

Dated: February 26, 1996.
 Joseph J. Angelo,
*Director for Standards, Office of Marine
 Safety, Security and Environmental
 Protection.*
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 960216032-6032-01; I.D.
 021296E]

RIN 0648-AH70

Northeast Multispecies Fishery; Amendment 7

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

ACTION: Proposed rule; request for
 comments.

SUMMARY: NMFS proposes regulations to
 implement Amendment 7 to the
 Northeast Multispecies Fishery
 Management Plan (FMP). These
 regulations would: Establish an annual
 target Total Allowable Catch (TAC) for
 regulated species; accelerate the current
 days-at-sea (DAS) effort reduction
 program; eliminate most of the current
 exemptions to the effort control
 program; add new closed areas; restrict
 fisheries in the Gulf of Maine/Georges
 Bank (GOM/GB) and Southern New
 England (SNE) regulated mesh areas
 having more than a minimal bycatch of
 regulated species; establish a possession
 limit for vessels 30 ft (9.1 m) or less in
 length; establish the current
 experimental Nantucket Shoals dogfish
 fishery as an exempted fishery; modify
 the permit categories; establish
 restrictions on charter or party, and
 recreational vessels; revise and expand
 the existing framework provisions; and
 revise the harbor porpoise protection
 framework procedures. The intended
 effect of this rule is to rebuild
 multispecies stocks.

DATES: Comments are invited on the
 proposed Amendment 7 and its
 supporting documents, including the
 regulatory impact review (RIR) and the
 initial regulatory flexibility analysis
 (IRFA) contained within the RIR, and
 the proposed rule through April 19,
 1996.

ADDRESSES: Comments should be sent to
 Dr. Andrew A. Rosenberg, Director,
 NMFS, Northeast Regional Office, 1

Blackburn Drive, Gloucester, MA 01930.
 Mark the outside of the envelope
 "Comments on Multispecies Plan."

Comments regarding burden-hour
 estimates for collection-of- information
 requirements contained in this proposed
 rule should also be sent to the Office of
 Information and Regulatory Affairs,
 Office of Management and Budget
 (OMB), Washington, D.C. 20503
 (Attention: NOAA Desk Officer).

Copies of proposed Amendment 7, its
 RIR and the IRFA contained within the
 RIR, and the Final Supplemental
 Environmental Impact Statement
 (FSEIS) are available from Douglas
 Marshall, Executive Director, New
 England Fishery Management Council,
 Suntaug Office Park, 5 Broadway (US
 Rte. 1), Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT:
 Susan A. Murphy, Fishery Policy
 Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:
 Regulations implementing Amendment
 5 to the FMP were published on March
 1, 1994 (59 FR 9872). Amendment 5's
 principal objective was to eliminate the
 overfished condition of the multispecies
 finfish stocks. An emergency rule to
 further protect the severely depleted
 haddock resource was issued by NMFS
 and published January 3, 1994 (59 FR
 26). This rule was extended through
 further rulemaking and permanently
 became effective with the publication of
 Secretarial Amendment 6 to the FMP
 (59 FR 32134).

Amendment 7 development began in
 response to an unprecedented report
 entitled, "Special Advisory: Groundfish
 Status on Georges Bank," issued and
 delivered by the Northeast Regional
 Stock Assessment Workshop to the New
 England Fishery Management Council
 (Council) at its August 9-10, 1994,
 meeting. The Advisory announced that
 Amendment 5 to the FMP is inadequate
 to achieve the reductions in fishing
 mortality rates needed to rebuild the
 principal groundfish stocks of cod,
 haddock and yellowtail flounder and
 cautioned that fishing mortality "should
 be reduced to as low a level as possible,
 approaching zero" to prevent further
 decline and to rebuild already collapsed
 stocks.

In response to this advice, the Council
 began development of Amendment 7 to
 the FMP. As an interim measure, the
 Council initiated, and NMFS approved,
 an emergency interim rule (59 FR
 63926, December 12, 1994) to afford
 some additional protection to the
 multispecies resource during the
 development of Amendment 7. This
 emergency action was extended on
 March 13, 1995 (60 FR 13078). At the

request of the Council, NMFS approved
 Framework Adjustment 9 to the FMP
 (60 FR 19364, April 18, 1995) to
 implement measures contained in the
 emergency action on a permanent basis,
 until Amendment 7 could be finalized
 and implemented.

Recent scientific information from the
 Northeast Fisheries Science Center
 (NEFSC) confirms that groundfish
 stocks are at historical lows. Results
 from Stock Assessment Workshop 19
 (SAW 19), presented to the Council at
 its February 15-16, 1995, meeting
 concluded that GOM cod continues to
 be overexploited and exhibits persisting
 low biomass levels. Stock assessment
 scientists counsel that spawning stock
 biomass decline for GOM cod should be
 halted and reversed immediately.
 Similarly, results from SAW 20 on GB
 haddock, presented at the August 10-
 11, 1995, Council meeting indicate that
 this stock remains in an overfished and
 collapsed condition and that fishing
 mortality needs to remain as low as
 possible.

In addition, the most recent U.S. and
 Canadian bottom trawl survey indices,
 through fall 1995 for GB and SNE
 yellowtail flounder and GB and GOM
 cod, indicate no significant new
 recruitment in any of these stocks and
 suggest a continuation of consistently
 low biomass levels. Overall, there is
 very little recruitment and very low
 biomass levels observed for all of these
 stocks and conservation of the
 vulnerable existing year classes has
 become critical. In the absence of
 immediate measures to husband older
 year classes and begin stock rebuilding,
 scientists caution that the recovery
 period may be substantially lengthened.

For haddock, both U.S. and Canadian
 survey results indicate a small amount
 of recruitment into the fishery, which, if
 mortality levels are kept low, may
 contribute to rebuilding these stocks.

Amendment 7

This Amendment would implement
 Alternative 3 of the Council's
 Amendment 7 public hearing document
 as refined and modified by the Council
 for adoption as its preferred alternative.
 The foundation of this action is an
 acceleration of the Amendment 5 effort-
 reduction schedule. This action would
 build and expand upon the current
 management system, serving as a basic
 structure to be further developed by the
 Council through the framework process.

Disapproved Measures

Three measures proposed in
 Amendment 7 have been disapproved
 by NMFS and are not included in this
 proposed rule. The allowance of

additional DAS for trawl vessels in the Individual DAS category that use 8-inch mesh; the 300-lb (136.1-kg) possession allowance of regulated species for trawl vessels that use 8-inch mesh in an exempted fishery; and the establishment of a Limited Access permit category for vessels that fished in the Possession Limit Open Access category under Amendment 5, have been determined to be inconsistent with the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) or other applicable law.

The first measure, which would grant additional DAS for large mesh trawl vessels, was proposed by the Council based on its policy to provide incentives for using mesh larger than the minimum size. The Council provided this incentive to trawl and gillnet vessels that would have received the Fleet category DAS allocation and to trawl vessels that would receive the Individual category DAS allocation, but did not provide it to the gillnet vessels that may be permitted in this category. This omission, whether intentional or unintentional, is inequitable; and was therefore disapproved, because it is inconsistent with Magnuson Act National Standard 4. Increased DAS for large mesh Fleet category vessels (both gillnet and trawls) was not disapproved, because no inequity is established within that category.

The 300-lb (136.1-kg) allowance of regulated species bycatch for vessels fishing in an exempted fishery (i.e., a fishery that has less than five-percent bycatch of regulated species) was disapproved, because it conflicts with the Council's proposed exempted fishery measure. A fishery can be exempted only if sufficient information is available to demonstrate that it would have a minimal bycatch of regulated species, otherwise the fishery is not allowed. The exemption standard is a strong disincentive against regulated species bycatch. The 300-lb (136.1-kg) allowance would provide an incentive for regulated species bycatch, counteracting the effect of the bycatch prevention measure. Therefore, because this measure would counteract the conservation effect of the bycatch protection measures, it cannot be reasonably calculated to promote conservation; therefore it is inconsistent with National Standard 4.

The proposed establishment of a new possession limit category was also disapproved. This category would establish an inequity and impose an undue administrative burden on NMFS. The Council set the possession limit for this category at zero, making it effectively more restrictive than the

open access categories. Thus, a vessel applying to fish in this category would be committing to at least one year without the ability to land regulated species. The administrative burden of establishing this category is likely to be significant due to the permit eligibility reviews and appeal process. The Amendment does not make clear the purpose of the category, that is, which sector of the industry would be served by it. This measure would present a significant administrative cost to NMFS with no discernable benefit or purpose.

The Council will have the opportunity to reconsider, modify, and possibly resubmit these measures under the Magnuson Act's 60-day accelerated review schedule.

Measures of Concern

Public comments are particularly sought on several measures. The first such measure is the possession allowance for the Open Access Handgear Category that would allow a directed fishery on multispecies with only a 300-lb (136.1-kg) constraint on cod, haddock and yellowtail catch and a requirement to use hand gear. Charter/Party permit holders and recreational vessels may obtain the Handgear permit, which raises enforcement concerns about determining which set of rules a vessel may be fishing under at any given time. A call-in requirement for Charter/Party vessels is proposed to aid in distinguishing which type of trip a vessel is conducting, but this would only provide a partial solution at the expense of complicating the DAS call-in program.

The second measure is the white hake exemption program presented in the Amendment as an option for future implementation by the Director, Northeast Regional, NMFS (Regional Director). This exemption would allow a directed fishery on a regulated species, white hake, outside the constraint of a DAS. This possible exemption raises concern as this fishery is currently fully exploited and may not be able to withstand additional pressure.

Third, the Large Mesh DAS permit, which would allocate additional DAS to vessels using mesh larger than the minimum size, is based on the notion that the selectivity of this mesh would compensate for the additional allocation of DAS. However, no mesh selectivity studies for 7- (17.8 cm) and 8-inch (20.3 cm) mesh in these fisheries exist yet.

Fourth, the Council proposed a change to the boundary for the Mid-Atlantic area to incorporate the inshore waters of New York. For the purposes of enforcement, the proposed rule simplifies the Council's definition of the

new boundary line by using fewer coordinates. The simplified definition would appear to achieve the Council's objective. This rule proposes to define the Mid-Atlantic regulated mesh area as the area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5' W. long. to its intersection with the three-nautical mile line, south along the three-nautical mile line to Montauk Point, southwesterly along the three-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 (see Figure 1 to part 651).

Amendment 7 did not specifically exempt mid-water trawl gear from the proposed GOM area closures, but left open the possibility that this gear may become exempt in the future. NMFS is seeking public comment on this possibility.

Because Amendment 7 proposes to eliminate the DAS exemption for gillnet vessels, most gillnet vessels will become permitted in either the Fleet or the Individual DAS category. NMFS is seeking comment on how to calculate the number of DAS for any gillnet vessel that may appeal the number of Individual DAS assigned to it by NMFS because a vessel's initial allocation of DAS is currently based on time away from the dock and a gillnet DAS is proposed to be counted under this rule as time when gear is in the water.

Fifth, the Council proposed the allowance of a possession limit for winter flounder in the Mid-Atlantic regulated mesh area. NMFS is concerned about the impact of this, and the Winter Flounder State Waters exemptions because of the severely overfished status of this resource.

The following summarizes the remaining proposed measures.

Total Allowable Catch

The Amendment would establish a procedure for setting annual target TAC levels for specific cod, haddock, and yellowtail flounder stocks (GB cod, haddock, and yellowtail flounder, SNE yellowtail flounder, and GOM cod), and an aggregate TAC for the combined stocks of the other regulated species (pollock, redfish, white hake, witch flounder, American plaice, winter flounder and windowpane flounder). This procedure would be used annually to set TACs, with the exception of TACs for 1996, which would be set by this rule. The TACs would be set based on the best available scientific information and would provide a measure by which to evaluate the effectiveness of the management program and to make determinations on the need for

adjustments to this program on an annual basis. The TAC levels would be set so as to attain a fishing mortality rate that would allow cod, haddock, and yellowtail flounder stocks to rebuild over time, and to maintain current potential yield for the seven other regulated species.

The 1994 special advisory concluded that fishing mortality "should be reduced to as low a level possible, approaching zero" for GB stocks of cod, haddock and yellowtail flounder, and SNE yellowtail flounder. The biological reference point of $F_{0.1}$ was selected by the Council as the most practicable way to achieve this goal, considering the needs of the fishery. For GOM cod, a biological reference point of F_{max} was selected because this stock is not as depleted as the others. TACs for the remaining regulated species would be set at levels corresponding to recent fishing mortality rates to ensure that effort is not redirected on these stocks. Because the Council's overriding management objective is to rebuild the five primary stocks of cod, haddock and yellowtail flounder, the management program established under Amendment 5, and expanded in this Amendment, is based on these primary stocks as well. In other words, the remaining multispecies stocks, other than cod, haddock and yellowtail flounder, would be protected under the management program developed for the primary stocks.

Using the 1993 fishing mortality rates contained in Amendment 5 as a baseline, an 80 percent average reduction in the fishing mortality rate is required to achieve the fishing mortality goals for the above mentioned stocks. This Amendment proposes to accomplish the reduction primarily through a combination of reductions in DAS, bycatch controls, area closures and elimination of previously established exemptions to effort reduction programs.

Specification of 1996 and 1997 TAC and Adjustments

For the period May 1, 1996, through April 30, 1997, the TAC levels that would correspond to the fishing mortality rate objectives are contained in the table below (calculation of the TACs is based on scientific assessment incorporating data and estimates of stock sizes, recruitment patterns, natural and fishing mortality, growth, etc.).

TABLE 1.—1996 TAC SPECIFICATIONS

Species	1996 target TACs (metric tons)
Georges Bank cod	1,851
Georges Bank haddock	2,801
Georges Bank yellowtail flounder .	385
Gulf of Maine cod	2,761
Southern New England yellowtail flounder	150
Aggregate for remaining regulated species	25,500

Specification of TACs and adjustments for 1997 and beyond would be accomplished through the annual review framework process discussed later in this document.

Days-at-Sea Effort Control Program

The Amendment proposes to reduce DAS in two equal increments, on May 1, 1996 and May 1, 1997, to the level called for in the final year of the current Amendment 5 DAS reduction schedule. In addition, vessels previously exempted from the DAS program would be subject to the effort control program through this Amendment. Specifically, vessels in the 45-ft (13.7 m)-and-less, Hook-Gear and Gillnet Permit categories were exempted from the DAS program. Amendment 7 proposes to eliminate these exemptions and allocate DAS to all but the smallest group of vessels, those 30 ft (9.1 m) or less in length.

Existing limited access vessels subject to the effort-control program would continue under reduced DAS allocations. Vessels currently in the Individual and Combination DAS permit categories would have their DAS allocation reduced by 35 percent of their Amendment 5 baseline in fishing year 1996 and by 50 percent in fishing year 1997. Vessels assigned to the Fleet DAS limited access permit category would receive an allocation of 139 DAS in the fishing year 1996 and 88 DAS in the fishing year 1997.

Limited access vessels that agree to use sink gillnet gear with a minimum mesh size of 7 inches (17.8 cm) for the entire fishing year could opt to fish under a new permit category "Large Mesh DAS" and would be allocated 155 DAS in 1996, and 120 DAS in 1997. Similarly, trawl vessels choosing to fish exclusively with nets with a minimum mesh size of 8 inches (20.32 cm) when fishing under a groundfish DAS allocation could also enroll in this category and receive the same DAS allocation. Again, DAS allocations for 1997 may change as the result of the annual review process described under the framework provisions.

Limited access vessels 30 ft (9.1 m) or less in length that do not fish under a DAS program would be restricted to a cod, haddock and yellowtail flounder possession limit of up to a maximum combined weight of 300 lb (136.1 kg), but would not be subject to any limits on other multispecies finfish. These vessels may choose instead to fish under the DAS program. Vessels issued a 1995 valid limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)) that are 20 ft (6.1 m) or less in length, would initially be assigned to the Small Vessel (less than or equal to 30 ft (9.1 m)) category. However, due to different methods of measuring overall length, vessels greater than 20 ft (6.1 m) but less than or equal to 30 ft (9.1 m) would need to provide verification of overall length to obtain a Small Vessel category permit.

With the exception of one 20-consecutive-day block of time between March 1 through May 31 that all vessels subject to the effort-control program would be required to "take out" of the fishery, this rule would eliminate the Fleet DAS category requirement of taking blocks of time "out" of the multispecies fishery as well as the layover day provision currently required after completion of a multispecies DAS.

Upon implementation of this rule, DAS will be prorated to account for a full fishing year beginning May 1, 1996, through April 30, 1997.

Closed Areas

In addition to retaining the current closed areas, the Amendment would close additional areas, seasonally, to reduce further fishing mortality. The areas selected for closure correspond to the current time/area closures imposed on sink gillnet vessels in the GOM, that is, the Northeast Closure Area, the Mid-Coast Closure Area, and the Massachusetts Bay Closure Area to reduce the bycatch of harbor porpoise. These areas would be closed to all gear types capable of catching multispecies. By extending the closure of these areas to all gear capable of catching multispecies, the goal of reducing bycatch of harbor porpoise can be realized in a less complex and more enforceable manner, while at the same helping to achieve the goal of reducing fishing mortality for regulated species in the GOM. Further, because the closure areas range from the U.S.-Canadian boundary, down through Massachusetts Bay, and would be closed for different seasons and for relatively short periods of time, they would affect vessels more or less equally throughout the GOM region. All vessels would be allowed to

transit these areas, provided that their gear is properly stowed. To minimize the impact of these closures on other fisheries, gears that have little or no impact on regulated species would be exempt from the closures.

Exempted Fisheries

Under this proposed rule, vessels fishing in the GOM/GB and SNE regulated mesh areas would be allowed to fish only in an exempted fishery, under a DAS (multispecies or scallop), or under the small vessel category. An exempted fishery is one in which it has been determined that there is a minimal bycatch of regulated species. Currently, a five-percent standard is applied to fisheries utilizing mesh smaller than the minimum mesh size in the GOM, GB or SNE regulated mesh areas. This rule would extend the restriction to large mesh fisheries and would revise the requirement to reflect the Council's intent that the five-percent standard is an absolute maximum and that other restrictions on fishing gear and/or seasons may be considered to reduce bycatch.

Changes To Permit Categories

The Amendment would establish two additional limited access permit categories and allow some vessels in an open access category an opportunity to qualify for a limited access permit under specified criteria.

During the development of Amendment 5, the open access Hook-Gear category was promoted by the Council as the remaining opportunity for new entrants into the multispecies fishery. Under Amendment 7, vessels holding open access permits would no longer be allowed to target regulated species. Consequently, individuals that may have invested in vessels and gear based on the Council's guidance and that have participated in the fishery would be given an opportunity to qualify for a Hook-Gear limited access permit, if they meet the following criteria: The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish. Under Amendment 5 regulations, all vessels issued a multispecies permit are required to submit logbooks within 15 days after the end of each month. The January 26, 1996 deadline, therefore, actually is less restrictive than the current provision. Vessels fishing under the limited access Hook-Gear permit would be restricted to setting no more than 4,500 hooks per day. And finally,

vessels qualifying for the limited access Hook-Gear permit under this provision would be restricted to that limited access category and could not select a different limited access permit category.

A new limited access category also would be established for vessels that currently have limited access status and that choose to use larger than the minimum size mesh in exchange for an increased allocation of DAS. The mesh requirements for this category were described under "Days at Sea Effort Control Program."

Vessels 30 ft (9.1 m) or less in length that choose to fish under the Small Vessel permit category and vessels possessing an open access Handgear permit category would not be allowed to fish for, possess, or land regulated multispecies between March 1 and March 20 of each year.

This rule also proposes three new open access permit categories: Handgear, Charter/party and Scallop Multispecies Possession Limit. Vessels holding Handgear permits could possess, land, and sell up to 300 lb (136.1 kg), combined weight, of cod, haddock, and yellowtail flounder, and unlimited amounts of the other multispecies finfish, provided they use rod and reel or handlines only (no jigging machines). Charter/party permits would be required for vessels that carry passengers for hire and that do not possess a limited access permit. These vessels would be restricted by the recreational fishing provisions on minimum fish sizes, gear, and a prohibition on sale. Charter/party permit holders could also obtain an open access Handgear permit to fish commercially for multispecies finfish when they are not fishing under hire. Limited access scallop vessels could obtain an open access Scallop Multispecies Possession Limit permit and possess, land and sell up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS.

Other Measures

The current experimental dogfish trawl fishery in the Nantucket Shoals area would be implemented on a permanent basis during the time period of June 1 through October 15 of each year. Extensive sea sampling conducted by the Massachusetts Division of Marine Fisheries has shown that this fishery has a very low bycatch of regulated species and is, therefore, an appropriate candidate for exemption to the mesh restrictions. Vessels participating in the Nantucket Shoals dogfish exemption program would be required to have on board an authorization letter issued by the Regional Director and would be

allowed to retain the bycatch species and amounts allowed in the GB/GOM small mesh exemption area, as well as skates in an amount up to 10 percent of other fish on board.

Limited access vessels would be allowed to continue fishing under the current state waters winter flounder exemption program. This program is available to vessels fishing in the waters of any state that is in compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) Winter Flounder Fishery Management Program. Additionally, limited access vessels that are not fishing under the DAS program would be allowed to retain up to 500 lb (226.8 kg) of winter flounder when fishing under this exemption program.

Vessels fishing in the Mid-Atlantic regulated mesh area, when not fishing under a DAS, would be allowed to possess, land, and sell winter flounder up to 10 percent by weight of all other species on board, or 200 lb (90.72 kg), whichever is less.

Vessels fishing in the SNE regulated mesh area would be allowed to retain a bycatch of skate or skate parts up to 10 percent of the total weight of other fish possessed on board, when fishing under the small-mesh exemption provision. This possession limit represents a legitimate bycatch when fishing in the exempted species program, while eliminating the incentive to conduct a directed fishery on skate.

A provision would be added to the Observer Program section that would allow the Regional Director to accept observer coverage funded by sources other than NMFS, provided certain conditions are met. These conditions are: That all observer coverage is determined by NMFS to be in compliance with NMFS' sea-sampling guidelines and procedures; that the owner or operator of the vessel complies with all requirements under the multispecies plan; and that the observer is approved by the Regional Director.

Because the Small Mesh Area 1 exemption area lies entirely within the Mid-coast Closure Area, the season termination date for this exemption would be changed to coincide with the closure of this area. The current Small Mesh Area 1 season of July 15 through November 15 would, therefore, be changed to July 15 through October 31.

Amendment 7 requires that recreational and charter/party vessels comply with the following restrictions: A 20-inch (50.8-cm) minimum fish size for cod and haddock for the first year of the plan increasing to 21-inches (53.3 cm) in the second year; a prohibition on the sale of multispecies finfish; and a two hook-per-line limit for each angler.

In addition, there would be a 10 fish bag limit on cod and haddock, combined, for recreational anglers. This would not include charter/party vessels.

Charter/party vessels not fishing under the DAS program that possess limited access multispecies permits or open access Handgear permits would be required to fish under the recreational provisions, when fishing for hire.

Amendment 7 would expand the FMP's existing framework provision to remove the current 10-percent cap on annual reductions in fishing mortality and establish an annual process to review progress towards fishing mortality goals and to make changes in the management program, including recreational provisions. A Multispecies Monitoring Committee (MSMC) would be established to consist of technical staff from the New England and Mid-Atlantic Council's, the NMFS Northeast Regional Office, the NEFSC, and representatives from the U.S. Coast Guard, the fishing industry, and from affected coastal states appointed by the ASMFC. The MSMC would meet annually and, based on a review of the status of the resource, would recommend to the Multispecies Committee of the Council annual DAS adjustments by fleet sector, target TACs and any other management measure adjustments necessary to achieve the FMP's goals. After considering this recommendation, and any public comment, the Council would then make a recommendation to the Regional Director on annual TACs and adjustments to management measures, if any, for the following fishing year. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the Federal Register.

This rule would revise the current haddock possession limit to be 1,000 lb (453.6 kg) for vessels fishing under a multispecies DAS. Existing regulations limit possession of haddock to 500 lb (226.8 kg) or its equivalent, as measured by the volume of four standard boxes or five standard totes. This volumetric measure has, in practice, allowed vessels to land more than the 500-lb (226.8-kg) haddock trip limit because volumetric equivalent measures turned out to be too generous. This has made

enforcement of this provision problematic for cases based solely on landing records. Therefore, in response to the elimination of the use of this volumetric measure and to address that industry concern over vessels catching more than the 500-lb (226.8-kg) haddock trip limit and consequently discarding fish, the possession limit of haddock would be increased to 1,000 lb (453.6 kg). Although the status of haddock remains critical, other more restrictive conservation measures proposed under this plan would afford additional benefits to this species.

For clarity, Latin nomenclature for genus and species has been added to the Definitions section and removed from all other sections.

Unless changed by this proposed rule, all measures currently in place under the FMP would remain in effect.

Classification

This action has been determined to be economically significant for the purposes of E.O. 12866.

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared a FSEIS for Amendment 7 describing the possible impacts on the environment as a result of this rule. This amendment is expected to have a significant impact on the human environment. A copy of the FSEIS may be obtained from the Council (see ADDRESSES).

The Biological Opinion (BO) for the original consultation on the initial FMP in 1986 concluded that the fishing activities resulting from that action may affect but are not likely to jeopardize the continued existence of endangered and threatened species of marine mammals, sea turtles, and fish or their critical habitat(s) found in the affected area. This conclusion was re-evaluated in a BO for the Marine Mammal Exemption Program MMEP initiated in 1989 under the Marine Mammal Protection Act of 1972. New information regarding incidental take was introduced and the conclusion of no jeopardy was reached. Amendment 5 to the FMP contained measures to reduce the incidental take of marine mammals and implemented

significant effort reduction measures. Due to the scope of the proposed amendment and the fact that right whale critical habitat has been designated since the BO for Amendment 5 to the Multispecies FMP was written, formal consultation was re-initiated. This consultation does not change the basis for the original determination. The consultation concluded that the provisions of the proposed amendment may affect but are not likely to jeopardize the continued existence of endangered and threatened species or their critical habitat(s).

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA as part of the RIR contained in Amendment 7 that concludes that this proposed rule would have significant economic impacts on a substantial number of small entities. The measures proposed are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs, in part because of these restrictions and also due to the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the status quo, however, this proposal produces positive significant effects on a substantial number of small entities after stock abundance of groundfish recovers. The majority of the vessels in the Northeast Multispecies Fishery are considered small entities. The proposed action will reduce the overall revenues of the multispecies industry by approximately 10 to 25 percent in the first three years of the program compared to the status quo. The impact of the proposed action will not be uniform for all vessels or all sectors. Instead, the action will have different effects on different gear groups, with trawlers being relatively more disadvantaged than other vessels. This is primarily because trawlers produce the largest share of total groundfish landings and have higher costs. Alternately, smaller independent vessels are well suited to adapting to year to year changes in species as availability changes. Generally, smaller vessels are more flexible and have lower costs. The proposed action would allow vessels 30 ft (9.1 m) or less in length to be exempt from the DAS program, provided they comply with the 300-lb (136.1-kg) cod, haddock, and yellowtail flounder possession limit. Cod, haddock, and yellowtail flounder

comprise 15 percent of the revenue of these vessels.

The negative effects of the non-selected alternatives would be greater than those of the proposed measures. Expected impacts of the proposed action on crew income are negative in the first 5 years of the program and positive thereafter. Likewise, the level of employment is expected to decline in the short-term to an undetermined extent but will rebound over the long term. Projected revenues from fishing will be positive beginning in the year 2001, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. The proposed action is expected to increase net benefits to the nation by \$18 million over the 10-year rebuilding period. The recreational sector is not expected to be negatively impacted by this action.

The proposed action is economically significant for the purposes of E.O. 12866, but probably will not have an annual impact on the economy of \$100 million or more, and will not adversely affect the productivity, environment, public health or safety or state, local or tribal governments or communities in the long term. By increasing multispecies catch rates in the long term and reducing operating costs, the proposed action is expected to make the industry more productive after recovery of groundfish stock abundance and to increase the competitiveness of the domestic industry in comparison to foreign suppliers.

This proposed rule contains six new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the parentheses in the following statements and include 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 reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

The new requirements are:

1. The Nantucket Shoals Dogfish exemption, OMB# 0648-0202, will require vessel notification (2 minutes/response).

Revisions to the existing requirements are:

2. Proof of VTS installation, OMB# 0648-0202, (2 minutes/response);

3. Call-in or card system, OMB# 0648-0202, (2 minutes/response);

4. Limited access permit, OMB# 0648-0202. Appeal of the DAS allocation will require written submission (2 hours/response);

5. Limited access permit appeals, OMB# 0648-0202, appeal of denied permits will require written submission (0.5 hours/response);

6. Three new vessel permit categories (Handgear, Charter/Party and Scallop Multispecies Possession Limit), OMB# 0648-0202, are created with no increase in burden above that currently associated with vessel permits.

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

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.2, the definition for "Charter and party boats" is removed, and the definitions for "Alewife", "American shad", "Atlantic croaker", "Black sea bass", "Blowfish", "Bluefish", "Charter or party boat or charter/party boat", "Conger eels", "Cunner", "Dogfish", "Exempted gear", "Fourspot flounder", "Hagfish", "Handgear", "Handline or handline gear", "Hickory shad", "John Dory", "Longhorn sculpin", "Mullet", "Multispecies Monitoring Committee", "Rod and reel", "Scup", "Sea raven", "Searobin", "Skate", "Spot", "Summer flounder", "Swordfish", "Target Total Allowable Catch (TAC)", "Tautog", "Tilefish", and "Weakfish" are added, in alphabetical order; the definitions for "DAS (Days-at-sea)", "Out of the multispecies fishery or DAS program", and "Sink gillnet" are revised to read as follows:

§ 651.2 Definitions.

* * * * *

Alewife means *Alosa pseudoharengus*.

* * * * *

American shad means *Alosa sapidissima*.

Atlantic croaker means *Micropogonias undulatus*.

* * * * *

Black sea bass means *Centropristis striata*.

Blowfish (puffer) means any species in the family *Tetraodontidae*.

Bluefish means *Pomatomus saltatrix*.

* * * * *

Charter or party boat or charter/party boat means any vessel carrying passengers for hire to engage in recreational fishing and that is not fishing under a DAS.

* * * * *

Conger eels means *Conger oceanicus*.

* * * * *

Cunner means *Tautoglabrus adspersus*.

DAS (Days-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species, or for gillnet vessels, the 24-hour periods of time beginning when the gillnet vessel leaves port with the intent to fish for, possess or land, or fishes for, possesses or lands regulated species, and ending when a gillnet vessel returns to port with all of its gillnet gear that was in the water on board.

* * * * *

Dogfish means spiny dogfish, *Squalus acanthias*, or smooth dogfish, *Mustelus canis*.

* * * * *

Exempted gear means gear that is deemed to be not capable of catching multispecies finfish and includes: pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and mid-water trawls.

* * * * *

Fourspot flounder means *Paralichthys oblongus*.

* * * * *

Hagfish means *Myxine glutinosa*.

Handgear means handline or rod and reel gear.

Handline or handline gear means fishing gear that is released by hand and consists of one main line to which is attached up to two leaders for a total of

not more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

* * * * *

Hickory shad means *Alosa mediocris*.

* * * * *

John Dory means *Zenopsis conchifera*.

* * * * *

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

* * * * *

Mullet means any species in the family *Mugilidae*.

* * * * *

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the Council to review, analyze, and recommend adjustments to the management measures. The team will consist of staff from the New England and Mid-Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NEFSC, the U.S. Coast Guard, an industry representative, and representatives from affected coastal states appointed by the Atlantic States Marine Fisheries Commission.

* * * * *

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the multispecies DAS program.

* * * * *

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

* * * * *

Scup means *Stenotomus chrysops*.
Sea raven means *Hemitripterus americanus*.

Searobin means any species in the family *Triglidae*.

Sink gillnet means a bottom-tending gillnet, which is any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species in the family *Rajidae*.

Spot means *Leiostomus xanthurus*.

* * * * *

Summer flounder means *Paralichthys dentatus*.

Swordfish means *Xiphias gladius*.
Target Total Allowable Catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitis*.

* * * * *

Tilefish means *Lopholatilus chamaeleonticeps*.

* * * * *

Weakfish means *Cynoscion regalis*.

* * * * *

3. In § 651.4, paragraphs (a), (b), (c), (e), (f), (h)(1)(ii), (h)(1)(iii) and (q) are revised to read as follows:

§ 651.4 Vessel permits.

* * * * *

(a) *General*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid Federal multispecies permit issued under this part to fish for, possess or land multispecies finfish in or from the EEZ. Recreational vessels and vessels fishing for multispecies exclusively in state waters are exempt from this requirement.

(b) *Limited access permits*—(1) *Eligibility*—

(i) *Limited access multispecies permit*. To be eligible for a multispecies limited access permit, specified in § 651.22, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies permit under paragraph (b)(1)(ii) of this section.

(ii) *Limited access hook-gear permit*. A vessel issued a 1995 open access hook-gear permit may apply for and obtain a 1996 limited access hook-gear permit provided it meets the criteria for eligibility described below. Vessels must apply for a limited access Hook-Gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be insured that their permit application will be processed within the 30 days allowed under paragraph (e) of this section. Vessels applying after December 31, 1996, will be ineligible to apply for a 1997 limited access hook-gear permit. A vessel qualifying for a limited access hook-gear permit may not change its limited access permit category. The criteria for eligibility are:

(A) The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish;

or

(B) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(ii)(A) of this section.

(2) *Qualification restriction*. Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and

permit history. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (b)(3) of this section.

(3) *Change in ownership*. The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels*. To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (b)(5) of this section:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. For purposes of this paragraph, a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 net tons. For undocumented vessels, gross registered tonnage does not apply.

(5) *Upgraded vessel*. To remain eligible to retain a valid limited access permit under this part, or to apply for or renew a limited access permit under this part, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered

tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(6) *Consolidation restriction.* Limited access permits under this permit and DAS allocations may not be combined or consolidated.

(7) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant eligible to apply for an initial limited access Hook-Gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director 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 shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) Status of vessels pending appeal of a limited access permit denial. A vessel denied a limited access Hook-Gear permit may fish under the limited access Hook-Gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access Hook-Gear category. The Regional Director 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 authorizing letter must be carried on

board the vessel. If the appeal is finally denied, the Regional Director 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.

(8) *Limited access permit restrictions.*

(i) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels are prohibited from changing limited access multispecies permit categories during the fishing year, except as provided in paragraph (f)(3) of this section. A vessel issued a limited access Hook-Gear permit may not change its limited access permit category at any time.

(ii) With the exception of Combination Vessels, sea scallop dredge vessels are prohibited from being issued a limited access multispecies permits.

(9) *Confirmation of Permit History.*

Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access multispecies permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History must be received by the Regional Director by the beginning of the fishing year for which the Confirmation of Permit History is

required. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who have been issued a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(4) of this section.

(c) *Open access permits.* Subject to the restrictions in § 651.33, a U. S. vessel that has not been issued a limited access multispecies permit may obtain an open access Handgear or Charter/party permit. Vessels that are issued a valid scallop limited access permit under § 650.4 of this chapter and that have not been issued a limited access multispecies permit may obtain an open access Scallop Multispecies Possession Limit permit.

* * * * *

(e) *Vessel permit application.*

Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for a permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name; mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's current U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the current state registration; party/charter boat license; home port and principal port of landing; length overall; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-

hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation, or other corporate papers showing incorporation and the names of the current officers in the Corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners owning a 25 percent interest or more; and, name and signature of the owner or the owner's authorized representative.

(2) Applications for an initial limited access Hook-Gear permit must also contain the following information:

(i) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within one year of the date of when the contract for the replacement engine was signed.

(ii) If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within one year from the date when the contract for the upgrade was signed.

(3) A vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (b)(8) of this section. In 1996, any such change must be requested by submitting an application to the Regional Director within 45 days of implementation of this rule. After 45 days, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, limited access multispecies vessels eligible to request a change in permit category must elect a

category prior to the start of each fishing year and must remain in that permit category for the duration of the fishing year. A vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(4) If the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

* * * * *

(h) * * *

(i) * * *

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (b)(1)(ii), and (q) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (b)(1) of this section; or

* * * * *

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

* * * * *

4. Section 651.9 is revised to read as follows:

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(2) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(3) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal dealer's permit issued under § 651.6.

(4) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or

otherwise transfer, for a commercial purpose, other than transport, any multispecies, unless the transferee has a dealer permit issued under § 651.6.

(5) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(6) Fail to affix and maintain permanent markings as required by § 651.8.

(7) Enter, fail to remove gear from, or be in the areas described in § 651.21(f)(1) through § 651.21(h)(1) during the time period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(8) Possess or land multispecies finfish smaller than the minimum sizes specified in § 651.23 or § 651.34, as appropriate.

(9) Land, or possess on board a vessel, more than the possession limits specified in § 651.27(a), or violate any of the other provisions of § 651.27.

(10) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel or other floating conveyance unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(11) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(12) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(13) Fail to provide an observer with the required food, accommodations, access, and assistance, specified in § 651.31.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit under § 651.4(b) or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(b)(4) or § 651.4(b)(5).

(2) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(b)(4) or § 651.4(b)(5).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 651.27(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22, unless otherwise exempted under §§ 651.22(b)(3) or 651.34.

(5) Possess or land per trip more than the possession limit specified under § 651.22(b)(3)(i) if the vessel has been issued a limited access Small Vessel permit.

(6) Fail to comply with the restrictions on fishing and gear specified in § 651.22(b)(4) if the vessel has been issued a limited access Hook-Gear permit.

(7) Fail to declare and be out of the multispecies fishery as required by § 651.22(g), using the procedure described under § 651.22(h), as applicable.

(8) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 651.27(b), or violate any of the other provisions specified in § 651.27(b).

(9) If required to have a VTS unit specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage specified in § 651.29(a).

(10) Fail to comply with any requirement regarding the DAS notification specified in § 651.29(a) or § 651.29(b).

(11) Fail to comply with other notification requirements, including a call-in system specified in § 651.29(c), if required by the Regional Director.

(12) Fail to provide notification of the beginning or ending of a trip, as required under § 651.29(b) and § 651.29(d).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Handgear permit under § 651.4(c) to do any of the following:

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 651.33(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting multispecies finfish other than rod and reel or handline while in possession of, or fishing for, multispecies finfish.

(3) Possess or land multispecies finfish during the time period specified in § 651.33(a)(2).

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Scallop Multispecies Possession Limit permit under § 651.4(c) to do any of the following:

(1) Possess or land more than the possession limit of regulated species specified in § 651.33(c).

(2) Possess or land regulated species when not fishing under a scallop DAS.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless: (i) The multispecies finfish were being fished for or harvested by a vessel issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and the operator aboard such vessel was issued an operator's permit under § 651.5 and a valid permit is on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any multispecies finfish from a trip unless the vessel is issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and is not fishing under the charter/party restrictions specified in § 651.34(d), or unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or issued a Federal multispecies permit under this part, without having been issued and possessing a valid operator's permit issued under § 651.5.

(4) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the

exception specified in paragraph (e)(1)(ii) of this section.

(5) Purchase, possess, or receive for a commercial purpose or attempt to purchase, possess, or receive multispecies finfish caught by a vessel other than one issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(6) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(7) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(8) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 650.20 of this chapter, or with scallop dredge gear, unless said fish are caught, possessed or landed in accordance with § 651.20, or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) Fish with, use, or have on board, within the area described in § 651.20(a)(1) nets of mesh size smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20(a)(3) through (a)(6), (a)(8), (a)(9), (e), (f) and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(10) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3).

(11) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(12) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(13) Fail to comply with the requirements of § 651.20(a)(5).

(14) Fail to comply with the requirements of § 651.20(a)(8).

(15) Fail to comply with the requirements of § 651.20(a)(9).

(16) Fish with, use, or have available for immediate use within the area described in § 651.20(c)(1) nets of mesh size smaller than the minimum size specified in § 651.20(c)(2), except as provided in § 651.20(c)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with, use, or have available for immediate use within the area described in § 651.20(d)(1) nets of mesh size smaller than the minimum size specified in § 651.20(d)(2), except as provided in § 651.20(d)(3), § 651.20(e), § 651.20(f), and § 651.20(j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size specified in § 651.20(a)(2), § 651.20(c)(2) or § 651.20(d)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20(e) or § 651.20(f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(19) Obstruct or constrict a net as described in § 651.20(h)(1) and § 651.20(2).

(20) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(21) Violate any of the restrictions on fishing with scallop dredge gear specified in § 651.20(i).

(22) Violate any of the provisions of § 651.20(j).

(23) Enter or be in the area described in § 651.21(a)(1) on a fishing vessel, except as provided in § 651.21(a)(2) and § 651.21(d).

(24) Enter or be in the area described in § 651.21(b)(1) on a fishing vessel, except as provided in § 651.21(b)(2).

(25) Enter or be in the area described in § 651.21(c)(1), on a fishing vessel, except as provided in § 651.21(c)(2) and § 651.21(d).

(26) Enter or be on a fishing vessel, or fail to remove gear from the EEZ portion of the areas described in § 651.21(f)(1) through § 651.21(h)(1), during the time period specified, except as provided in § 651.21(d), § 651.21(f)(2), § 651.21(g)(2), and § 651.21(h)(2).

(27) Import, export, transfer, land, buy, sell or possess regulated species smaller than the minimum sizes specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Violate any terms of a letter authorizing experimental fishing pursuant to § 651.24 or fail to keep such letter on board the vessel during the period of the experiment.

(29) Fail to comply with the gear-marking requirements of § 651.25.

(30) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, fish in excess of the possession limits specified for vessels issued a Federal multispecies permit.

(31) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(32) Violate any provision of § 651.29.

(33) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(34) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(35) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(36) Make any false statement in connection with an application under § 651.4 or § 651.5 or on any report required to be submitted or maintained under § 651.7.

(37) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search relating to the enforcement of this part.

(f) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (e) of this section, it is unlawful for the owner or operator of a charter or party boat issued a permit under § 651.4, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 651.34(a).

(2) Possess regulated species smaller than the minimum sizes specified in § 651.34(b).

(3) Possess cod and haddock in excess of the possession limits specified in § 651.34(c).

(4) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, multispecies finfish for a commercial purpose as specified in § 651.34(d).

(g) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(h) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

5. In § 651.20, paragraph (a)(9) is added and paragraphs (a)(2), (a)(3)(i)(B), (a)(4)(i)(E), (a)(6)(iii)(C), (a)(7), the introductory text of paragraph (a)(8) preceding the tables, paragraphs (a)(8)(i), (a)(8)(iii)(B), (c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e)(2), (f)(2), (i), (j) introductory text and (j)(7) are revised to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Gear restrictions.* (i) Except as provided in paragraphs (a)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraphs (a)(2)(ii) and (a)(5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel fishing under a DAS in the multispecies DAS program in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) square or diamond 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 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum

mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond 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 m)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel, when not fishing under the multispecies DAS program and when fishing in the GOM/GB regulated mesh area, is provided for under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the GOM/GB regulated mesh area.

(3) * * *
(i) * * *

(B) The following may be retained, with the restrictions noted, as allowable bycatch species in the northern shrimp fishery as described in this section: Longhorn sculpin; up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(4) * * *
(i) * * *

(E) The following may be retained, with the restrictions noted, as allowable bycatch species in the Cultivator Shoal whiting fishery exemption area as described in this section: longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(6) * * *
(iii) * * *

(C) Vessels may not fish for, possess on board, or land any species of fish except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (c) and (d) of this section. Vessels may retain exempted small mesh species as

provided in paragraphs (a)(4)(i), (a)(9)(i), (c)(3) and (d)(3), of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there is sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the Council, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent by weight of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent by weight of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through publication of a rule in the Federal Register.

(ii) The Council may recommend to the Regional Director, through the framework procedure specified in § 651.40(b), additions or deletions to exemptions for fisheries either existing or proposed for which there may be insufficient data or information for the Regional Director to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraphs (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) *Restrictions on exempted fisheries.* Exempted fisheries authorized under this paragraph are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, possession of regulated species will be prohibited.

(B) Possession of monkfish or monkfish parts will be limited to 10 percent by weight of all other species on board.

(C) Possession of lobsters will be limited to 10 percent by weight of all

other species on board or 200 lobsters, whichever is less.

(D) Possession of skate or skate parts in the SNE regulated mesh area will be limited to 10 percent by weight of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Fisheries using nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in subareas described as Small Mesh Area 1 and Small Mesh Area 2 of the Small Mesh Exemption Area as specified under paragraph (a)(3) of this section, and defined in this paragraph (a)(8), have been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in these areas, if the vessel complies with the restrictions specified in paragraphs (a)(8)(i) through (iii) of this section. These subareas are defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

* * * * *

(i) The fishing season is from July 15 through October 31 when fishing under the exemption in Small Mesh Area 1.

* * * * *

(iii) * * *

(B) *Allowable bycatch.* Vessels fishing for the exempted species identified in paragraph (a)(8)(iii)(A) of this section may also possess and land the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(9) *Nantucket Shoals dogfish fishery exemption area.* The Nantucket Shoals dogfish fishery as defined in this part has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section.

Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Nantucket Shoals dogfish fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals dogfish fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	Latitude	Longitude
NS1	41°45' N	70°00' W.
NS2	41°45' N	69°20' W.
NS3	41°30' N	69°20' W.
CI1	41°30' N	69°23' W.
NS5	41°26.5' N	69°20' W.
NS6	40°50' W	69°20' N.
NS7	40°50' W	70°00' N.
NS1	41°45' N	70°00' W.

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6' N	66°24.8' W.
G6	40°55.5' N	66°38' W.
G7	40°45.5' N	68°00' W.
G8	40°37' N	68°00' W.
G9	40°30.5' N	69°00' W.
NL3	40°22.7' N	69°00' W.
NL2	40°18.7' N	69°40' W.
NL1	40°50' N	69°40' W.
G11	40°50' N	70°00' W.
G12		70°00' W. ¹

and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the SNE regulated mesh area.

(3) * * *

(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 paragraph (c)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, 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. Vessels fishing for the exempted species identified in paragraph (c)(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; searobins; black sea bass; red hake; tautog (blackfish); blowfish (puffer); cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less; and skate and skate parts up to 10 percent by weight of all other species on board.

* * * * *

(5) *Addition or deletion of exemptions.* An exemption may be added, deleted or modified pursuant to the procedure described in paragraph (a)(7) of this section.

(d) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic (MA) regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5' W. long. to its intersection with the 3 nautical mile line, south along the 3 nautical mile line to Montauk Point, southwest 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 (see Figure 1 to part 651).

(2) *Gear restrictions.* (i) Except as provided in paragraphs (d)(3) and (j) of this section, and unless otherwise restricted under paragraph (d)(2)(ii) of this section, the minimum mesh size for

(i) *Requirements.* Vessels authorized to fish in this fishery must have on board an authorizing letter issued by the Regional Director. Vessels are subject to the following conditions:

(A) Authorized vessels may not fish for, possess on board or land any species of fish other than dogfish except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Authorized vessels may fish under this exemption during the season of June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area as specified under paragraph (a)(1) of this section, any nets of mesh smaller than the regulated mesh size specified in paragraph (a)(2) of this section, must be stowed according to the provisions of paragraph (c)(4) of this section.

(D) The following may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals dogfish fishery exemption area as described in this section: Longhorn sculpin, up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less; and skate or skate parts up to 10 percent by weight of all other species on board.

(E) Authorized vessels must comply with any additional gear restrictions specified in the authorization letter issued by the Regional Director.

(ii) *Sea Sampling.* The Regional Director 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.

* * * * *

(c) *Southern New England regulated mesh area.* (1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 part 651):

¹Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by the eastern boundary of the Mid-Atlantic regulated mesh area.

(2) *Gear restrictions.* (i) Except as provided in paragraphs (c)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the Southern New England (SNE) regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel when not fishing under the multispecies DAS program and when fishing in the SNE regulated mesh area, is provided for under the exemptions specified in paragraphs (c)(3), (e), (f), (i),

any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the MA regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(3) *Exemptions.* Vessels in the MA regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section provided that they do not possess or land multispecies finfish, except as provided in § 651.27(b).

(ii) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (d)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Director may, using the process described in either (a)(7)(i) or (a)(7)(ii), authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board

an authorizing letter issued by the Regional Director;

* * * * *

(f) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(i) *Scallop vessels.* (1) Except as provided in paragraph (i)(2) of this section, scallop vessels that possess a limited access permit under § 650.4 of this chapter, and that are fishing under the scallop DAS program described in § 650.24, may possess and land up to 300 lb (136.1 kg) of regulated species, unless otherwise restricted pursuant to § 651.27(a)(2).

(2) Combination vessels fishing under a multispecies DAS are subject to the gear restrictions specified in § 651.20 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(j) *State waters winter flounder exemption.* Any vessel issued a Federal limited access multispecies permit under this part may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (c)(2), and (d)(2) of this section provided that:

* * * * *

(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;

* * * * *

6. In § 651.21, paragraphs (a)(2)(i), (b)(2)(i), (c)(2)(i), (d) and (e) introductory text are revised, and paragraphs (f), (g), and (h) are added to read as follows:

§ 651.21 Closed areas.

(a) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish; and

* * * * *

(b) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(c) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the Northeast Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1) and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transiting the closed areas must stow their gear as follows:

* * * * *

(f) *Northeast Closure Area.* (1) During the period August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Northeast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0' W.
NE2	43°29.6' N	68°55.0' W.
NE3	44°04.4' N	67°48.7' W.
NE4	44°06.9' N	67°52.8' W.
NE5	44°31.2' N	67°02.7' W.
NE6	Maine shoreline	67°02.7' W.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) During the period November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish unless otherwise allowed in this part may be,

in the area known as the Mid-coast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section:

Point	Latitude	Longitude
MC1	42°30'N	Massachusetts shoreline.
MC2	42°30'N	70°15'W.
MC3	42°40'N	70°15'W.
MC4	42°40'N	70°00'W.
MC5	43°00'N	70°00'W.
MC6	43°00'N	69°30'W.
MC7	43°15'N	69°30'W.
MC8	43°15'N	69°00'W.
MC9	Maine shoreline	69°00'W.

(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Massachusetts Bay Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

Point	Latitude	Longitude
MB1	42°30' N	Massachusetts shoreline.
MB2	42°30' N	70°30' W.
MB3	42°12' N	70°30' W.
MB4	42°12' N	70°00' W.
MB5	Cape Cod shoreline	70°00' W.
MB6	42°00' N	Cape Cod shoreline.
MB7	42°00' N	Massachusetts shoreline.

(2) *Exceptions.* Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters;

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Classified as charter, party, or recreational.

7. Section 651.22 is revised to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(a) A limited access multispecies vessel issued a permit under § 651.4(b) 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 below, unless otherwise provided in these regulations.

(b) *DAS program—Permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter as specified in § 651.4(f)(3). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS Category—(i) DAS allocation.* Vessels fishing under the Individual DAS category shall be allocated 65 percent of their initial 1994 allocation baseline as established under Amendment 5 to the FMP for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued valid Individual DAS limited access multispecies permits, including vessels also issued limited access multispecies Gillnet category permits, as of the effective date of the final rule for Amendment 7, shall be initially assigned to this category.

(2) *Fleet DAS Category—(i) DAS allocation.* Vessels fishing under the Fleet DAS category shall be allocated 139 DAS for the 1996 fishing year, and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* As of the effective date of the final rule for Amendment 7, vessels issued valid permits in one of the following categories shall be initially assigned to this category: Fleet DAS permit holders, including vessels also issued limited access multispecies Gillnet category permits; limited access multispecies

Hook-Gear permit holders; limited access multispecies Gillnet permit holders that have not also been issued a permit in a DAS permit category; limited access multispecies ≤45 ft (13.7 m) category permit holders that are larger than 20 ft (6.1 m) in length as determined by the most recent permit application.

(3) *Small vessel category—(i) DAS allocation.* Vessels qualified and electing to fish under the Small Vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. These vessels are not subject to a possession limit for the other multispecies finfish.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)) permit as of the effective date of the final rule for Amendment 7, and that are 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit shall be initially assigned to this category. Other vessels may elect to change into this category as provided for in § 651.4(f)(3) if such 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) Vessels for which construction was begun after May 1, 1994, must be constructed such that the quotient of the overall length divided by the beam will not be less than 2.5; and

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be U.S. Guard documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(D) Adjustments to the small-boat category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(4) *Hook-Gear Category—(i) DAS allocation.* Vessels issued a valid

limited access multispecies Hook-Gear permit shall be allocated 139 DAS for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond. A vessel fishing in this permit category under the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel; and

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion 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.

(ii) *Initial assignment.* No vessel shall be initially assigned to the Hook-Gear category. Any vessel that meets the qualifications specified in § 651.4(b)(1) may apply for and obtain a permit to fish under this category.

(5) *Combination Vessel Category—(i) DAS allocation.* Vessels fishing under the Combination Vessel category shall be allocated 65 percent of their initial 1994 allocation baseline as established under Amendment 5 to the FMP for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit qualified to fish as a Combination Vessel as of the effective date of the final rule for Amendment 7 shall be assigned to this category.

(6) *Large Mesh DAS Category—(i) DAS allocation.* Vessels fishing under the Large Mesh DAS category shall be allocated 155 DAS for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh DAS permit category a vessel must fish with gillnet gear with a minimum mesh net of 7-inch (17.78-cm) diamond or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(c) *1996 DAS appeals.* A vessel that was issued a valid 1995 limited access multispecies permit and fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)), Hook-Gear or Gillnet permit categories, that elects to fish under the Individual DAS category, and has not previously been allocated Individual DAS, is eligible to appeal its allocation of DAS if it has not previously done so, as described under paragraph (d)(2) of this section. Each of these vessel's initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations—(1) Calculation of a vessel's Individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the Individual DAS Program shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990. Multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation—(i) Appeal criteria.* Initial allocations of Individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* Vessels, while their Individual DAS allocation is under appeal, may fish under the Fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(1) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(2) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(g) *Spawning season restrictions.* Vessels issued a valid Small Vessel category permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species between March 1 and March 20 of each year. All other vessels issued limited access permits must declare out and be out of the regulated multispecies finfish fishery for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified under § 651.29. If a vessel owner has not declared, or taken, the period of time required between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day spawning period out of the multispecies fishery using the notification requirements specified under § 651.29.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made following

a reappraisal and analysis as specified in subpart C of this part.

8. In § 651.23, the introductory text of paragraph (a) and paragraphs (d) and (e) are revised to read as follows:

§ 651.23 Minimum fish size.

(a) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a multispecies DAS are specified in § 651.34. All other vessels are subject to minimum fish sizes (total length) as follows:

* * * * *

(d) *Exception.* (1) Each person aboard a vessel issued a 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.

(e) *Adjustments of minimum size.* (1) At anytime when information is available, the Council 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 Council shall propose the minimum fish sizes to be implemented following the procedures specified in subpart C of this part.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C of this part.

9. Section 651.27 is revised to read as follows:

§ 651.27 Additional possession limits on haddock and winter flounder.

(a) *Haddock*—(1) *Multispecies DAS vessels.* A vessel issued a limited access multispecies permit under this part that is fishing under a multispecies DAS may land, or possess on board, up to 1000 lb (453.6 kg) of haddock. 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.

(2) *Scallop dredge vessels*—(i) No person owning or operating a scallop dredge vessel issued a permit under this

part 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 a permit under this part may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, no scallop dredge vessel or persons owning or operating a scallop dredge vessel, that is fishing under the scallop DAS program as described in § 651.20(i), may land, or possess on board, more than 300 lbs (136.1 kg) of haddock. 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) *Winter flounder.* A vessel issued a limited access permit under this part that is fishing in the MA regulated mesh area and is not fishing under a multispecies DAS, may land, or possess on board, winter flounder up to 10 percent by weight of all other species on board or 200 lb (90.7 kg), whichever is less. Winter flounder 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 in standard totes.

(c) Vessels are subject to any other applicable possession limit restrictions of this part.

10. In § 651.28, the heading and the first sentence of paragraph (a), and paragraphs (b) and (c) are revised to read as follows:

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access multispecies vessels.* Unless otherwise authorized or required by the Regional Director under § 651.29(b), vessel owners fishing under the Individual DAS program and Combination Vessels must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. * * *

(b) *Fleet DAS and other limited access multispecies vessels.* Vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS shall be subject to the call-in requirements specified in § 651.29(b).

(c) *Charter/party vessels.* Charter/party vessels that are not fishing under a multispecies DAS are subject to the following requirements:

(1) A vessel must declare into and out of the charter/party fishery providing notification under § 651.29(b).

(2) Vessels that declare into the charter/party fishery are subject to the restrictions in § 651.34.

(3) Once a vessel has declared into the charter/party fishery, that vessel must remain in the charter/party fishery for a minimum of 24 hours.

11. Section 651.29 is revised to read as follows:

§ 651.29 DAS notification program.

(a) *VTS notification.* Unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of vessels issued limited access multispecies permits that have elected to or are required to use a VTS system shall be subject to the following requirements:

(1) Vessels that are issued limited access multispecies permits, that have crossed the demarcation line specified under paragraph (d)(ii) of this section, are deemed to be fishing under the DAS program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (b) of this section.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* Vessel owners authorized or required to provide notification using the call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program, or the charter party fishery, by calling 1-800-260-8204 or 508-281-9335, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS, or a vessel's participation in the charter/party fishery, begins once the call has been

received and confirmation given by the Regional Director.

(3) A vessel must keep its confirmation number on board for the duration of the trip and must provide it to an authorized officer upon request.

(4) Upon returning to port, at the conclusion of a trip as defined in paragraph (d) of this section or when the vessel is leaving the charter/party fishery, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 1-800-260-8204 or 508-281-9335, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, confirmation number, and that the trip has ended.

(5) A DAS, or the vessel's participation in the charter/party fishery, ends when the call has been received and confirmation given by the Regional Director.

(6) Any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possess or lands regulated species, except as provided in § 651.23, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(7) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

(c) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the Federal Register, or other appropriate means. Vessel owners authorized or required by the Regional Director to provide

notification by a call-in system under this paragraph shall be subject to the requirements specified in paragraph (b) of this section.

(d) *Counting of DAS.* DAS shall be counted as follows:

(1) *Vessels fishing under the VTS system.* (i) DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(ii) *Vessel Tracking System Demarcation Line.* The VTS Demarcation Line is defined as straight lines connecting the following points in the order stated (see Figures 6 and 7 to part 651):

VESSEL TRACKING SYSTEM DEMARCATION LINE

Description	Longitude	Latitude
1. Northern terminus point (Canada land mass)	45°03' N	66°47' W.
2. A point east of West Quoddy Head Light	44°48.9' N	66°56.1' W.
3. A point east of Little River Light	44°39.0' N	67°10.5' W.
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6' N	68°10.8' W.
5. Isle au Haut Light	44°03.9' N	68°39.1' W.
6. Pemaquid Point Light	43°50.2' N	69°30.4' W.
7. A point west of Halfway Rock	43°38.0' N	70°05.0' W.
8. A point east of Cape Neddick Light	43°09.9' N	70°34.5' W.
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6' N	70°47.1' W.
10. Halibut Point Gong Buoy "1AHP"	42°42.0' N	70°37.5' W.
11. Connecting reference point	42°40' N	70°30' W.
12. Whistle Buoy "2" off Eastern Point	42°34.3' N	70°39.8' W.
13. The Graves Light (Boston)	42°21.9' N	70°52.2' W.
14. Minots Ledge Light	42°16.2' N	70°45.6' W.
15. Farnham Rock Lighted Bell Buoy	42°05.6' N	70°36.5' W.
16. Cape Cod Canal Bell Buoy "CC"	41°48.9' N	70°27.7' W.
17. A point inside Cape Cod Bay	41°48.9' N	70°05' W.
18. Race Point Lighted Bell Buoy "RP"	42°04.9' N	70°16.8' W.
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0' N	70°06.2' W.
20. Connecting point, off Nauset Light	41°50' N.	69°53' W.
21. A point south of Chatham "C" Whistle Buoy	41°38' N.	69°55.2' W.
22. A point in eastern Vineyard Sound	41°30' N	70°33' W.
23. A point east of Martha's Vineyard	41°22.2' N	70°24.6' W.
24. A point east of Great Pt. Light, Nantucket	41°23.4' N.	69°57' W.
25. A point SE of Sankaty Head, Nantucket	41°13' N	69°57' W.
26. A point west of Nantucket	41°15.6' N	70°25.2' W.
27. Squibnocket Lighted Bell Buoy "1"	41°15.7' N	70°46.3' W.
28. Wilbur Point (on Sconticut Neck)	41°35.2' N	70°51.2' W.
29. Mishaum Point (on Smith Neck)	41°31.0' N	70°57.2' W.
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7' N	71°13.4' W.
31. Point Judith Lighted Whistle Buoy "2"	41°19.3' N	71°28.6' W.
32. A point off Block Island Southeast Light	41°08.2' N	71°32.1' W.
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0' N	72°28.6' W.
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5' N	73°55.0' W.
35. Barnegat Lighted Gong Buoy "2"	39°45.5' N	73°59.5' W.
36. A point east of Atlantic City Light	39°21.9' N	74°22.7' W.
37. A point east of Hereford Inlet Light	39°00.4' N	74°46' W.
38. A point east of Cape Henlopen Light	38°47' N	75°04' W.
39. A point east of Fenwick Island Light	38°27.1' N	75°02' W.
40. A point NE of Assateague Island (VA)	38°00' N	75°13' W.
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0' N.	75°33.7' W.
42. A point NE of Cape Henry	36°55.6' N	75°58.5' W.
43. A point east of Currituck Beach Light	36°22.6' N	75°48' W.

VESSEL TRACKING SYSTEM DEMARCATION LINE—Continued

Description	Longitude	Latitude
44. Oregon Inlet (NC) Whistle Buoy	35°48.5' N	75°30' W.
45. Wimble Shoals, east of Chicamacomico	35°36' N	75°26' W.
46. A point SE of Cape Hatteras Light	35°12.5' N	75°30' W.
47. Hatteras Inlet Entrance Buoy "HI"	35°10' N	75°46' W.
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5' N	76°00.5' W.
49. A point east of Cape Lookout Light	34°36.5' N	76°30' W.
50. Southern terminus point	34°35' N	76°41' W.

(2) *Gillnet vessels under the call-in system.* Accrual of DAS under the call-in notification system for vessels fishing with gillnet gear begins once the phone call has been received, and confirmation has been given by the Regional Director. DAS continue to accrue as long as the vessel's gillnet gear remains in the water or on the vessel when returning to port. A trip concludes and accrual of DAS ends when a vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(3) *All other vessels under the call-in system.* Accrual of DAS under the call-in notification system begins once the phone call has been received and confirmation has been given by the Regional Director. A trip concludes and accrual of DAS ends when after returning to port, the phone call has been received and confirmation has been given by the Regional Director.

12. In § 651.31, paragraph (d) is added to read as follows:

§ 651.31 At-sea observer coverage.

* * * * *

(d) *Industry funded observer coverage.* NMFS may accept observer coverage funded by outside sources provided the following requirements are met:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures;

(2) The owner or operator of the vessel complies with all other provisions of this part; and

(3) The observer is approved by the Regional Director.

13. Section 651.32 is revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* The closed area restrictions prohibiting sink gillnets in the areas and times specified in § 651.21(f) through § 651.32(h) are implemented in order to reduce the takes of harbor porpoise consistent with the harbor porpoise mortality reduction goals. Additional restrictions may be implemented following a reappraisal

and analysis under the framework provisions specified in paragraph (b) of this section.

(b) *Framework adjustment.* (1) At least annually the Regional Director will provide the Council with the best available information on the status of Gulf of Maine harbor porpoise including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the Council's Harbor Porpoise Review Team shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the Council's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The HPRT shall report its findings and recommendations to the Council.

(2) After receiving and reviewing the HPRT's findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two Council meetings.

(3) The Council may request at any time that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The Council shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological 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 must come from one or more of the

categories specified under § 651.40(b)(1).

(5) If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(b)(2).

(6) The Regional Director may accept, reject, or with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule, as specified under § 651.40(b)(3).

14. Section 651.33 is revised to read as follows:

§ 651.33 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access Handgear permit issued under § 651.4(c) is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other multispecies finfish provided that it does not use, or possess on board, gear other than rod and reel or handlines while in possession of, fishing for, or landing multispecies finfish.

(2) A vessel may not fish for, possess, or land regulated species between March 1 and March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access Charter/party permit under § 651.4(c), and has declared into the charter/party fishery, is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 651.34, and any other applicable provisions of this part.

(c) *Scallop Multispecies Possession Limit Permit.* A vessel that has been issued a valid open access Scallop Multispecies Possession Limit permit under § 651.4(c) may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS as described under § 651.20(i), provided the vessel does not fish for, possess or land haddock during January 1 through June 30 as specified under § 651.27(a)(2)(i).

15. Section 651.34 is added to subpart B to read as follows:

§ 651.34 Recreational and charter/party 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 §§ 651.20(c)(4) and 651.21(e)(2), 651.21(e)(3) and 651.21(e)(4).

(b) *Recreational minimum fish sizes.* (1) 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 subject to minimum fish sizes (total length) as follows:

RECREATIONAL

Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm).
Haddock	20 (50.8 cm)	21 (53.3 cm).
Pollock	19 (48.3 cm)	19 (48.3 cm).
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm).
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm).
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm).
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm).
Redfish	9 (22.9 cm)	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) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ:

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels 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 aboard. 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 and operator.

(3) Cod and haddock must be stored, so as to be readily available for inspection.

(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, multispecies finfish caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

15. Section 651.40 is revised to read as follows:

§ 651.40 Framework Specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for Council consideration on any changes, adjustment or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP goals and objectives.

(1) The MSMC must review available data pertaining to the following:

- (i) Catch and landings;
- (ii) DAS and other measures of fishing effort;
- (iii) Survey results;
- (iv) Stock status;
- (v) Current estimates of fishing mortality; and
- (vi) Any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the FMP including, but not limited to:

- (i) The 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 10 regulated species;
- (ii) DAS changes;
- (iii) Possession limits;
- (iv) Gear restrictions;
- (v) Closed areas;

- (vi) Permitting restrictions;
- (vii) Minimum fish sizes;
- (viii) Recreational fishing measures; and

(ix) Any other management measures currently included in the FMP.

(3) The Council shall review the recommended target TACs and all of the options developed by the MSMC, other relevant information, consider public comment, and develop a recommendation to meet the FMP objective 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 Director may adopt any option developed by the Council, unless rejected by the Council, as specified in (a)(5) of this section, provided that the option meets the FMP objective and is consistent with other applicable law.

(4) Based on this review, the Council shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. Included in the Council's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(5) If the Council submits, on or before January 7, a recommendation to the Regional Director after one Council meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the Council's recommendation in the Federal Register as a proposed rule. The Federal Register notification of proposed action will provide for 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) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law and determines that the recommended management measures be published as a final rule, the action will be published as a final rule in the Federal Register. If the Regional Director 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. 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.

(6) If the Regional Director 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)(5) of this section. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the Federal Register.

(b) *Within season management action.* 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 FMP.

(1) *Adjustment process.* 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 analysis, 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 must come from one or more of the following categories:

- (i) DAS changes;
- (ii) Effort monitoring;
- (iii) Data reporting;
- (iv) Possession limits;
- (v) Gear restrictions;
- (vi) Closed areas;
- (vii) Permitting restrictions;
- (viii) Crew limits;
- (ix) Minimum fish sizes;
- (x) Onboard observers;
- (xi) Minimum hook size and hook style;
- (xii) The use of crucifiers in the hook fishery;
- (xiii) Fleet sector shares;
- (xiv) Recreational fishing measures;
- (xv) Area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; and
- (xvi) Any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published 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; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(i) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (b)(2) of this section, the action will be published in the Federal Register as a final rule; or

(ii) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the Federal Register; or

(iii) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(c) Nothing in this section is meant to derogate from the authority of the Secretary of Commerce to take emergency action under section 305(e) of the Magnuson Act.

16. Figure 5 to part 651 is removed and reserved, and Figures 1, 3, and 4 to part 651 are revised to read as follows:

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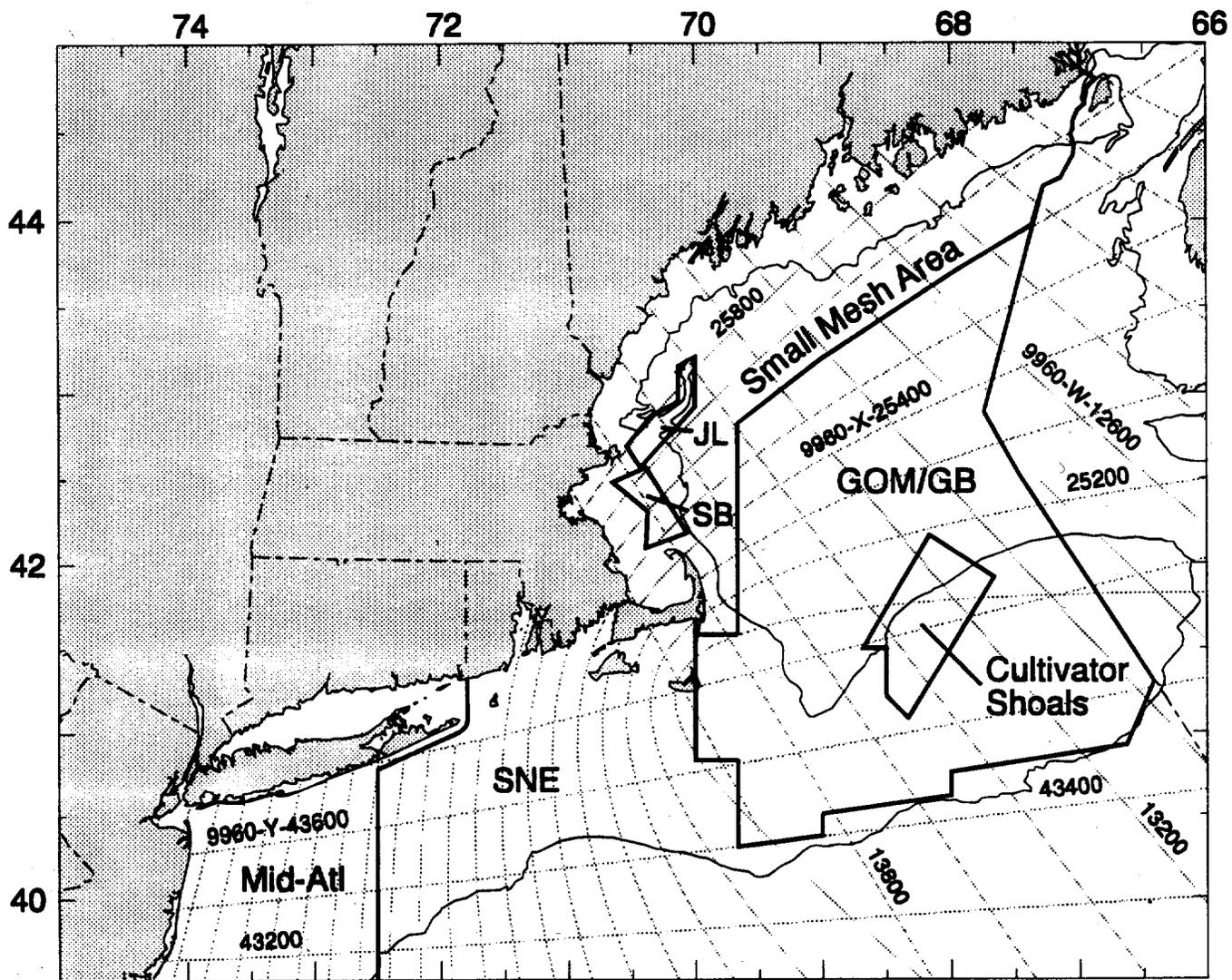


Figure 1 to part 651--Regulated Mesh Area.

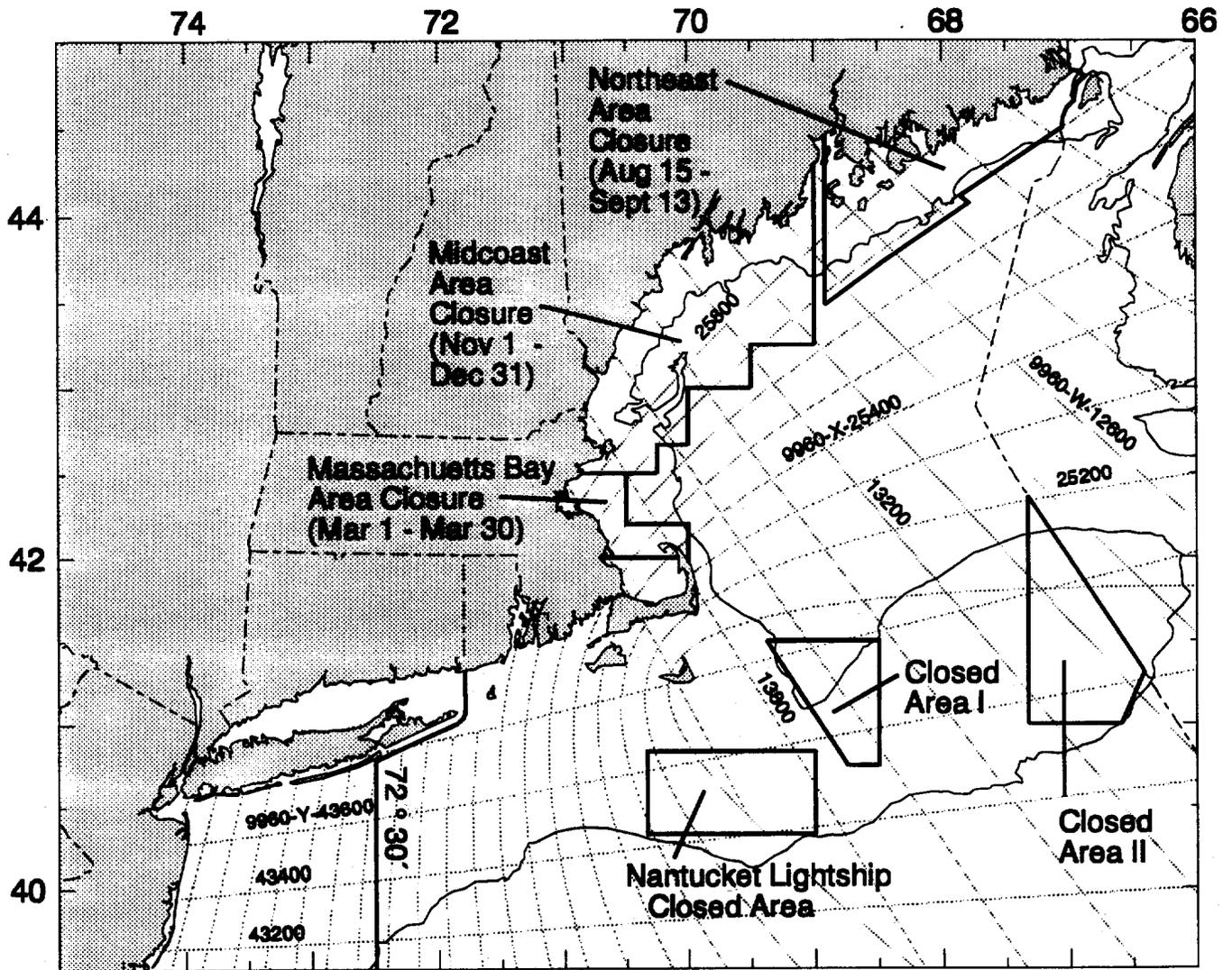


Figure 3 to part 651--Closed Areas.

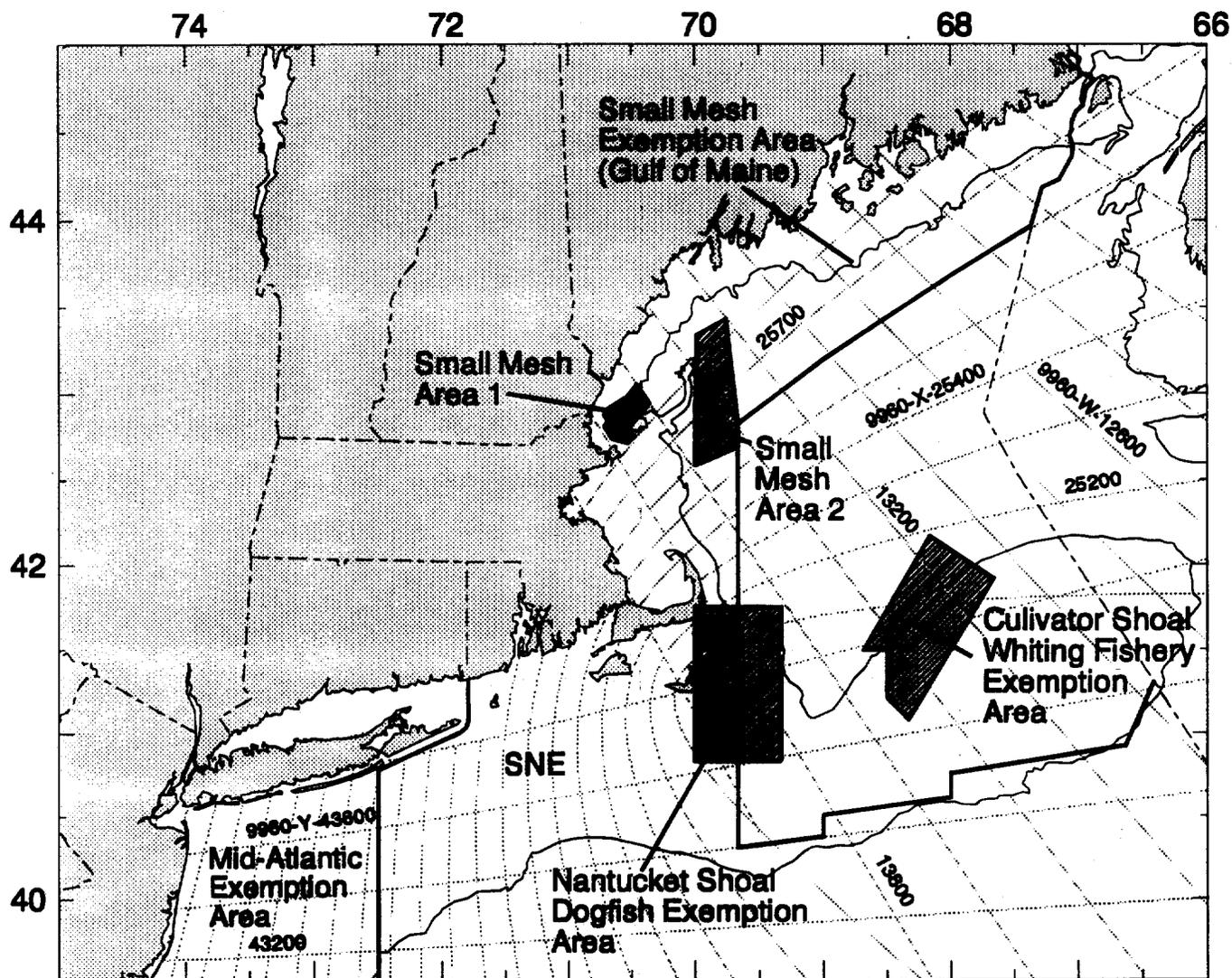


Figure 4 to part 651--Exemption Areas.

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