1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption,

must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35′	70°00′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 10	42°04.75′	70°16.95′
RF 11	42°00′	70°13.2′
RF 12	42°00′	70°24.1′
RF 13	42°07.85′	70°30.1′
RF 1	42°14.05′	70°08.8′

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. lat.	W. long.
RF 1	42°14.05′	70°08.8′
RF 2	42°09.2′	69°47.8′
RF 3	41°54.85′	69°35.2′
RF 4	41°41.5′	69°32.85′
RF 5	41°39′	69°44.3′
RF 6	41°45.6′	69°51.8′
RF 7	41°52.3′	69°52.55′
RF 8	41°55.5′	69°53.45′
RF 9	42°08.35′	70°04.05′
RF 1	42°14.05′	70°08.8′

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1	43°15′	70°35.4′
GRF2	43°15′	70°00′
GRF3	43°25.2′	70°00′
GRF4	43°41.8′	69°20′
GRF5	43°58.8′	69°20′

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of ⅜-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1]The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		70°00′ [1]	

[1]Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00′ W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00′ W. long. line.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81

sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10

percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has an Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5′ N. lat. and 71°50.2′ W. long.; east-northeastly through Block Island, RI, to 41°15′ N. lat. and 71°07′ W. long.; then due north to the intersection of the RI–MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to

evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

Point	N. lat.	W. long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12		70°00′ [1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30′ W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc1	(1)	73°00′
Sc2	40°00′	73°00′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc9	41°00′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, posses on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (''crucifer'') with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A ''snap-on'' hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear

permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels*—(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(*2*) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(*3*) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20′ N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair

trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies*— (i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes*—(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

■ 10. Section 648.81 is revised to read as follows:

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

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. lat.	W. long.
C1I1	41°00′	67°20′
C1I2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ [1]
C1I3	42°22′	67°20′ [1]
C1I1	41°00′	67°20′ [1]

[1] The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;

(iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or

(iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and

(B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. lat.	W. long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°5O′	70°20′
G10	40°50′	69°00′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

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

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(d) *Cashes Ledge Closure Area.* (1) 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, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area.* (1) 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, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM CLOSURE AREA [1]

Point	N. lat.	W. long.
WGM1	42°15′	70°15′
WGM2	42°15′	69°55′
WGM3	43°15′	69°55′
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′

[1] A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to

persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) 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, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

[March 1–March 31]

Point	N. lat.	W. long.
GM3	42°00′	(1)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM23	42°30′	70°00′

1 Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM9	43°00′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM23	42°30′	70°00′
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM10	43°30′	(4)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM23	42°30′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32′ or (2)
GM20	44°00′	67°21′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

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

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching 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 owner's name and vessel identification number;

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

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

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

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

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, 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, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREA

[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00′	(1)
GB2	42°00′	68°30′
GB3	42°20′	68°30′
GB4	42°20′	67°20′
GB5	41°30′	67°20′
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
GB6	40°30′	68°30′
GB7	40°30′	69°00′
G10	40°50′	69°00′
GB8	40°50′	69°30′
GB9	41°00′	69°30′
GB10	41°00′	70°00′
G12	(1)	70° 00′

[1] Northward to its intersection with the shoreline of mainland MA.

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

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. lat.	W. long.
WGM4	43°15′	70°15′
WGM1	42°15′	70°15′
WGM5	42°15′	70°00′
WGM6	43°15′	70°00′
WGM4	43°15′	70°15′

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CLH1	43°01′	69°03′
CLH2	43°01′	68°52′
CLH3	42°45′	68°52′
CLH4	42°45′	69°03′
CLH1	43°01′	69°03′

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. lat.	W. long.
JB1	43°40′	68°50′
JB2	43°40′	68°40′
JB3	43°20′	68°40′
JB4	43°20′	68°50′
JB1	43°40′	68°50′

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CI1	41°30′	69°23′
CI4	41°30′	68°30′
CIH1	41°26′	68°30′
CIH2	41°04′	69°01′

CLOSED AREA I—NORTH HABITAT CLOSURE AREA—Continued

Point	N. lat.	W. long.
CI1	41°30′	69°23′

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIH3	40°55′	68°53′
CIH4	40°58′	68°30′
CI3	40°45′	68°30′
CI2	40°45′	68°45′
CIH3	40°55′	68°53′

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. lat.	W. long.
CIIH1	42°00′	67°20′
CIIH2	42°00′	67°00′
CIIH3	41°40′	66°43′
CIIH4	41°40′	67°20′
CIIH1	42°00′	67°20′

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSED AREA

Point	N. lat.	W. long.
NLH1	41°10′	70°00′
NLH2	41°10′	69°50′
NLH3	40°50′	69°30′
NLH4	40°20′	69°30′
NLH5	40°20′	70°00′
NLH1	41°10′	70°00′

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the Cashes Ledge Closure Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that its gear is stowed in

accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9′ N.	68°36.0′ W.
70	40°07.2′ N.	68°38.4′ W.
71	40°06.9′ N.	68°46.5′ W.
73	40°08.1′ N.	68°51.0′ W.
74	40°05.7′ N.	68°52.4′ W.
75	40°03.6′ N.	68°57.2′ W.
76	40°03.65′ N.	69°00.0′ W.
77	40°04.35′ N.	69°00.5′ W.
78	40°05.2′ N.	69°00.5′ W.
79	40°05.3′ N.	69°01.1′ W.
80	40°08.9′ N.	69°01.75′ W.
81	40°11.0′ N.	69°03.8′ W.
82	40°11.6′ N.	69°05.4′ W.
83	40°10.25′ N.	69°04.4′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.6′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.1′ N.	69°03.9′ W.
88	40°02.65′ N.	69°05.6′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.6′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.65′ N.	69°24.4′ W.
94	39°56.1′ N.	69°26.35′ W.
95	39°56.55′ N.	69°34.1′ W.
96	39°57.85′ N.	69°35.5′ W.
97	40°00.65′ N.	69°36.5′ W.
98	40°00.9′ N.	69°37.3′ W.
99	39°59.15′ N.	69°37.3′ W.
100	39°58.8′ N.	69°38.45′ W.
102	39°56.2′ N.	69°40.2′ W.
103	39°55.75′ N.	69°41.4′ W.
104	39°56.7′ N.	69°53.6′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.4′ N.	69°55.9′ W.
107	39°56.9′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.0′ W.
110	39°59.2′ N.	70°04.9′ W.
111	40°00.7′ N.	70°08.7′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.2′ N.	70°10.9′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 181		
Offshore Boundary		
to 69		
120	40°06.4′ N.	68°35.8′ W.
121	40°05.25′ N.	68°39.3′ W.
122	40°05.4′ N.	68°44.5′ W.
123	40°06.0′ N.	68°46.5′ W.
124	40°07.4′ N.	68°49.6′ W.
125	40°05.55′ N.	68°49.8′ W.
126	40°03.9′ N.	68°51.7′ W.
127	40°02.25′ N.	68°55.4′ W.
128	40°02.6′ N.	69°00.0′ W.
129	40°02.75′ N.	69°00.75′ W.
130	40°04.2′ N.	69°01.75′ W.
131	40°06.15′ N.	69°01.95′ W.
132	40°07.25′ N.	69°02.0′ W.
133	40°08.5′ N.	69°02.25′ W.
134	40°09.2′ N.	69°02.95′ W.
135	40°09.75′ N.	69°03.3′ W.
136	40°09.55′ N.	69°03.85′ W.
137	40°08.4′ N.	69°03.4′ W.
138	40°07.2′ N.	69°03.3′ W.
139	40°06.0′ N.	69°03.1′ W.
140	40°05.4′ N.	69°03.05′ W.
141	40°04.8′ N.	69°03.05′ W.
142	40°03.55′ N.	69°03.55′ W.
143	40°01.9′ N.	69°03.95′ W.
144	40°01.0′ N.	69°04.4′ W.
146	39°59.9′ N.	69°06.25′ W.
147	40°00.6′ N.	69°10.05′ W.
148	39°59.25′ N.	69°11.15′ W.
149	39°57.45′ N.	69°16.05′ W.
150	39°56.1′ N.	69°20.1′ W.
151	39°54.6′ N.	69°25.65′ W.
152	39°54.65′ N.	69°26.9′ W.
153	39°54.8′ W.	69°30.95′ W.
154	39°54.35′ N.	69°33.4′ W.
155	39°55.0′ N.	69°34.9′ W.
156	39°56.55′ N.	69°36.0′ W.
157	39°57.95′ N.	69°36.45′ W.
158	39°58.75′ N.	69°36.3′ W.
159	39°58.8′ N.	69°36.95′ W.
160	39°57.95′ N.	69°38.1′ W.
161	39°54.5′ N.	69°38.25′ W.
162	39°53.6′ N.	69°46.5′ W.
163	39°54.7′ N.	69°50.0′ W.
164	39°55.25′ N.	69°51.4′ W.
165	39°55.2′ N.	69°53.1′ W.
166	39°54.85′ N.	69°53.9′ W.
167	39°55.7′ N.	69°54.9′ W.
168	39°56.15′ N.	69°55.35′ W.
169	39°56.05′ N.	69°56.25′ W.
170	39°55.3′ N.	69°57.1′ W.
171	39°54.8′ N.	69°58.6′ W.
172	39°56.05′ N.	70°00.65′ W.
173	39°55.3′ N.	70°02.95′ W.
174	39°56.9′ N.	70°11.3′ W.
175	39°58.9′ N.	70°11.5′ W.
176	39°59.6′ N.	70°11.1′ W.
177	40°01.35′ N.	70°11.2′ W.
178	40°02.6′ N.	70°12.0′ W.
179	40°00.4′ N.	70°12.3′ W.
180	39°59.75′ N.	70°13.05′ W.
181	39°59.3′ N.	70°14.0′ W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 48		
Offshore Boundary		
to 49		
1	39°59.3′ N.	70°14.0′ W.
2	39°58.85′ N.	70°15.2′ W.
3	39°59.3′ N.	70°18.4′ W.
4	39°58.1′ N.	70°19.4′ W.
5	39°57.0′ N.	70°19.85′ W.
6	39°57.55′ N.	70°21.25′ W.
7	39°57.5′ N.	70°22.8′ W.
8	39°57.1′ N.	70°25.4′ W.
9	39°57.65′ N.	70°27.05′ W.
10	39°58.58′ N.	70°27.7′ W.
11	40°00.65′ N.	70°28.8′ W.
12	40°02.2′ N.	70°29.15′ W.
13	40°01.0′ N.	70°30.2′ W.
14	39°58.58′ N.	70°31.85′ W.
15	39°57.05′ N.	70°34.35′ W.
16	39°56.42′ N.	70°36.8′ W.
21	39°58.15′ N.	70°48.0′ W.
24	39°58.3′ N.	70°51.1′ W.
25	39°58.1′ N.	70°52.25′ W.
26	39°58.05′ N.	70°53.55′ W.
27	39°58.4′ N.	70°59.6′ W.
28	39°59.8′ N.	71°01.05′ W.
29	39°58.2′ N.	71°05.85′ W.
30	39°57.45′ N.	71°12.15′ W.
31	39°57.2′ N.	71°15.0′ W.
32	39°56.3′ N.	71°18.95′ W.
33	39°51.4′ N.	71°36.1′ W.
34	39°51.75′ N.	71°41.5′ W.
35	39°50.05′ N.	71°42.5′ W.
36	39°50.0′ N.	71°45.0′ W.
37	39°48.95′ N.	71°46.05′ W.
38	39°46.6′ N.	71°46.1′ W.
39	39°43.5′ N.	71°49.4′ W.
40	39°41.3′ N.	71°55.0′ W.
41	39°39.0′ N.	71°55.6′ W.
42	39°36.72′ N.	71°58.25′ W.
43	39°35.15′ N.	71°58.55′ W.
44	39°34.5′ N.	72°00.75′ W.
45	39°32.2′ N.	72°02.25′ W.
46	39°32.15′ N.	72°04.1′ W.
47	39°28.5′ N.	72°06.5′ W.
48	39°29.0′ N.	72°09.25′ W.
to 70		

(2) *Restricted period*—(i) *Mobile gear.* From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6′ N.	70°17.7′ W.
183	40°06.5′ N.	70°40.05′ W.
184	40°11.05′ N.	70°45.8′ W.
185	40°12.75′ N.	70°55.05′ W.
186	40°10.7′ N.	71°10.25′ W.
187	39°57.9′ N.	71°28.7′ W.
188	39°55.6′ N.	71°41.2′ W.
189	39°55.85′ N.	71°45.0′ W.
190	39°53.75′ N.	71°52.25′ W.
191	39°47.2′ N.	72°01.6′ W.
192	39°33.65′ N.	72°15.0′ W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75′ N.	70°16.1′ W.
50	40°00.7′ N.	70°18.6′ W.
51	39°59.8′ N.	70°21.75′ W.
52	39°59.75′ N.	70°25.5′ W.
53	40°03.85′ N.	70°28.75′ W.
54	40°00.55′ N.	70°32.1′ W.
55	39°59.15′ N.	70°34.45′ W.
56	39°58.9′ N.	70°38.65′ W.
57	40°00.1′ N.	70°45.1′ W.
58	40°00.5′ N.	70°57.6′ W.
59	40°02.0′ N.	71°01.3′ W.
60	39°59.3′ N.	71°18.4′ W.
61	40°00.7′ N.	71°19.8′ W.
62	39°57.5′ N.	71°20.6′ W.
63	39°53.1′ N.	71°36.1′ W.
64	39°52.6′ N.	71°40.35′ W.
65	39°53.1′ N.	71°42.7′ W.
66	39°46.95′ N.	71°49.0′ W.
67	39°41.15′ N.	71°57.1′ W.
68	39°35.45′ N.	72°02.0′ W.
69	39°32.65′ N.	72°06.1′ W.
70	39°29.75′ N.	72°09.8′ W.
to 192		

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60′ N.	68°40.60′ W.
194	40°11.60′ N.	68°53.00′ W.
195	40°14.00′ N.	69°04.70′ W.
196	40°14.30′ N.	69°05.80′ W.
197	40°05.50′ N.	69°09.00′ W.
198	39°57.30′ N.	69°25.10′ W.
199	40°00.40′ N.	69°35.20′ W.
200	40°01.70′ N.	69°35.40′ W.
201	40°01.70′ N.	69°37.40′ W.
202	40°00.50′ N.	69°38.80′ W.
203	40°01.30′ N.	69°45.00′ W.
204	40°02.10′ N.	69°45.00′ W.
205	40°07.60′ N.	70°04.50′ W.
206	40°07.80′ N.	70°09.20′ W.
to 119		
Offshore Boundary		
69	40°07.90′ N.	68°36.00′ W.
70	40°07.20′ N.	68°38.40′ W.
71	40°06.90′ N.	68°46.50′ W.
72	40°08.70′ N.	68°49.60′ W.
73	40°08.10′ N.	68°51.00′ W.
74	40°05.70′ N.	68°52.40′ W.
75	40°03.60′ N.	68°57.20′ W.
76	40°03.65′ N.	69°00.00′ W.
77	40°04.35′ N.	69°00.50′ W.
78	40°05.20′ N.	69°00.50′ W.
79	40°05.30′ N.	69°01.10′ W.
80	40°08.90′ N.	69°01.75′ W.
81	40°11.00′ N.	69°03.80′ W.
82	40°11.60′ N.	69°05.40′ W.
83	40°10.25′ N.	69°04.40′ W.
84	40°09.75′ N.	69°04.15′ W.
85	40°08.45′ N.	69°03.60′ W.
86	40°05.65′ N.	69°03.55′ W.
87	40°04.10′ N.	69°03.90′ W.
88	40°02.65′ N.	69°05.60′ W.
89	40°02.00′ N.	69°08.35′ W.
90	40°02.65′ N.	69°11.15′ W.
91	40°00.05′ N.	69°14.60′ W.
92	39°57.8′ N.	69°20.35′ W.
93	39°56.75′ N.	69°24.40′ W.
94	39°56.50′ N.	69°26.35′ W.
95	39°56.80′ N.	69°34.10′ W.
96	39°57.85′ N.	69°35.05′ W.
97	40°00.65′ N.	69°36.50′ W.
98	40°00.90′ N.	69°37.30′ W.
99	39°59.15′ N.	69°37.30′ W.
100	39°58.80′ N.	69°38.45′ W.
102	39°56.20′ N.	69°40.20′ W.
103	39°55.75′ N.	69°41.40′ W.
104	39°56.70′ N.	69°53.60′ W.
105	39°57.55′ N.	69°54.05′ W.
106	39°57.40′ N.	69°55.90′ W.
107	39°56.90′ N.	69°57.45′ W.
108	39°58.25′ N.	70°03.00′ W.
110	39°59.20′ N.	70°04.90′ W.
111	40°00.70′ N.	70°08.70′ W.
112	40°03.75′ N.	70°10.15′ W.
115	40°05.20′ N.	70°10.90′ W.
116	40°02.45′ N.	70°14.1′ W.
119	40°02.75′ N.	70°16.1′ W.
to 206		

(2) *Restricted period*—(i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

■ 11. Section 648.82 is revised to read as follows:

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

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B

DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any 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.

(b) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

(5) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(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 (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004

fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS*—(i) *Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual

specified under paragraph (e)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program.

(2) Starting in fishing year 2006, unless otherwise determined in accordance with paragraph (d)(4) of this section, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

(f) *Good Samaritan credit.* See § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program.* (1) *Program description.* For fishing years 2004 and 2005, eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel,

subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C and D vessels.* A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(l) *DAS Transfer Program.* Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall or a baseline gross registered tonnage that is no greater than 10 percent of the baseline length overall or the baseline gross registered tonnage, respectively, of the transferor vessel. For the purposes of this program, the baseline horsepower, length overall, and gross registered

tonnage specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, will be reduced by 40 percent upon transfer.

(v) Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS.* Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

■ 12. Section 648.83 is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

■ 13. Section 648.84 is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of,

or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

■ 14. Section 648.85 is revised to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area 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):

WESTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 1	42° 20′	68° 50′
USCA 2	39° 50′	68° 50′
USCA 3	39° 50′	66° 40′
USCA 4	40° 40′	66° 40′
USCA 5	40° 40′	66° 50′
USCA 6	40° 50′	66° 50′
USCA 7	40° 50′	67° 00′
USCA 8	41° 00′	67° 00′
USCA 9	41° 00′	67° 20′
USCA 10	41° 10′	67° 20′
USCA 11	41° 10′	67° 40′
USCA 12	42° 20′	67° 40′
USCA 1	42° 20′	68° 50′

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area 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):

EASTERN U.S./CANADA AREA

Point	N. lat.	W. long.
USCA 12	42° 20′	67° 40′
USCA 11	41° 10′	67° 40′
USCA 10	41° 10′	67° 20′
USCA 9	41° 00′	67° 20′
USCA 8	41° 00′	67° 00′
USCA 7	41° 50′	67° 00′
USCA 6	41° 50′	66° 50′
USCA 5	41° 40′	66° 50′
USCA 4	41° 40′	66° 40′
USCA 15	41° 30′	66° 40′
USCA 14	41° 30′	65° 44.3′
USCA 13	42° 20′	67° 18.4′
USCA 12	42° 20′	67° 40′

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* 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.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./

Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. The VMS unit will be polled at least twice per hour in the U.S./Canada Management Areas, when the vessel has declared into the U.S./Canada Management Areas under a groundfish DAS, as specified in paragraph (a)(3)(ii) of this section.

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b)(3) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvedges joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(*1*) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80—85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes wide.

(*2*) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(*1*) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3.0 ft (0.9 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(*2*) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) with the exception that the mesh size in the square of the top panel of the net, identified as the area located from the headrope to the beginning of the first belly, shall not be smaller than 12.0-in (30.5-cm) square mesh. The vertical dimension of the forward wing end may not measure more than 3.0 ft (0.9 m) in height.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part.

(*1*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area.

(*2*) [Reserved]

(B) *Haddock landing limit*—(*1*) *Initial haddock landing limit.* The initial haddock landing limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting,

possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit—(1) Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit is specific to the CA II Yellowtail Flounder SAP as specified in paragraph (b)(3)(viii) if this section, unless adjusted pursuant to paragraph (a)(3)(iv)(C)(*2*) and (*3*) of this section.

(*2*) *Implementation of yellowtail flounder landing limit for Western and Eastern U.S./Canada Areas.* When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall impose and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified under paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area.* When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all groundfish DAS vessels, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), groundfish DAS vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of an NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must be submitted in 24–hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded. For vessels that have declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of yellowtail flounder kept and total lb of yellowtail flounder discarded.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding.* At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(b) *Special Access Programs.* A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies.* A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies.* A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under an NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area.* The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA

Point	N. lat.	W. long.
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′ [1]
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

[1] The U.S.-Canada Maritime Boundary.

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period June 1 through December 31.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in this area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under an NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net (both nets may be onboard the fishing vessel simultaneously).

(4) *SNE/MA Winter Flounder SAP.* A limited access NE multispecies vessel fishing for summer flounder west of 72o 30' W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under an NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder on board;

(iii) The vessel must not be fishing under an NE multispecies DAS; and

(iv) Fishing for, retention, and possession of regulated species other than winter flounder is prohibited.

■ 15. Section 648.86 is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*— (1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments*—(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC. At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is

fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*— (1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (*e.g.*, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00′ N. lat. and running eastward along 42°00′ N. lat. until it intersects with 69°30′ W. long., then northward along 69°30′ W. long. until it intersects with 42°20′ N. lat., then eastward along 42°20′ N. lat. until it intersects with 67°20′ W. long., then northward along 67°20′ W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph

(d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved]

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder*—(1) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT13	(1)	70° 00′
SYT12	41° 20′	70° 00′
SYT11	41° 20′	69° 50′
SYT10	41° 10′	69° 50′
SYT9	41° 10′	69° 30′
SYT8	41° 00′	69° 30′
SYT7	41° 00′	68° 50′
USCA1	42° 20′	68° 50′
USCA12	42° 20′	67° 40′
NYT1	43° 50′	67° 40′
NYT2	43° 50′	66° 50′
NYT3	44° 20′	66° 50′
NYT4	44° 20′	67° 00′
NYT5	(2)	67° 00′

[1] South facing shoreline of Cape Cod, MA.
[2] East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods April through May, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1	38°00′	(1)
SY2	38°00′	72°00′
SY3	39°00′	72°00′
SY4	39°00′	71°40′
SY5	39°50′	71°40′
USCA2	39°50′	68°50′
SYT7	41°00′	68°50′
SYT8	41°00′	69°30′
SYT9	41°10′	69°30′
SYT10	41°10′	69°50′
SYT11	41°20′	69°50′
SYT12	41°20′	70°00′
SYT13	(2)	70°00′

[1] East facing shoreline of Virginia.
[2] South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

■ 16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The sector allocation must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5–year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(3) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant 15 CFR part 904.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel operator and/or vessel owner signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(3) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(3) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: 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 (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

(2) *Operations Plan and Sector Contract.* Each Sector must submit an Operations Plan and Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The following elements must be contained in either the Operations Plan or Sector Contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and will solicit

public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(3) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of an compliance with the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(4) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at anytime if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking as prescribed by the Administrative Procedure Act.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (d)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner comply with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *GB Cod Hook Sector Area (GBCHSA).* The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. lat.	W. long.
HS1	70°00′	(1)
HS2	70°00′	42°20′
HS3	67°18.4′	42°20′ [3]
Follow the U.S. EEZ boundary south to HS3.		
HS3	66°45.5′	39°00′
HS4	71°40′	39°00′
HS5	71°40′	(2)

[1] The east facing shoreline of Cape Cod, MA.
[2] The south facing shoreline of Rhode Island.
[3] (the U.S. Canada Maritime Boundary).

(ii) *Eligibility.* All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation.* For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements.* A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

(2) [Reserved]

■ 17. Section 648.88 is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 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 under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of

fishing specified in § 648.80 and any other applicable provisions of this part.

■ 18. Section 648.89 is revised to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	22 (58.4 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions*—(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

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

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

■ 19. Section 648.90 is revised to read as follows:

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

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) NE multispecies—(1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development

Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi)

of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(2) [Reserved]

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the

following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS*. The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts*. The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation*. After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action*. If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System*. (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the **Federal Register** requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the **Federal Register** and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances

under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the **Federal Register**.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the **Federal Register**. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

■ 20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) *Category C and D vessels that lease NE multispecies DAS.* (A) A monkfish Category C or D vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS—37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

■ 21. In § 648.94, paragraph (f) is revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

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■ 22. In § 648.322, paragraph (b)(6) is revised to read as follows:

§ 648.322 Skate possession and landing restrictions.

* * * * *

(b) * * *

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

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