

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 040112010-4010-01; I.D. 122203A]

RIN 0648-AN17

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. The proposed measures include: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England (SNE) scallop dredge vessels; modifications to Vessel Monitoring System (VMS) requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and

yellowtail flounder on Georges Bank (GB); Special Access Programs (SAPs) to allow targeted harvest of healthy stocks of groundfish; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders.

DATES: Comments must be received by 5 p.m., February 27, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Amendment 13." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

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

Copies of Amendment 13, its Regulatory Impact Review (RIR), the Preliminary Regulatory Economic Evaluation (PREE), and the Draft Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. NMFS prepared an Initial Regulatory Flexibility Act analysis, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978-281-9347, fax: 978-281-9135; email: thomas.warren@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Council has been developing Amendment 13 since 1999, in order to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish

stocks. Significant events in the history of that development are described below.

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia (Court) on a lawsuit brought by the Conservation Law Foundation, Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al., v. Evans, et al.*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court did not impose a remedy, but instead asked the parties to the lawsuit to propose remedies consistent with the Court's findings. The Court specifically found that Framework 33 failed to meet the FMP's Amendment 9 and SFA overfishing and rebuilding targets. Amendment 9 established overfishing and rebuilding objectives intended to meet SFA requirements, but did not implement or analyze any specific measures necessary to meet the new overfishing and rebuilding objectives. Framework 33, which was developed after Amendment 9, was an annual adjustment required by Amendment 7 to meet Amendment 7 targets.

From April 5-9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. The Settlement Agreement called for short-term measures to reduce overfishing while the Council completed its development of Amendment 13.

On April 29, 2002, NMFS published an interim final rule (67 FR 21139) under the authority of section 304(e), consistent with section 305(c), of the Magnuson-Stevens Act, which allows for interim measures to reduce overfishing until an amendment to stop overfishing and rebuild fish stocks is implemented, to implement the short-term measures called for by the Settlement Agreement. On May 6, 2002 (67 FR 30331), NMFS corrected the April 29, 2002, interim final rule to bring it into full compliance with the

Order. NMFS further amended the April 29, 2002, interim final rule on June 5, 2002 (67 FR 38608) to bring the regulations into conformance with a May 23, 2002, Order issued by the Court in response to a motion for reconsideration. NMFS proposed additional, more restrictive interim measures on July 1, 2002 (67 FR 44139), and implemented those measures on August 1, 2002 (67 FR 50292), also as required by the terms of the Settlement Agreement. A final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule, was published on January 28, 2003 (68 FR 4113), and another minor correction to the August 1, 2002, interim final rule was published March 25, 2003 (68 FR 14347). Descriptions of the measures implemented through the interim rules can be found in the preamble to those rules and are not repeated here.

The Order specified that management measures implemented by the August 1, 2002, interim final rule remain in effect until the completion of Amendment 13, which was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address concerns related to NMFS's Northeast Fisheries Science Center's (NEFSC) trawl survey and new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180-day period, ending July 27, 2003. Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two consecutive 180-day periods. Because the Order required that the interim management measures remain in effect until Amendment 13 is implemented, and because the Court granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004, in response to unanticipated events, NMFS proposed, on April 24, 2003 (68 FR 20096), an emergency action under authority of section 305(c) of the Magnuson-Stevens Act. In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order,

the April 24, 2003, emergency rule proposed a pilot program to allow limited access NE multispecies vessels to lease their NE multispecies DAS. The proposed emergency rule was corrected on May 9, 2003 (68 FR 24914), and notification of changes to that rule was published June 20, 2003 (68 FR 36970). Due to the newness and potential controversy of the DAS Leasing Program, NMFS extended the comment period through June 10, 2003, on the DAS leasing aspect of the proposed emergency rule only (68 FR 28188; May 23, 2003). On June 27, 2003 (68 FR 38234), NMFS published a final emergency rule that implemented many of the same measures implemented through the August 1, 2002, interim final rule, with some modifications in response to public comment, but did not implement the DAS Leasing Program. Because of the public comments received and the controversial aspects of the DAS Leasing Program, NMFS concluded that it would be better to develop such a program through the Council process than through emergency rulemaking; thus, NMFS withdrew the proposed DAS Leasing Program (68 FR 41549, July 14, 2003). The measures implemented through the June 27, 2003, emergency rule remain in effect at this time. The emergency measures were continued in effect through publication of a notice of continuation in the **Federal Register** on December 22, 2003 (68 FR 71032), pursuant to section 305(c) of the Magnuson-Stevens Act.

Amendment 13 was developed by the Council to end overfishing of all groundfish stocks and to rebuild all groundfish stocks that are overfished, and includes measures to minimize bycatch, to implement improved reporting and recordkeeping requirements, and to address other conservation and management issues. Amendment 13 also contains measures to minimize the adverse effects of fishing on EFH, in accordance with the Settlement Agreement resulting from the legal challenge *American Oceans Campaign, et al. v. Daley, et al.* (Civil Case Number 99-982 (GK)). In accordance with the EFH Settlement Agreement, Amendment 13 evaluates the impacts of fishing on EFH through analysis in the FSEIS and includes management measures designed to minimize the adverse effects of fishing on EFH to the extent practicable.

A notice of availability of a Draft Environmental Impact Statement for the EFH components of Amendment 13 was published on April 4, 2003 (68 FR 16511), with public comment accepted through July 2, 2003. A notice of

availability of the Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018), with public comments accepted through October 15, 2003. A correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

A notice of availability for Amendment 13, as submitted by the Council for review by the Secretary of Commerce, was published in the **Federal Register** on December 29, 2003 (68 FR 74939). The comment period on Amendment 13 ends on February 27, 2004. In addition to the implementing measures proposed in this rule, Amendment 13 contains changes to overfishing definitions and other aspects of the management program that are not reflected in regulations.

Proposed Measures

Amendment 13 proposes a large number of changes to the management regime for the NE groundfish fishery. In order to provide the public with the clearest information possible on how the groundfish regulations would appear if Amendment 13 is approved and implemented, NMFS is publishing in this proposed rule the entirety of 50 CFR part 648, subpart F, that pertain to the groundfish fishery as they would appear if this proposed rule is adopted as final. The proposed regulations also reflect revisions to the existing text in subpart F that are not a result of Amendment 13; these revisions would remove obsolete language and improve organization and clarity of the regulations, but they are not substantive changes. A description of the proposed management measures follows.

1. Recreational Measures

The bag limit (possession limit) for cod aboard a private recreational vessel (*i.e.*, not a charter/party vessel) fishing while in the Exclusive Economic Zone (EEZ), or caught in the EEZ, would be changed to 10 cod per person per day, with no possession limit for haddock, year-round. The current possession limit is 10 cod and/or haddock, combined, per person per trip, from April 1 through November 30; and 10 cod and/or haddock, combined, per person per trip, no more than 5 of which may be cod, when fishing in the Gulf of Maine (GOM) from December 1 through March 31. The current seasonal bag limit restrictions for private recreational fishing vessels would be eliminated.

The possession limit for cod aboard a charter/party vessel fishing in the GOM would be changed to 10 cod per person

per day, year-round. The current possession limit when fishing in the GOM is 10 cod per person per trip, from April 1 through November 30; and 5 cod per person per trip, from December 1 through March 31. As with private recreational vessels, the current seasonal bag limit restrictions for charter/party vessels would be eliminated.

For charter/party vessels issued a Federal multispecies permit, and for private recreational vessels, any trip in excess of 15 hours and covering 2 calendar days would be considered a 2-day trip for purposes of calculating allowable bag limits. Allowable bag limits for recreational vessels conducting trips longer than 2 consecutive calendar days would be determined by adding 24 hours for each additional day to the 15-hour minimum, 2-day trip requirement. For example, to possess 3-days equivalent of the bag limit, a recreational vessel would have to fish at least 39 hours (15 plus 24) over a 3-consecutive-day period.

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

2. Handgear Permit

A new limited access permit category, called Handgear A, would be created for qualified vessels fishing with handgear (rod and reel, handline, or tub-trawl gear). To qualify for a Handgear A permit, a vessel must have been previously issued a NE multispecies open access Handgear permit, and must have landed at least a total of 500 lb (227 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit category, in at least one of the fishing years from 1997 through 2002 (fishing years are May 1 through April 30). Landings would need to be documented through dealer reports submitted to NMFS or other NMFS-approved entity, prior to January 29, 2004. A process would be established to allow vessel owners to appeal denials of Handgear A permits, if they believe the denials were based on incorrect information.

Vessels fishing under the limited access Handgear A permit would be allowed to land up to 300 lb (136 kg) of cod, one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Handgear A permits would be

transferrable between vessels, with the transfers not subject to vessel size and horsepower upgrade restrictions. In addition to handline and rod-and-reel gear, open access Handgear and limited access Handgear A permit holders would be allowed to fish hand-hauled tub-trawl gear, with a maximum of 250 hooks. Definitions of "handgear" and "tub-trawl" would be added to § 648.2.

The trip limits under the current open access Handgear permit category would be modified to allow vessels to possess up to 75 lb (34.0 kg) of cod and one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Open access Handgear permitted vessels are currently subject to possession limits of 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined; one Atlantic halibut; and the daily possession limits allowed for the remaining regulated groundfish species. The cod trip limit for both the limited access Handgear A permit and the open access Handgear permit would be adjusted proportional to changes in the GOM cod trip limits for groundfish DAS vessels in the future, as necessary.

The creation of a limited access Handgear A permit would provide historical participants in this specialized component of the groundfish fishery with higher cod trip limits than they currently have, and provide holders of the Handgear A permits the flexibility to transfer or upgrade their vessels with little or no increase in fishing mortality to groundfish stocks, because of the specialized nature of the gear they fish.

3. Northern Shrimp Exempted Fishery

Amendment 13 proposes to remove the restriction that the northern shrimp fishery be conducted shoreward of the small-mesh fishery exemption line (§ 648.80(a)(5)). All other restrictions for participation in the northern shrimp fishery would remain in effect. This measure would provide greater flexibility to the northern shrimp fishery, by enabling the fishery to pursue shrimp over a larger area than is currently allowed, without jeopardizing conservation measures for groundfish stocks.

4. Tuna Purse Seine Access to Groundfish Closed Areas

Tuna purse seine gear is currently defined as exempted gear in the FMP. Under Amendment 13, tuna purse seine vessels would be allowed to fish in all groundfish closed areas, including Closed Area (CA) I, CA II, and Nantucket Lightship Closed Area

(NLCA), subject to existing restrictions for using exempted gear in those areas. Fishing for, landing, or possessing any groundfish by vessels using purse seine gear would be prohibited, and vessels fishing under this exemption could not have on board gear capable of catching groundfish. Fishing under this exemption would not be allowed in the CA II Habitat Area of Particular Concern (HAPC). If the Administrator, Northeast Region, NMFS (Regional Administrator) determines that tuna purse seine vessels are adversely affecting habitat or groundfish stocks, individual vessels, or all vessels, could be prohibited from one or more of the groundfish closed areas.

Tuna purse seine gear is currently allowed in the groundfish seasonal closure areas and in the GOM year-round closure areas. The intent of this measure is to provide flexibility to purse seine vessels to pursue tuna, using exempted gear, throughout the groundfish management area, with the exception of the CA II HAPC. Because of the type of gear used in this fishery, and based on several years of experimental fishing, impacts on groundfish are expected to be minimal.

5. SNE Scallop Dredge Exemption Program

Unless otherwise prohibited in § 648.81, or unless prohibited under the scallop regulations, vessels with a limited access scallop permit that have declared out of the scallop DAS program as specified in § 648.10, or that have used up their scallop DAS allocations, unless otherwise restricted, and vessels issued a General Category scallop permit, would be allowed to fish in statistical areas 537, 538, 539, and 613, defined as the SNE Scallop Dredge Exemption Area, when not fishing under a groundfish DAS, with certain restrictions. A vessel meeting the above requirements and fishing in the SNE Scallop Dredge Exemption Area could not fish for, possess on board, or land any species of fish (as defined in the Magnuson-Stevens Act) other than Atlantic sea scallops. The combined dredge width used by such vessels could not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge. Dredges would be required to have at least an 8-inch (20.3-cm) twine top, to minimize bycatch of groundfish. The exemption would not provide access to the NLCA, unless specifically authorized through the groundfish FMP.

This measure would provide flexibility for vessels to fish for sea scallops in this area, as authorized under the Atlantic Sea Scallop Fishery Management Plan (§ 648.52(a)) in an

area of SNE where such fishing is not currently allowed. The use of scallop dredges, with the restrictions that would be required under this proposed measure, is not expected to result in significant catches of groundfish.

6. Modified VMS Operational Requirements

Under Amendment 13, a vessel using a VMS could opt out of the VMS program for a minimum period of 1 calendar month by notifying the Regional Administrator. Such notification would be required to include the date the vessel would resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator could stop sending VMS reports to NMFS, but could not engage in any fishery until the VMS is turned back on. This would enable vessel owners to turn off power to the VMS unit and to save on the costs of VMS polling during periods when their vessel is under repair or, for some other reason, is not engaged in fishing.

7. Standards for Certification of Exempted Fisheries

Vessels are currently prohibited from fishing in the GOM, GB, and SNE exemption areas unless fishing: (1) Under a groundfish or scallop DAS; (2) with exempted gear; (3) under the small-vessel exemption; (4) under the scallop state-waters exemption; or (5) in an exempted fishery. Under current regulations (§ 648.80(a)(8) and (b)(4)), an exempted fishery may be added in an existing fishery for which there is sufficient information to determine the amount of regulated groundfish species bycatch if the Regional Administrator, 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 the fishing mortality objectives.

Under Amendment 13, the standards for certification of exempted fisheries that were implemented through Amendment 7 to the FMP would continue to be used, but with the following changes:

The incidental catch standard (5 percent of the total catch, by weight) could be modified by the Council or Regional Administrator, for those groundfish stocks that are not in an overfished condition, or if overfishing is not occurring. In order for the Council or Regional Administrator to modify the exemption standard, it must be demonstrated that the modification would not cause a delay in a rebuilding

program, would not result in overfishing of a stock, and would not result in a stock becoming overfished. Other factors would also be considered in the certification of an exempted fishery, such as the impact of the fishery on juvenile fish, sacrifices in yield that would result from increases in fishing mortality, the ratio of target species to regulated species, the status of stock rebuilding, recent recruitment of groundfish species, etc. Under the proposed procedures, the incidental catch standard could be modified either through a Council action (framework adjustment) that would change the standard for all exempted fisheries, or on a case-by-case basis for specific exempted fisheries.

On a case-by-case basis, through approval by the Regional Administrator, with notification to the public through rulemaking consistent with the Administrative Procedure Act (APA), or through Council development of a framework action for NOAA Fisheries consideration, an exempted fishery in the GOM, GB, or SNE exemption areas, and a small mesh fishery in that portion of the Mid-Atlantic (MA) Regulated Mesh Area (RMA) outside of the SNE exemption area, could be authorized to possess and land certain regulated groundfish. In making that determination, the Council or Regional Administrator would consider the status of the stock or stocks caught in the exempted fishery; the risk that allowing possession of groundfish would result in increased landings of groundfish; the extent of the exempted fishery, in terms of both time and area; the possibility of expansion of the exempted fishery; whether the exempted fishery should be allowed to take place in a groundfish closed area; impacts of the exempted fishery on any groundfish stock that is overfished; and whether overfishing is already occurring on a stock that would be caught by the exempted fishery. Possession by an exempted fishery could be allowed for a groundfish stock under a rebuilding program, but only if it can be determined that the catch of that stock by the exempted fishery would not likely result in exceeding the rebuilding fishing mortality rate for that stock.

The intent of the proposed changes is to allow greater flexibility to the Council and NMFS to administer the exempted fishery program as groundfish stocks rebuild, while continuing to protect the groundfish stocks.

8. Flexible Area Action System (FAAS)

The FAAS management system, currently contained in § 648.85, would be eliminated by Amendment 13. The

FAAS system was developed by the Council to provide a mechanism to respond quickly to bycatch problems in the groundfish fishery. However, experience demonstrated that it was infeasible to use the system as originally intended, due to administrative constraints that prevented the rapid action that was initially anticipated.

9. Periodic Adjustments to the FMP

The current annual process to make adjustments to the FMP (§ 648.90) would be revised to be a biennial adjustment process. The Plan Development Team (PDT) would perform a review and submit management recommendations to the Council every 2 years, with a review of each of the regulated multispecies, Atlantic halibut, and ocean pout. The first review would be in 2005, to determine necessary changes for the 2006 fishing year. This review would be completed by the PDT, based on the most current and best scientific information available. The PDT would consider relevant data and information provided by the NEFSC, as well as by the states, the Atlantic States Marine Fisheries Commission, the U.S. Coast Guard (USCG), and other sources. Adjustments would continue to be implemented on May 1 of the relevant year (the beginning of the fishing year). The PDT would recommend, for the Council's consideration, new measures, if necessary, to address current management needs in the FMP, within the scope of a framework adjustment. The PDT would review the most current data pertaining to landings, stock status, and fishing mortality rates; enforcement issues; DAS use; social and economic impacts; and any other relevant information. The Council would then hold at least two Council meetings and submit its recommendations to the Regional Administrator by December 1. The Regional Administrator would review the Council's recommendations, including the supporting analyses, and undertake rulemaking, consistent with the APA, to meet the May 1 implementation date. If the Council fails to submit measures by February 1, the Regional Administrator would be authorized to choose any PDT alternative not specifically rejected by the Council. For the 2005 review, an updated groundfish assessment, peer reviewed by independent scientists, would be conducted to facilitate the PDT review for the adjustment, if needed, for the 2006 fishing year. The PDT would also prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report, which would

include the most recent biological and socio-economic information.

In addition to the biennial review discussed above, the PDT would meet to conduct a review of the groundfish fishery by September 2008 to determine the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer reviewed by independent scientists, would be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in Amendment 13 would be examined during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination would be made as to whether the Amendment 13 biomass targets are still considered valid, given the response of the stocks to the management measures in Amendment 13 that were expected to result in certain stock levels by 2008.

Under the proposed procedures, the existing Multispecies Monitoring Committee would be folded into the PDT, and would cease to exist as a separate committee. As a result, the PDT membership would be revised to include technical staff from the Council, the NMFS Northeast Regional Office, the NEFSC (biologists, social scientists, and economists), technical personnel from state management agencies or qualified researchers, a representative from the USCG, the Chair of the Groundfish Advisory Panel, and another interested parties designated by the Council Chair. The PDT would continue to provide technical support to the Groundfish Committee in the development of FMP amendments. In addition, it would monitor the FMP and develop options for framework adjustments through the new biennial adjustment process.

The proposed adjustment process is intended to provide greater stability to the management of the groundfish fishery by adjusting management measures less frequently. It is also intended to be more streamlined than the current process.

10. Rebuilding Program

The proposed rebuilding program for groundfish stocks is the heart of Amendment 13. The Council adopted Alternative 5 in the DSEIS, which was based on management measures developed by the Council and on an industry proposal put forward by the Northeast Seafood Coalition, as its proposed rebuilding program. The intent is to rebuild all overfished groundfish stocks primarily through effort-reduction measures that are

phased in over a period of several years. Because several stocks are currently not overfished, others are being overfished (*i.e.*, the fishing mortality rates on these stocks are too high), and some are in need of rebuilding to the levels that can produce maximum sustainable yield (MSY) on a continuing basis, a mixture of management measures is proposed to achieve all of the objectives.

Amendment 13 attempts to balance the need to end overfishing of some stocks as quickly as possible, with the need to consider the economic and social impacts of effort reduction measures on the participants in the fishery and on fishing communities. The proposed measures to accomplish this are summarized as follows:

DAS Allocations

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

The allocation of a vessel's DAS would be calculated from that vessel's DAS baseline, defined as the maximum DAS used by that vessel in any single fishing year from qualifying fishing years 1996 through 2001 (May 1, 1996, through April 30, 2002). Qualifying years would be only those in which the vessel landed a total of 5,000 lb (2,268 kg) or more of regulated groundfish species. Landings would need to be documented through dealer reports submitted to NMFS or other NMFS-approved entity, prior to April 30, 2003. For fishing years 2004 and 2005, 60 percent of a vessel's DAS baseline would be defined as its "Category A" DAS, and 40 percent of a vessel's DAS baseline would be defined as its "Category B" DAS. Category B DAS would be further categorized as "regular B" DAS and "reserve B" DAS, each representing 20 percent of the vessel's DAS baseline. The difference between a vessel's fishing year 2001 DAS allocation and its DAS baseline would be the vessel's "Category C" DAS. Upon implementation of Amendment 13, either regular or reserve B DAS could be

used in any approved SAPs, but neither could be used outside of an approved SAP. The procedures and restrictions applying to the use of regular B DAS when fishing outside of a SAP have not been developed, and would need to be implemented through future Council action, such as a framework. Category C DAS would not be made available to fish at this time.

Because groundfish DAS vessels would be allocated DAS based on their historical fishing records, the Fleet DAS permit category and the Large Mesh Fleet DAS permit category would be eliminated, since these categories represented a fleet average of DAS. Upon approval of Amendment 13, vessels currently fishing in the Fleet DAS and Large Mesh Fleet DAS permit categories would automatically be reissued permits in the Individual DAS and Large Mesh Individual DAS permit categories, respectively. Vessels affected by this change would have an opportunity to reapply for a different permit category.

DAS Use

Under Amendment 13, Category A DAS could be used to target any regulated groundfish stock. Beginning with the implementation of Amendment 13, any Category B DAS (*i.e.*, regular or reserve B DAS) could be utilized to fish in approved SAPs, subject to the requirements of the SAPs. Amendment 13 would require that each vessel would be required to have at least 1 Category A DAS remaining for each regular B DAS it intends to fish.

A vessel would be required to declare its intent to use a Category B DAS at the start of a fishing trip, and would need to specify which type of (regular or reserve) B DAS would be used on that trip. Even though regular B DAS could initially be used only while fishing within a SAP, NMFS would need to track the usage of both types of B DAS by each vessel, starting with the implementation of Amendment 13. That would enable NMFS and the vessels to know how many of each type of B DAS each vessel has remaining for the fishing year, should the Council develop a program for use of regular B DAS during the fishing year.

Vessel owners should be aware that Amendment 13 provides that, should a program for use of regular B DAS outside of SAPs be developed by the Council and implemented in the middle of a fishing year, the vessel would need to have Category A DAS available in order to fish the regular B DAS outside of a SAP during the remainder of that fishing year.

As groundfish stocks rebuild, there may be opportunities to increase the number of available Category A DAS. In that circumstance, Amendment 13 calls for all Category B DAS (regular and reserve) to be converted to Category A DAS before any Category C DAS would be converted to Category A DAS. If necessary to achieve rebuilding targets, Category A DAS could be changed to Category B DAS by the Council. Any DAS carried over from the 2003 fishing year into the 2004 fishing year would be classified as regular B DAS. For any DAS carried over from the 2004 fishing year into the 2005 fishing year, and for all subsequent fishing years, the carried-over DAS would be determined as follows: If a vessel has Category A DAS remaining, these would be carried over first; if the vessel has fewer than 10 A DAS remaining, then the vessel's regular B DAS would be carried over, up to a total of 10 DAS; if the vessel has fewer than 10 A DAS and regular B DAS, combined, remaining, then the vessel's reserve B DAS would be carried over, up to a total of 10 DAS, combined. For example, if a vessel ended a fishing year with 3 A DAS, 6 regular B DAS, and 10 reserve B DAS, that vessel's carry-over DAS would be 10 DAS, comprised of the following: 3 A DAS, 6 regular B DAS, and 1 reserve B DAS. Category C DAS could not be carried over and could not be fished.

Default Measures

Amendment 13 would establish fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates would be immediately reduced to a level that would end overfishing. For several other stocks, reductions in fishing mortality rates would be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures would automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which would allow a vessel to fish up to 55 percent of its DAS baseline allocation as

A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE RMA, where DAS would be counted at a rate of 1.5 to 1. On May 1, 2009, there would be an additional DAS reduction of 10 percent, which would allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment would be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures would not occur if the Regional Administrator determines that the Amendment 13 projected target biomass levels for relevant stocks under Amendment 13, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, and overfishing is not occurring on those stocks. If these criteria are met, the Regional Administrator would publish that determination in the **Federal Register**, consistent with the requirements of the APA.

Trip Limits

The following modifications to the cod and yellowtail flounder trip limits are proposed, in order to meet Amendment 13 objectives:

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

GB cod: The possession limit would be reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel elects to fish, through an annual declaration, exclusively with hook gear under the GB Cod Hook Gear Trip Limit Exemption Program. Similar to the Day or Trip Gillnet Category designation, a vessel would need to declare into the GB Cod Hook Gear Trip Limit Exemption Program when applying for its limited access groundfish permit.

The GB cod trip limit for hook vessels would be as follows:

January 1 through March 31: 2,000 lb (907 kg)/DAS;

April 1 through June 30: No hook gear (jig or demersal longline) fishing allowed on GB;

July 1 through September 15 (directed cod season for hook vessels): 2,000 lb (907 kg)/DAS; during this period, vessels could not land groundfish on Fridays or Saturdays; and September 16 through December 31 (restricted cod season): 600 lb (272 kg)/DAS.

Cape Cod (CC)/GOM yellowtail flounder, when fishing in the SNE/MA stock areas:

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

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

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

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

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

Modifications to Gear Restrictions

Gear restrictions would be modified as follows, in order to meet Amendment 13 objectives:

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

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

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

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

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

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges bank	SNE	Mid-Atlantic
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category *.	<i>Roundfish nets</i> 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net.	<i>All nets</i> 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net.	<i>All nets</i> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.	<i>Roundfish nets</i> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
	<i>Flatfish nets</i> 6.5" (16.5 cm) mesh; 100-net allowance; 1 tag/net.			<i>Flatfish nets</i> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category *.	<i>All nets</i> 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net.	<i>All nets</i> 6.5" (16.5 cm) mesh; 150-net allowance; 2 tags/net.	<i>All nets</i> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.	<i>All gillnet gear</i> 6.5" (16.5 cm) mesh; 75-net allowance 2 tags/net.
Monkfish Vessels **	10" (25.4 cm) mesh/150-net allowance			
	1 tag/net			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size * ...	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square.	6.5" (16.5 cm) diamond or square.
Large Mesh Category—entire net.	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square.
MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK GEAR ***				
Limited access multi species vessels.	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

* When fishing under a NE multispecies DAS.

** Monkfish Category C and D vessels, when fishing under a monkfish DAS.

*** When fishing under a NE multispecies DAS or when fishing under the Small Vessel permit.

11. DAS Transfer Program

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

The length overall (LOA) baseline or gross registered tonnage baseline of the buyer/transferee vessel could not be more than 10 percent greater, and its horsepower could not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel would also be required to retire from all state and Federal commercial fisheries and to relinquish permanently all Federal and state fishing permits. Category A and B DAS that are transferred would be reduced by 40 percent; Category C DAS that are transferred would be reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) could be transferred, but vessels fishing under a sector allocation would be

prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

The intent of the permit transfer measures is to allow vessel owners the flexibility to retire from the fishery, while reducing the overall DAS in the fishery. The requirement that all other permits be relinquished is intended to prevent vessels from transferring their groundfish permits and continuing to fish, potentially increasing effort in other fisheries that may already be fully or overcapitalized.

12. DAS Leasing Program

Amendment 13 proposes a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term "lease" refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year.

Implementation of the proposed program would provide the industry an opportunity to mitigate economic impacts of the effort reduction measures proposed in Amendment 13.

Eligibility

All vessels with a valid limited access groundfish DAS permit would be eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing would be termed lessees; eligible vessels leasing-out DAS would be termed lessors. DAS associated with a CPH could not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, would not be allowed to lease DAS, and vessels participating in an approved sector under the proposed Sector Allocation Program in Amendment 13 would not be allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

Application Procedures

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

An application to lease DAS could be submitted at any time throughout the fishing year, up until March 1. A complete application would consist of the following: Lessor's owner name, vessel name, permit number and official number or state registration number; lessee's owner name, vessel name, permit number and official number or state registration number; the number of groundfish DAS to be leased; total price paid for the leased DAS; signatures of lessor and lessee; and the date the form was completed. Information obtained from the application would be held confidential in accordance with the requirements of the Magnuson-Stevens Act and applicable regulations.

The Regional Administrator could reject an application for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the lessor or lessee has not been issued a valid limited access groundfish permit, or is otherwise not eligible; the lessor's or lessee's DAS are under sanction pursuant to an enforcement proceeding; the lessor's or lessee's vessel is determined not in compliance with the conditions and restrictions of 50 CFR part 648; or the lessor has an insufficient number of allocated or unused groundfish DAS available to lease. Upon denial of an application, the Regional Administrator would send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator would be the final agency decision. There would be no appeal process.

Conditions and Restrictions

No subleasing of groundfish DAS would be allowed. This means that, once a lease application is approved by NMFS, the leased DAS could not be

leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (e.g., a vessel sinking). This restriction is necessary to ensure NMFS' ability to administer and account for all leased DAS in an efficient manner. Vessels would not be allowed to lease carry-over DAS. Only Category A DAS could be leased, and all leased DAS would be Category A DAS.

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

A lessor could not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also could not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA. This is intended to constrain effort by ensuring that leased DAS would be fished by vessels of similar fishing power.

History of DAS Use and Landings

Because, in the future, DAS use and landing history may be used to determine fishing rights, the proposed program includes a presumption for how such history would be accounted for. For ease of administration, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS would be presumed to be attributed to the lessee vessel. However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS would be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel had an allocation of 50 DAS, leased an

additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel would be presumed to have used its 20 leased DAS first. This same vessel would be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings would be presumed to be attributed to the vessel that actually landed the fish (lessee). Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and costly for NMFS to implement.

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

Monkfish Category C and D vessels

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

If a monkfish Category C or D vessel leases groundfish A DAS to another vessel, the vessel would be required to forfeit a monkfish DAS for each

groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS – 37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C and D vessels must fish a groundfish A DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where groundfish A DAS are leased (transferred) would allow monkfish and groundfish A DAS to be fished independently. This could create a significant effort increase in the monkfish fishery.

13. U.S./Canada Resource Sharing Understanding

Amendment 13 would adopt and implement the U.S./Canada Resource Sharing Understanding (Understanding). Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder would be subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Eastern U.S./Canada Area has been modified slightly to encompass all of CA II for the purpose of better administration of the Understanding. The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

Measures to implement the Understanding proposed in Amendment 13 are intended to allow the U.S. groundfish fishery to harvest, but not exceed, the U.S. allocation of these three shared stocks. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas would be determined through a process involving the Council, the Transboundary Management Guidance

Committee, and the U.S./Canada Steering Committee. Based on information available at this time, the U.S. TACs in fishing year 2004 are expected to be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. The Council will consider these recommendations at its January 2004 Council meeting; any different recommendation would be implemented through proposed and final rulemaking. Once any one of these TACs is reached, the Eastern U.S./Canada Area would be closed to all fishing by gear capable of catching groundfish, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area would not be closed, but would have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

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

of whether the vessel is fishing in one of the U.S./Canada Management Areas.

As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS would not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in either of the U.S./Canada Management Areas would also be required to fish with, and have on board only, either a flatfish net or a haddock separator trawl, which are defined in this proposed rule. NMFS has worked with gear experts in the industry to develop the proposed gear definitions and requests specific comment from the public on those definitions.

A cod trip limit within the U.S./Canada Management Areas of 500 lb (227 kg)/DAS, not to exceed 5 percent of the total catch on board, would be implemented for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

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

The U.S./Canada Management Area measures would remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, could adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments could be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In

addition, the Regional Administrator, in consultation with the Council, could withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time would remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

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

14. SAPs

Amendment 13 would implement a process to develop SAPs, which are intended to facilitate access in closed or highly restricted areas to groundfish stocks that can support an increase in fishing mortality, and management of, and access to, non-groundfish stocks. The premise for SAP development is that specific fisheries can be developed that would not undermine achievement of the goals of the FMP, because some groundfish stocks are in better condition than others. A SAP would allow fishing for either regulated groundfish or species in other fisheries, without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies. A SAP would represent a narrowly defined fishery that would be prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH.

SAP Program Procedures

The proposed SAP program would define minimum criteria that would be utilized in the future to develop and implement SAPs. The proposed program is comprised of two parts: One that would define a process and standards for SAPs for the groundfish fishery, and a second that would define a process and standards for SAPs for non-groundfish fisheries. Under both proposed processes, in order for a SAP to be established, there would need to be sufficient information available to demonstrate that the SAP would not adversely impact efforts to control fishing mortality on groundfish stocks of concern; would, to the extent practicable, minimize bycatch; and

would minimize, to the extent practicable, adverse effects on EFH caused by fishing. If that information is not available, the first step in getting authorization of a SAP would be collection of information necessary to demonstrate the feasibility of the SAP through an experimental fishery.

SAPs for Vessels Harvesting Groundfish

Amendment 13 proposed that implementation of SAPs for vessels harvesting groundfish could be through a framework adjustment or FMP amendment, using the proposed and final rulemaking procedures; or an expedited process in which the Council, or an industry participant or other member of the public could propose a SAP, which would then be reviewed and approved or disapproved by the Regional Administrator, in consultation with the Council, through publication in the **Federal Register**. This expedited approach is intended to allow more rapid implementation of a SAP than the framework action approach. In order to be approved under this process, the SAP must apply to a groundfish stock(s) for which the previous year's landings fell short of the TAC. The application must also demonstrate that the SAP will not catch more than the previous year's TAC shortfall, and that implementation of the SAP will not result in overfishing of any stock, or cause any stock to become overfished. This is intended to ensure that the biological impacts on the target stock fall within the range of the biological and economic impacts analyzed in Amendment 13. In order to demonstrate consistency with the goals of the FMP, the application would be required to specify the number of vessels that would participate in the SAP, and the estimated catch rates of the species to be harvested. The proposed SAP also could not modify any of the measures that minimize, to the extent practicable, the adverse impacts of fishing activity on EFH. This also is intended to ensure that any habitat impacts of the proposed SAP would fall within the range of the impacts analyzed in the FSEIS for Amendment 13. The proposed SAP, to be approved, could not increase fishing mortality on a groundfish stock of concern. This, too, is intended to ensure that the impacts of the SAP fall within the range of impacts analyzed in the FSEIS for Amendment 13. This could be accomplished in several ways: (1) By adoption of a limitation on catch of the stock of concern, for example through a specific TAC for that stock in the SAP, which would have to be adequately monitored through observer coverage; (2) by adopting gear or fishing

techniques demonstrated to reduce or prevent the catch of the stocks of concern, including demonstration that the reduction is sufficient that any increase in time fishing (effort) will not increase the catch of a stock of concern beyond that which would result in the absence of the proposed SAP; and (3) by sufficient overall effort reduction or redirection to ensure that there is no net increase in bycatch mortality. Any SAP would be conducted within a defined area. Participation in the SAP could not be limited to vessels or individuals from a particular state or political subdivision. The SAP would be required to reduce discards and/or discard mortality of all species, to the extent practicable. In order for a SAP to be approved under the expedited process, it could not have significant impacts as defined by the National Environmental Protection Act (NEPA), or if the impacts are significant, these impacts would have to have been analyzed in the FSEIS for Amendment 13 or some later action. The proposed SAP would be required to specify the type of data reporting to be utilized to monitor the status of harvest, and should include a realistic plan of implementation. Finally, the Regional Administrator should take into account available enforcement resources and the enforcement record of vessel owners and operators of vessels that would participate in the SAP, to help ensure that adherence to the prescribed conditions of the SAP could be assured, if approved.

Under Amendment 13, if a SAP request is submitted to the Regional Administrator for approval through the expedited process, the Regional Administrator would: (1) Perform an initial review to ensure the required elements are present; (2) if all required elements are present, notify the Council of receipt of the SAP proposal within 21 days of receipt of the application; and (3) publish a notice in the **Federal Register** requesting comment on the SAP proposal within a 30-day comment period. After considering comments from the Council and the public, the Regional Administrator would make a determination on the proposed SAP and, if approved, issue a permit authorization for an exemption to existing regulations or promulgate new regulations, as appropriate, within 60 days of the end of the comment period. The expedited process could only be used if it is found to be consistent with the APA and other applicable law.

SAPs for Vessels Harvesting Non-groundfish Species

Implementation of SAPs allowing vessels to harvest non-groundfish stocks could be accomplished through a framework adjustment or FMP amendment, using normal rulemaking procedures, or through an expedited process similar to the process previously described for vessels harvesting groundfish. In order to demonstrate consistency with the goals of the FMP, the application for the proposed SAP would be required to estimate the catch rates of the species to be harvested.

Proposed SAPs

In addition to a proposed process for implementing SAPs in the future, Amendment 13 proposes four SAPs to be implemented as part of Amendment 13. Three of the SAPs would be available to vessels when fishing under their category B DAS (the CA II Yellowtail Flounder SAP, the CA II Haddock SAP, and the CA I Hook Gear Haddock SAP). The remaining SAP, the SNE/MA Winter Flounder SAP, would allow access to a limited amount of winter flounder outside of the DAS program. Descriptions of each of the proposed SAPs follows.

CA II Yellowtail Flounder SAP

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

CA II Haddock SAP

This SAP would be intended to allow fishing for GB haddock. Vessels would be allowed to fish in the CA II Haddock SAP, using B DAS, under the following conditions and restrictions. From May 1 through February 28 (or 29 in leap year), vessels fishing under the provisions of this SAP could harvest GB haddock. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP would be subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS would not be counted until the vessel crosses the boundary into the Eastern U.S./Canada Area. Participating vessels would be subject to a cod possession limit of one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg)), not to exceed 5 percent of the total catch on board. The Regional Administrator would have broad authority to modify possession restrictions and trip limits under this SAP.

CA I Hook Gear SAP

This SAP would be intended to allow fishing for GB haddock. Vessels would be allowed to fish in the CA I Hook Gear SAP, using B DAS, under the following conditions and restrictions. From September 16 through December 31, vessels fishing under the provisions of this SAP could harvest GB haddock. Although this area lies outside of the U.S./Canada Management Area, vessels would be required to utilize a fully functional VMS when participating in this SAP. In addition, vessels would be restricted to 400 lb (181.4 kg) of cod per trip, and the area would close once 77,161 lb (35 mt) of cod is caught. Each vessel would be required to have an industry-funded observer on board when participating in this SAP.

SNE/MA Winter Flounder SAP

This SAP would be intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this proposed SAP, a vessel fishing for summer flounder west of 72°30' W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS, would be allowed to possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessels must possess a valid Federal summer flounder permit; (2) the weight of winter flounder could not exceed the weight of summer flounder on board; (3) while in

the program, the vessel could not fish on a groundfish DAS; (4) all fishing would have to take place west of 72° 30' W. long.; and (5) possession and/or landing of other groundfish species would be prohibited.

15. EFH Measures

These measures would be intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 would designate portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, would also be relied upon to meet the EFH provisions of the Magnuson-Stevens Act. The list of fishing gears prohibited from use in the year-round closed areas would be expanded to include clam dredges. Use of shrimp trawls within closed areas would also be prohibited, except in the Western GOM Closed Area.

16. Reporting Requirements

Dealer Reporting

Dealers would be required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers would be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Implementation of electronic dealer reporting for all dealers may be accomplished through a separate rulemaking.

Vessel Reporting

Once a viable electronic system becomes available for reporting by vessels, that system would replace the current VTR system. Vessels would be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports would be required to be submitted at least at the current statistical area level of reporting. Vessels would have the option of using any approved, viable electronic means possible to report this information. The trip identifier would be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting would be

accomplished through a separate rulemaking.

17. Sector Allocation

Amendment 13 proposes a process for allowing a sector of the groundfish fishery to develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector could participate in. The intent would be to provide flexibility to the industry and to encourage stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under the proposed process, a self-selected group of groundfish permit holders could agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector could be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector would be allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desired. This could promote efficiency and reduce impacts of that portion of the fishery on habitat, for example. A primary motivation for the formation of a sector would be assurance that members of the sector would not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceeded their target TACs).

Formation of a Sector

Participation in a self-selecting sector would be voluntary. Vessels that do not choose to join a sector would remain in a common pool and would fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) would need to submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to compliance with general requirements described below and any analytical documents necessary to comply with NEPA. Should the Council and NMFS publish and ultimately approve the framework action, the sector would then be required to submit a legally binding plan of operations (operations plan) for the sector to the Council and to the Regional Administrator. The operations plan must contain at least the following: (1) A list of all parties, vessels, and vessel owners who will participate in the sector; (2) a contract signed by all

sector participants indicating their agreement to abide by the operations plan; (3) the name of a designated representative or agent for service of process; (4) historic information on the catch or effort history of the sector participants, and any additional historic information specified in the framework adjustment; (5) a plan and analysis of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the sector rules and for the monitoring and reporting of landings and discards; (6) a plan that defines the procedures by which members of the sector that do not abide by the rules of the sector would be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector; (7) if applicable, a plan of how the TAC or DAS allocated to the sector will be assigned to each vessel; (8) if the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment, a supplemental NEPA analysis may be required with the operations plan. The sector and all participants in the sector would be jointly and severally liable for any violations of applicable Federal fishery regulations. Once the operations plan is deemed complete, NMFS would solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator would approve or disapprove the operations plan through publication of a final determination consistent with the APA. Approved sectors would be required to submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the sector.

Movement Between Sectors

Each sector would be permitted to set its own rules with regard to movement between sectors, which would be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel would be required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside

the sector allocation in a given fishing year could not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules would not be eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

General Requirements for All Sector Allocation Proposals

Allocation of fishery resources to a sector would be based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 would be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector would be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations would be terminated for the remainder of the fishing year. If, in a particular fishing year the sector exceeds its TAC, the sector's allocation would be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year would not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP. The sector must submit an annual, year-end report to the Council and NMFS on the fishing activities of its members, including harvest levels of all vessels for cod and other federally managed limited access species, enforcement actions, and other information needed to evaluate the performance of the sector.

GB Cod Hook Gear Sector

One sector allocation proposal was developed sufficiently to be considered by the Council in Amendment 13. If approved, the GB Cod Hook Gear Sector would be allocated a maximum of 20 percent of the GB cod TAC for each fishing year. Participating vessels would be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, would be determined by calculating the percentage of all landings of GB cod

made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation would be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 would be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 would be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 would then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this would result in the percentage of the GB cod TAC for the next fishing year that would be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure would be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation would be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector would be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the year. Participating vessels could only harvest groundfish in the GB cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). No leasing of DAS would be allowed by participants in the sector during any fishing year of their participation. If the sector is approved in Amendment 13, the applicant would be required to submit its operations plan to the Council and NMFS for approval and public notification prior to its implementation. Because of this process, the GB Hook Sector could not be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, would not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants could join the sector at the beginning of a new fishing year, but once in the sector, a vessel would be required to stay in the

sector through the remaining portion of the 5-year period.

18. Closed Area Rationale

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

19. Frameworkable Items

Amendment 13 proposes that the following management measures could be adjusted through a framework action, in addition to those measures currently identified as framework measures in the FMP:

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

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

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

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

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

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

- Changes to administrative measures;
- Additional uses for regular B DAS;
- Future uses for C DAS;
- Reporting requirements;

- The GOM Inshore Conservation and Management Stewardship Plan;

- GB cod gillnet sector allocation;
- Allowable percent of TAC available to a sector through a sector allocation;
- Categorization of DAS;
- DAS leasing provisions;
- Adjustments for steaming time;
- Adjustments to the Handgear Only permits;

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

- Anything else analyzed with respect to this action.

20. MSY Control Rules

An MSY control rule is intended to provide management advice to the

Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, would be:

The F calculated to rebuild the stock to Bmsy in 10 years, when $\frac{1}{2} B_{msy} < B < B_{target}$. For Atlantic halibut, the MSY control rule would be: $F = 0$ until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 would adopt a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible.

Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut. The proposed MSY control rules are contained in Amendment 13, but would not be codified in the regulations.

21. Overfishing Definitions

Amendment 13 would clarify and revise the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock would be considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing would be considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds would be increased to at least half of the target biomass levels. The proposed overfishing definitions are contained in Amendment 13, but are not codified in the regulations.

22. Target TACs

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

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

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

The proposed target TACs are not codified in the regulations.

23. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 would reduce the minimum enrollment requirement for five of the six existing fishery exemption/authorization programs from 30 days to 7 days, and would establish a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/authorization programs currently contain a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00' N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00' N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs would be revised by Amendment 13 and would also have a 7-day minimum enrollment requirement. The original intent of the 30-day minimum enrollment requirement was to increase the enforceability of these programs. However, due to advances in technology and the increased use of VMS by commercial fishing vessels, NMFS has concluded that the 30-day minimum enrollment requirement is no longer

necessary for enforcement purposes. Members of the fishing industry and the Council have requested that NMFS reduce the 30-day minimum enrollment requirement in order to provide them with more flexibility with regard to their fishing practices.

24. Policy on Cooperative Research

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

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on several proposed measures for which the agency has concern, particularly regarding whether the measures are consistent with achieving the mortality reduction objectives and whether there is sufficient analysis in the FSEIS to

support the proposed measures. A description of these measures follows.

SAPs

Amendment 13 proposes four SAPs: The CA II Yellowtail Flounder SAP; the CA II Haddock SAP; the CA I Hook Gear Haddock SAP; and the SNE/MA Winter Flounder SAP. For two of these SAPs, the CA II Haddock SAP and the CA I Hook Gear Haddock SAP, the Amendment 13 document appears to lack sufficient analysis to determine the impacts of these programs. For the CA II Haddock SAP, the document states that there is no recent information available on catch rates of groundfish or other species inside the area. The document further cautions that recent VTR data from the area adjacent to the CA II Haddock SAP indicates that, for most months, vessels reported landing more cod than haddock, on a per trip basis. Although Amendment 13 would implement a haddock separator trawl gear requirement in this area (trawl gear that is expected to reduce cod bycatch), there may not be enough data at this time to justify access to this area, given the need to keep fishing mortality on GB cod low.

An experimental fishery is currently being conducted to determine whether a directed hook-gear fishery for haddock in CA I could be developed that would have very low bycatch of GB cod. However, the experiment has not been completed, and the data are of limited temporal scope, so there is little information on whether or not a directed hook fishery for haddock in CA I could avoid GB cod catches throughout the year. Amendment 13 also proposes 100-percent observer coverage for this SAP, but does not state

how this would be accomplished. The costs for 100-percent coverage could be very high, and lower coverage levels would likely accomplish the same objectives.

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

Amendment 13 proposes to exclude clam dredge gear from the NLCA, the Cashes Ledge Closure Area, and the Western GOM (WGOM) Closure Area to protect EFH for groundfish. There are seven EFH Closure Areas proposed under Amendment 13. One of the EFH Closure Areas, the Nantucket Lightship Habitat Closure Area, lies within a large portion of the NLCA and extends northward of this area. The proposed Cashes Ledge Habitat Closure Area is located within the existing Cashes Ledge Closure Area, with the exception of the northeast corner of the habitat area, and the proposed WGOM Habitat Closure Area almost fully encompasses the existing WGOM Closure Area. Amendment 13 proposes to exclude hydraulic clam dredges from the EFH Closure Areas. However, restricting clam dredge gear from the EFH Closure Areas within areas already closed exclusively to protect groundfish may be problematic, in that there appears to be little rationale provided for this measure.

Exemption to Allow Shrimp Trawl Gear in the WGOM Closure Area

Amendment 13 would create Level 3 Habitat Closures for the proposed EFH Closure Areas, except that, for the WGOM Habitat Closure Area, shrimp trawl gear would be allowed. NMFS is concerned that allowing shrimp trawl gear to be used in the WGOM Habitat Closure Area could compromise effectiveness of this habitat closure. Furthermore, there appears to be little justification in Amendment 13 to support this exemption.

Abbreviated Process to Implement SAPs

Amendment 13 proposes an abbreviated process to implement future SAPs, whereby the Regional Administrator would be given the authority, upon submission and review of a proposed SAP by a member of the public, to implement this program, provided certain conditions are met. The SAP could only be considered if it falls within the range of impacts analyzed in Amendment 13 or "other" management action. Since the only SAPs that appear to have been fully analyzed in Amendment 13 are the CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP, and

assuming that "other" management actions would analyze proposed SAPs, this authority appears to be unnecessary. Amendment 13 would provide for SAPs to be approved through the framework adjustment process. The framework process may be a more appropriate vehicle for consideration of proposed SAPs than the proposed abbreviated process for SAP implementation.

Proration of DAS

If Congress approves H.R. 2673, the Omnibus 2004 Appropriations bill, with the current provisions regarding the New England groundfish (sec. 105.(a) and (b)), implementation of Amendment 13 would be delayed until at least October 1, 2004. Because this proposed rule is designed for a May 1, 2004, implementation, which coincides with the beginning of the fishing year, an October 1, 2004, implementation would fall in the middle of the fishing year. If implementation were delayed, some of the management measures and analyses thereof described in this proposed rule may require modification in order to take into account the new date of implementation. DAS allocations would need to be prorated to take into account DAS already used in the 2004 fishing year, issuance of limited access Handgear A permits would be delayed, and there would be complications regarding certain aspects of implementation of the SAPs, the U.S./Canada Understanding TACs, the GB Cod Hook Sector Allocation, and the DAS Leasing Program.

Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a DEIS for the EFH components of Amendment 13; a notice of its availability was published on April 4, 2003 (68 FR 16511). A notice of availability of the DSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018); a correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

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

NMFS, pursuant to section 603 of the Regulatory Flexibility Act (RFA),

prepared this initial regulatory flexibility analysis (IRFA) as a supplement to the Council submission of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities.

The Council, in its submission, included a Regulatory Flexibility Act Analysis (RFAA) in support of the proposed action. In this analysis, the baseline (no-action alternative) is the set of measures that were in place prior to the first set of interim measures implemented under the settlement agreement (*i.e.*, FY 2001 fishing measures). The use of this baseline was adopted by the Council. Copies of Amendment 13, which includes the Council's RFAA, can be obtained from the Council (*see ADDRESSES*). Tables and sections that are referenced in this IRFA refer to those contained in Amendment 13. A description of the reasons why this action is being considered is found in the preamble to this proposed rule, the Executive Summary and Section 1.0, Volume 1, of Amendment 13. The objectives of, and legal basis for, the proposed rule are found in the preamble to this proposed rule and Section 1.0, Volume 1, of Amendment 13. There are no federal rules that may duplicate, overlap, or conflict with the proposed rule.

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

The proposed action would implement changes affecting any vessel holding a limited access groundfish permit, an open access hand gear-only permit, and vessels that hold an open access party/charter permit. Based on fishing year 2002 (FY2002) data the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 hand gear permits, and 685 party/charter permits. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a hand gear or a party/charter permit was 2,250 of which 1,565 held only a hand gear permit, 306 held only a party/charter permit, and 379 held both a hand gear and a party/charter permit. The SBA size standard for small commercial fishing entities is \$3.5 million in gross receipts while the size standard for small party/charter operators is 100 employees. The commercial fishing size standard would apply to limited access permit holders as well as open access hand-gear only permits. Available data based on 1998–

2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was \$1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial fishing entities, there would be no disproportionate impacts between small and large entities.

Economic Impacts of Proposed Action

Recreational Measures

The proposed action would implement a 10 cod/person/day bag limit for private recreational vessels and party/charter vessels in the GOM and a minimum size for cod 22 inches (55.9 cm) and haddock 19 inches (48.3 cm). This would relax current restrictions on the bag limit for Gulf of Maine party/charter passengers and would permit passengers to retain a two-day equivalent of the daily bag limit on trips that take place over two calendar days and that are at least 15-hours in duration. These measures would affect any vessel that chooses to take passengers for-hire in the Gulf of Maine where cod are caught. While there are a large number of vessels that hold a party/charter groundfish permit, there have only been about 120 vessels that have actually reported landing Gulf of Maine cod when taking passengers for hire. Of these vessels, the majority earn at least 75 percent of fishing income from passenger fees. Although the impact of a relaxation of the bag limit cannot be estimated using available data there is little doubt that the higher bag limit will be more attractive to party/charter customers which should result in higher passenger loads and an overall improvement in party/charter business profits.

Commercial Measures

Measures to Address Stock Rebuilding Requirements

The proposed action would implement both a change in baseline DAS allocations and a number of management measures that would affect the manner in which available DAS allocations may be used.

The Settlement Agreement assigned baseline DAS allocations based solely on DAS that had been called-in during fishing years 1996 to 2000 and granted a minimum allocation of 10 DAS to all limited access permit holders. The proposed action would change this baseline by adding FY2001 to the

qualification period but would also require that only years in which at least 5,000 pounds of regulated groundfish would count toward qualification. Vessels that either called in no DAS at all or never landed more than 5,000 pounds in a single year would receive a baseline allocation of zero although their full pre-settlement agreement allocation would be placed in Category C DAS.

Preliminary analysis of the proposed action indicates that the majority (599) of vessels would see no change in their effective effort baseline, while 272 vessels would receive a higher allocation than their Settlement Agreement baseline. However, 52 vessels would have a lower baseline and 519 vessels would receive a zero baseline allocation. Of the vessels with a zero baseline, 394 were vessels that had received a minimum allocation under the Settlement Agreement and 125 were vessels whose baseline allocation was more than 10 DAS.

In effect, the proposed action places greater weight on providing for continued participation in the groundfish fishery to those vessels that may be comparatively more active and that may be more dependent on the groundfish fishery for business income. That is, reducing the potential pool of qualifying DAS makes it possible to achieve the same conservation objective with a lower DAS reduction to all remaining vessels that will receive a baseline allocation.

Vessels that receive no baseline allocation in FY2004 would not be able to fish for regulated groundfish until all stocks have been rebuilt and all Category B DAS have been converted to Category A DAS. While this prohibition may not have an immediate impact on fishing income (*i.e.* vessels that received no allocation have either not participated in the groundfish fishery over a five-year period or did participate but at a very low level) but a loss of DAS does mean that the equity value of the business would be reduced. A loss in equity would affect the resale value of the vessel and may affect the ability to obtain business loans.

A total of 923 vessels would receive a non-zero baseline allocation; approximately the annual average number of vessels that have participated in the groundfish fishery since 1996. For these qualifying vessels the action would have no effect on economic opportunities for the 519 vessels with no change in baseline DAS. It would increase economic opportunity for 272 vessels, while 52 boats with DAS allocations receive lower allocations.

Approximately 500 vessels will receive zero DAS.

Since all entities were deemed to fall under the SBA size standard for small commercial fishing entities, disproportionality does not apply as a standard against which small entity impacts would be compared to large entity impacts. Nevertheless, in section 5.4.4, revenue impacts were estimated for several different vessel categories including total value of groundfish sales where groundfish sales classes were broken into four intervals based on quartiles of the distribution of 1998–2001 average groundfish sales for participating vessels. The findings in section 5.4.4 indicate that relative changes in total fishing income would have lower impact on vessels with total groundfish sales of less than \$35,000. Overall, vessels with the highest groundfish sales, as opposed to those with lower sales, may be expected to be more affected by Amendment 13 management measures. However, the proposed action would have lower revenue impact than any of the non-selected alternatives. To examine whether the proposed action would have impacts based on total sales, the revenue impacts were summarized by gross sales intervals where intervals were established as the quartiles of the distribution of 1998–2001 average gross sales. Due to differences in dependence on groundfish and normal fishing patterns, these total revenue losses are not equally distributed across all vessels. In fact, revenue changes were found to be quite skewed, which means that reporting average or even median vessel impacts fails to identify the full range of revenue losses across the groundfish fleet. For this reason, revenue impacts are reported for the 10th, 25th, 50th (median), 75th and 90th percentile of the distribution of impacted vessels sorted in ascending order from most negatively to least impacted vessel (Table 184). Each percentile forms an interval that represents a specific number of vessels as well as the lower and upper range of impact on vessels between percentiles.

Relative changes in total fishing revenues were not markedly different across all sales intervals at least among the 55 most impacted vessels in each sales interval, although the estimated impact at the 10th percentile was greatest (–44.7 percent) for vessels with sales less than \$65,000 (Table 369). However, revenue impacts on the remaining 150 or so vessels in this sales category were generally lower and were even positive for some vessels as compared to vessels with higher gross sales. In fact, the overall impact was

generally most burdensome on vessels with highest gross sales (\$300,000 or more). Note that these estimated impacts would be higher for all sales intervals for any of the non-selected alternatives versus the no-action alternative. Based on the estimated changes in gross fishing revenue, the proposed action would have higher impact on vessels with highest total sales and would not, therefore, have a disproportionate impact on vessels with smallest total sales.

Change in gross revenues provides an incomplete picture of the impact of the proposed action on vessel profitability, making it difficult to determine whether any given vessel may cease business operations. Unfortunately, while available data permit tracking landings and revenues by vessel, no comparable data collection system exists to collect a comprehensive set of operating, fixed, and debt service costs for the groundfish fleet. This means that it is not possible to directly provide a reliable numerical estimate of current profit levels or how many vessels may not be able to remain profitable once the Proposed action is implemented. However, a relative measure of profitability change and percent of possible business failures was estimated by simulating vessel costs and returns by using a combination of the cost data developed for the break-even DAS analysis (*see* Section 4.4.5), available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. A Monte Carlo simulation was then run using 1,000 iterations to produce 1,000 different possible financial profiles or equivalent profit levels for each gear and size class developed for the break-even analysis. By simultaneously simulating a baseline scenario and the Proposed action (the baseline groundfish days absent reduced by 45 percent) each realization produces a paired estimate of profit for the baseline and the Proposed action. In this manner, groundfish revenue is directly linked to the DAS reduction but so too are the operating cost savings associated with a reduction in groundfish effort. For calculations used to estimate profitability, *see* section 7.3.3.7.2.

The potential business failure rate ranged from 25 to 35 percent for small vessels using long-line gear depending on debt levels (Table 371). For vessels that may remain above break-even,

median reduction in profit level ranged from 47 percent to 56 percent for vessels with no debt and high debt respectively. Across all vessels, reductions in profit levels could exceed 80 percent while some vessels may experience more modest changes in profitability (between 8.0 and 25 percent depending on debt level). Available data does not make it possible to determine the mix of small long-line vessels by debt level. However, assuming a medium debt level represents a fleet average, 17 out of a total of 51 small long-line vessels (*see* Table 175 for total vessels by size-gear groupings) may be expected to cease business operations.

Larger long-line vessels had higher overall fishing revenues in FY2000 than small long-line vessels, but also had higher estimated costs. These costs represented a small overall increase in proportion to increases in total fishing revenues which means that business failure rates for these vessels are likely to be lower. Failure rates were estimated to range from a low of 9 percent for vessels with no debt and a high of 15 percent for vessels with high annual debt payments (Table 372). Median estimated reduction in profit level was also lower than small long-line vessels but still exceeded 37 percent, regardless of debt level. At the medium debt failure rate, a total of 3 of 24 large long-line vessels may cease business operations under the Proposed action.

Business failure rates for small gillnet vessels may range from 19 to 24 percent depending on debt level (Table 373). Median reduction in profit would be about 35 percent, but may be much higher (more than 80 percent) for some vessels or may be less than 1 percent for others. Assuming a medium debt failure rate, 14 of 63 small gillnet vessels may be expected to cease business operations.

As was the case for larger hook vessels, larger gillnet vessels had higher overall fishing revenues but costs were not higher by the same proportion. For this reason, failure rates for large gillnet vessels were somewhat lower (from 15 to 21 percent) than for small gillnet vessels (Table 374). However, potential reductions in profit levels for vessels that would still be above break-even may be higher for large, as compared to small gillnet vessels. Specifically, median profit reduction may be at least 50 percent; about 15 percentage points greater than estimated median impacts on small gillnet vessels. Using the medium debt level failure rate, a total of 23 of 118 large gillnet vessels may be expected to cease business operations.

Small trawl vessels (less than 50 feet in length) may have business failure

rates between 27 and 33 percent depending on level of debt payments (Table 375). Median losses in profit levels for vessels that may still be able to break-even may be between 50 and 60 percent with some vessels experiencing much larger reduction in profitability (90 percent or greater for vessels with high debt), while others may experience much lower reductions in profit. Assuming that medium debt is consistent with a fleet average, about 55 of 187 small trawl vessels may go out of business under the Proposed action.

The business failure rate for medium trawl vessels was estimated to range between 18 and 27 percent (Table 376). This failure rate was lower than that of small trawl vessels suggesting that these vessels may be able to take advantage of economies of scale which makes them somewhat more resilient to adverse economic conditions. Median reduction in profit level ranged within a narrow interval of from 45 to 48 percent. Based on the medium debt failure rate, 48 of 218 trawl vessels would not be able to remain in business after Amendment 13 is implemented.

Large trawl vessels had the highest debt levels and generally had higher trip and fixed costs than any other vessel size or gear category. These higher costs were not offset by proportionally higher revenue which tends to produce lower profit margins than other vessel gear/size classes. For this reason, the estimated business failure rate (between 31 and 43 percent) was the highest for large trawl vessels (Table 377). Similarly, reductions in profit, as measured at the median, were also generally higher (53 to 61 percent) as were reductions in profitability for both the most affected and least affected vessels. Applying the medium debt failure rate to the 187 large trawl vessels included in the economic analysis in Section 4.4.4 results in a potential for 68 business failures.

Discussion

Based on the above analysis, a total of 228 vessels of varying sizes and gear groups may not be able to remain in business under the proposed action. This estimate was based on the assumption that all vessels had a medium level of debt and may range from 190 to 260, depending upon which debt level best represents a fleet-wide average. These estimates are also contingent on the extent to which the simulated cost and returns reflect actual financial conditions in the groundfish fleet. Unfortunately, not enough cost data, particularly on fixed costs and debt payments, has been collected to evaluate the veracity of these results.

This difficulty aside, the profitability analysis did not take into account differences in potential revenue generation that may exist for vessels that fish predominately in the Gulf of Maine, as compared to elsewhere. The analysis also does not account for differences in how area closures may affect vessels, particularly small as compared to large vessels. Finally, the analysis only took into account the potential effort reduction associated with the expected use of Category A DAS.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

The proposed action contains a number of measures that would provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional "B" DAS, leasing of DAS, DAS transfer, and sector allocation. As designed, the proposed action would achieve target fishing mortality rates for most stocks but would achieve higher than necessary reduction for others.

Category B DAS

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

DAS Leasing or Transfer

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

profitability for both buyer and seller. The following describes this analysis.

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

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

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 feet; class 2 vessels were between 50

and 69 feet, and class 3 vessels were 70 feet and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease days at sea, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish (Table 378). However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation (Table 379). Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels which choose to lease all their quota can greatly enhance their profit since the owner is getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs. The decision from a vessel perspective on whether to lease quota to other vessels is based on whether they can lease their quota for more then they would earn after paying expenses including payments to the crew. If a vessel decides to lease quota from other vessels, it is based on whether they can earn more from a leased day at sea than what they will pay for the lease plus what they will pay to the crew, and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 feet in length were projected to use more days at sea than in 2002 under a DAS leasing scheme (Table 380). Trawl and gillnet vessels greater than 50 feet saw their days at sea usage decline from 2002 levels. Hook vessels were projected to see their days at sea increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. Examination of both tables 378 and 379 show that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was \$68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was \$31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was \$41,111 using 31.9 days of effort under days at sea

leasing, while their 2002 average profit was \$12,271, and their average days at sea was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

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

Hand Gear A Permit

The proposed action would convert the existing open access hand-gear permit into a limited access category and an open access category Handgear A permits. Vessels that qualify for a limited access permit would benefit from a relaxation of the cod trip limit and would not be subject to trip limits on any other species. Vessels that do not qualify for limited access would still be able to obtain an open access permit but the cod trip limit would be much lower than current hand-gear only permit holders may retain. Available data show that even though a large number of open access hand-gear permits have been issued in the past not much more than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels would qualify for a limited access hand-gear A permit which just about as many vessels with documented landings in any given year since 1997. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The no-action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no-action.

Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery

The northern shrimp fishery would no longer be restricted to the area shoreward to the small mesh fishery exemption line. All other restrictions remain in effect. The elimination of the line will increase potential economic benefits for shrimp fishermen without harm to the multispecies stock. Recent studies have shown that with other devices such as the Nordmore grate, bycatch of regulated multispecies is minimal. The no-action alternative would yield no economic benefits and would not change the economic

conditions in the shrimp fishery. Therefore, the proposed alternative is favorable when compared to the no-action. For further detail of the economic impacts relating to the measures *see* section 5.4.11.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

Tuna purse seine gear is defined as exempted gear for the purposes of the multispecies FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This would benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the multispecies fisheries. For further detail on the economic impacts of the proposed alternatives, *see* section 5.4.10.

Southern New England General Category Scallop Vessel Exemption Program

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in 648.10, or that have used up their DAS allocations, and vessels issued a general category scallop permit, may fish in the statistical areas 537, 538, 539, and 613—defined as the Southern New England General Category Scallop Exemption Area—when not under a NE multispecies DAS. This would relieve a restriction and allow scallop vessels to enter expanded areas for the harvest of scallops, relieving a restriction and allowing those vessels to increase profits, if available (*see* section 5.4.12). The no-action alternative would yield no economic benefits because vessels would be precluded from participating in this program. Therefore, the proposed alternative is favorable when compared to the no-action.

Modified VMS Operation Requirement

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

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

Observer Coverage Level Adjusted by NMFS

No later than 2006, NMFS would determine if a 10 percent level of observer coverage is sufficient to monitor catches and discards in the groundfish fishery with an acceptable level of precision and accuracy. The level of observer coverage will be adjusted (increased or decreased) consistent with that analysis. The present cost for a NMFS-approved observer is estimated to be \$1150 per day at sea. Based upon the analysis conducted by 2006, costs associated with the observer coverage program may increase or decrease.

Revised Standards for Certification for Bycatch/Exempted Fisheries

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

Flexible Area Action System (FAAS)

The FAAS would be eliminated under the proposed action. This system has not been used in recent years and its elimination should have no economic impact on multispecies vessels.

Periodic Adjustment Process

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every two years. This would tend to have a positive effect on profitability of individual vessels since it would

expand their planning horizon making their fishing operations more efficient and profitable. The no-action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action.

U.S./Canada Resource Sharing Understanding

Management of Georges Bank cod, haddock, and yellowtail flounder would be subject to the terms of the United States/Canada resource sharing agreement. The agreement specifies an allocation of Georges Bank cod, haddock, and yellowtail flounder for each country. The management objective is for the shared cod, haddock, and yellowtail flounder to achieve, but not exceed the U.S. allocation fraction. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish Georges Bank. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on Georges Bank, thus, increasing the profitability of individual vessels engaged in the fishery (see section 5.49.2.3). The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

Sector Allocation

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS) with target TACs specified for each sector. Vessels within the sector would be allowed to pool harvesting resources and consolidate operations in fewer vessels if they desired. One of the major benefits of self selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the

formation of a sector is assurance that members of the sector would not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector since they would be able to better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, this Amendment creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no-action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action. For additional detail on the economic impacts of the proposed alternatives see section 5.4.9.3.

GB Hook Sector

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

For fishing years 1996 through 2000, 182 vessels reported using longline gear to catch GB cod. This alternative also includes access to CAI to harvest haddock. From 1996 through 2000, 44 hookvessels reported landing GB haddock, roughly one-fourth of the total number that reported landing GB cod. Allowing access to CAI for vessels that choose to participate in the sector may increase the ability of these vessels to target GB haddock, further mitigating the impacts of the rebuilding programs.

Frameworkable Items

The Council has submitted, for approval, a number of items to be frameworkable. There are no economic impacts from this measure. However, each future framework action would need to contain an analysis of economic impact when applicable.

Measures To Minimize Adverse Effects of Fishing on EFH

The proposed action would implement habitat closed areas that are modifications of existing closed areas (Alternative 10B). For all VTR records retained for analysis, the total estimated gross revenue from all species reported during calendar year 2001 was \$296.3 million. The proposed Level 3 habitat closure would allow stationary bottom tending gear and mid-water trawl gear to continue to fish in a closed area. As a result, total revenues earned by vessels using these gears would not be reduced. The revenue losses from prohibiting bottom tending mobile gear in a Level 3 closure ranged from 8.1 percent (Alternative 5b) to 0.5 percent (Alternatives 6, 10A and 10B) (Table 295). Compared to the effects from a Level 1 closure where all fishing is prohibited, the revenue losses for the remaining alternatives were 1 to 2 percent lower. However, revenue losses for some specific species groups were substantially reduced. Since a large proportion of monkfish are landed with gillnet gear the Level 3 closure would mitigate a substantial proportion of estimated monkfish revenue losses associated with a level 1 closure. Similarly, revenue losses for the "other" species group would be mitigated under a Level 3 closure because a significant proportion of these revenues are comprised of lobster landings from trap gear. Revenue losses for groundfish would be partially offset by a Level 3 closure since gillnet and hook segments of the groundfish fishery would not be affected. However, bottom trawl gear accounts for the majority of groundfish effort, hence, groundfish revenue losses would still range between 9 and 14 percent for all gear for all alternatives except Alternatives 6, 10A, and 10B. Since a Level 3 habitat closure does not provide any relief to fisheries using mobile bottom-tending gear the share of revenue impact for fisheries that are dominated by these mobile gears increases relative to other fishery impacts. The surf clam/ocean quahog fishery would be impacted by a 0.9 percent revenue loss. The surf clam/ocean quahog fishery would further be impacted since under proposed Alternative 7 since surf clam/ocean

quahog dredges would not continue to be exempted from regulations prohibiting the use of that gear in multispecies closed areas. Therefore, while short-term revenue losses are estimated to be 0.9 percent there may be longer term impacts which cannot be estimated until further closures are undertaken.

In addition to Alternatives 7 and 10b, the Council has also adopted Alternative 2 to address impacts of fishing on EFH. There are no anticipated economic impacts resulting from the selection of Alternative 2. This Alternative relies on the habitat benefits of other non-habitat related management measures implemented through Amendment 13 to meet the EFH provisions of the Magnuson-Stevens Act. The No-Action alternative would increase profitability for those vessels prohibited in closed areas when compared to the proposed action which restricts fishing in those areas. Affected gear types include clam dredges and bottom trawl gear.

Economic Impacts of Alternatives to the Proposed Action

This section describes the impacts of management measures that were considered by the Council but were not adopted as part of Amendment 13. Unless otherwise stated, these impacts compare the economic results of the measure compared to the baseline period.

Recreational Measures

Two alternatives to the preferred action were considered: the status quo (settlement agreement measures) and a measure featuring a trip bag limit for cod with a closed season.

Under the status quo settlement agreement measures, charter/party operators would be directly affected by the enrollment requirement. The enrollment program would remove the possibility of charter/party vessels switching back-and-forth between commercial fishing and carrying passengers for hire for those vessels that still want to be able to take recreational passengers into any one of the rolling closure areas. Vessels that forego the exemption program would still be able to switch between commercial and recreational activities, but may sacrifice some charter/party business to competitors if catch rates are actually higher, or even perceived to be higher, inside the closed areas. Given the increase in the minimum size limit, charter/party vessels may experience a reduction in passenger demand. However, the minimum fish size increase will have a relatively small

effect on charter/party keep opportunities. Following implementation of the minimum fish size increases in 1996 and 1997, passengers and trips have increased on charter/party vessels. Further, among alternative management measures, size limits are generally supported by the recreational fishing public. Therefore, the change in minimum size would not seem likely to result in a substantial reduction in passenger demand for charter/party trips in the GOM or GB.

The status quo alternative would retain a bag limit on charter/party anglers fishing for Atlantic cod in the GOM. Industry representatives have indicated in the past that passenger demand is, in part, driven by angler expectations, and that one important component of angler expectations is the opportunity to have a "big trip." As the argument goes, even though these expectations are realized on only a small fraction of trips, imposition of a bag limit would cause individuals to lose interest in taking a charter/party trip. The extent to which anglers would respond in the manner described is not known, nor have there been any studies that document angler response to changes in charter/party bag limits.

The third alternative would increase the minimum size of cod, reduce the minimum size of haddock, prohibit fishing in the Gulf of Maine from December through March, and implement a 10 cod/trip limit. While the reduction in the haddock minimum size would represent a potential increase in economic benefits this option would yield smaller economic benefits than the proposed action due to the closed season.

From 1995–2000, an average of 72.7 percent of vessels that reported taking party/charter groundfish trips made 100 percent of their fishing income from party/charter operations conducted in the groundfish fishery. The remaining 27.3 percent earned income from other fishing activities. About ten percent earned less than 50 percent of their fishing income from party/charter operations. These vessels could be commercial vessels that are taking party/charter trips to compensate for reduced income from commercial fishing or to maintain a year-round income during times of area closures. The communities most likely to be impacted by these measures are those that are adjacent to Gulf of Maine closure areas and those in which the most party/charter vessels are homeported. These communities are Gloucester and the North Shore of Massachusetts, Portsmouth and the NH

Seacoast, southern Maine, and the South Shore of Massachusetts.

Management Alternatives To Address Rebuilding Requirements

The Council considered 4 stock rebuilding alternatives to the proposed action: Up to a 65 percent reduction in DAS; a reduction in DAS with gear modifications; area management; and a hard TAC alternative.

Alternative 1—Up to a 65 Percent Reduction in DAS

Alternative 1 contains two different proposed DAS use levels and two different trip limit alternatives for GB Cod. Alternative 1A has a DAS use of 28,400 days and a Georges Bank cod trip limit of 2,000 pounds per DAS, up to 20,000 pounds per trip. Alternative 1B has the same GB cod trip limit, but would reduce DAS use to 41,050 in the first year, with used DAS declining to 22,100 DAS in the fourth year after implementation. Alternative 1C would have the same DAS use as 1A, but would implement a GB cod trip limit that would vary by gear and season. Similarly, Alternative 1D would implement the same GB cod trip limit as 1C but would reduce DAS use to the same level as 1B. Alternative 1A would result in an estimated reduction of \$45.6 million in total fishing income, while Alternative 1B would result in an estimated reduction of \$28.3 million in the first year. Due to a more restrictive GB cod trip limit, Alternative 1C would result in an estimated reduction in total fishing revenues of \$49.1 million and Alternative 1D would result in a reduction of \$33 million.

Vessel-level impacts are not uniformly distributed with some vessels being much more impacted than others. Because of the tendency for revenue impacts to be skewed, revenue impacts are reported for the 10th, 25th, 50th (median), 75th and 90th percentile of the distribution of impacted vessels sorted in ascending order from most negatively to least impacted vessel (Table 192). Each percentile forms an interval that represents a specific number of vessels as well as the lower and upper range of impact on vessels between percentiles. For example, since there are 848 vessels included in the analysis, there are 85 (rounding to the nearest whole number) vessels at or below the 10th percentile. Gross revenues for these vessels would decline 46.3 percent or greater for Alternative 1A, but would decline 29.8 percent or more for Alternative 1B. Similarly, the revenue loss for the 127 vessels between the 10th and 25th percentile would range from 46.3 to 40.1

percent for Alternative 1A and from 29.8 to 25.4 percent for Alternative 1B. The revenue loss for the median (50th percentile) vessel was 24.0 percent and the revenue loss at the 25th percentile was 40.1 percent.

At the upper end of the distribution of impacted vessels are some vessels that may realize an increase in fishing revenues, in spite of the DAS reductions proposed under Alternative 1. For example, the 85 vessels above the 90th percentile would realize either no change, or some modest improvement in fishing income, because of the increase in the GOM cod trip limit from 400 lb under No Action to 800 pounds per day, as well as differences in the suite of closures between what had been in place in FY2001 and that proposed under Alternative 1. That is, compared to No Action, Alternative 1 measures permit a small number of vessels (about 10 percent) to be more efficient. For these vessels, the gain in efficiency is sufficient to more than offset the DAS losses resulting in a net increase in fishing income relative to No Action. This highlights the relationship between efficiency and regulatory design. That is, economic impacts may be reduced by identifying measures that permit vessels to operate as efficiently as possible within available effort allocations. The trip limit is one such example; the tradeoff between DAS and area closures is another. For example, for vessels with limited range a larger DAS reduction with fewer area closures may yield higher revenues as compared to a lower DAS reduction with more area closures.

At a fleet-wide level, Alternatives 1C and 1D have similar predicted revenue losses to that of Alternatives 1A and 1B. However, because of the comparatively more restrictive GB cod trip limit, Alternatives 1C and 1D revenue losses are 2–3 percent larger.

The impact on individual vessels depends on a variety of factors. Vessels that have a relatively high dependence on groundfish would be more affected by a given reduction in groundfish trip income than another vessel that is engaged in other fisheries. For example, if vessel A earned 80 percent and vessel B earned 20 percent of annual revenue from groundfish trips, a 20-percent reduction in groundfish revenue for both vessels would result in 16-percent reduction in total fishing income for vessel A, but would be only a 4 percent reduction in total annual fishing revenue for vessel B. For Alternative 1A and 1B the loss of gross fishing revenue increases with higher dependence on groundfish trip income (Table 193). For Alternative 1A, the median revenue loss for vessels that depend on groundfish

for 25 percent or less of fishing revenue was estimated to be 3.2 percent while the median loss for vessels with 75 percent or greater dependence on groundfish was 41.1 percent. This difference between vessels from lower to higher levels of dependence on groundfish trip income is consistent for all percentiles. As noted above, the revenue losses for Alternative 1B are lower across all dependence categories. Alternative 1C and 1D revenue losses are higher, but not appreciably so, for vessels with groundfish dependence below 75 percent. Among vessels that are most dependent on groundfish, the revenue losses for Alternative 1C are 3 to 5 percentage points higher as compared to Alternative 1A with the same used DAS. Similarly, the losses of Alternative 1D exceed that of 1B particularly among vessels at or below the 10th percentile (*i.e.* the most affected vessels).

Dependence on groundfish is defined as the proportion of groundfish trip income of total fishing income. This magnitude of dependence does not take into account the level of total fishing income since a vessel with \$5,000 in total fishing income could have the same level of dependence on groundfish as a vessel with \$500,000 in total fishing income. In relative terms the impact on these two vessels may be the same but the total losses may be very different since the former may have income from other non-fishing sources while for the latter fishing may be the sole source of income and may support a larger number of people. To examine the relative impact on vessels with differing levels of groundfish revenues the estimated distribution of no action revenues was divided into approximate quartiles resulting in the following revenue classes; \$35,000 or less, \$35,001 to \$100,000, \$100,001 to \$250,000, and \$250,001 or more.

As was the case for groundfish dependence, the relative impact on vessels with higher gross sales was estimated to be greater at all percentiles, although the relative impact for the most affected vessels (the 10th percentile) was approximately the same (–47 percent) for all sales categories from \$35,001 and above (Table 194). It is important to note that the fact that estimated relative revenue losses were generally higher for vessels with higher gross sales also means that the revenue losses in absolute terms would also be greater.

The relative impact on vessels with gross groundfish sales of \$35,000 or less was substantially lower than vessels with higher gross sales. In fact, 25 percent of these vessels were estimated

to earn higher fishing income under either Alternative 1A or 1B as compared to No Action. Vessels with increased revenue tended to be smaller vessels using gillnet or hook gear; vessels that would benefit relatively more from the increased GOM cod trip limit and whose revenue would be more sensitive to differences in area closures between No Action and Alternative 1. Estimated losses of gross revenues were higher for Alternative 1C and 1D as compared to 1A and 1B but the relative distribution of losses among sales intervals was similar; with revenue impacts tending to increase with sales.

The relative revenue loss was lower for hook gear than for either gillnet or trawl gears for both Alternative 1A and 1B (Table 195). Since cod represents a higher proportion of trip income for hook gear than for gillnet or trawl gear, revenue impacts associated with DAS reductions are offset by the higher GOM cod trip limit that for some vessels is enough to result in a net increase in fishing revenue.

Estimated revenue losses were similar among the most impacted gillnet and trawl vessels but estimated revenue changes tended to be less severe for gillnet vessels above the 25th percentile as compared to the trawl vessels. For example, the revenue loss of the median gillnet vessel was 12.0 percent as compared to 29.5 percent for the median trawl vessel. Gillnet losses tended to be lower than trawl losses, because like hook gear, cod represents a higher proportion of trip income so gillnet gear tends to benefit proportionally more from a change in cod trip limits than trawl gear. Note that total losses on trawl vessels is not only greater in relative terms but would also be greater in absolute terms since there are more than twice as many trawl vessels than either gillnet or hook vessels.

The more restrictive GB cod trip limit for Alternative 1C and 1D results in only a small loss on trawl vessels compared to Alternatives 1A and 1B but would have a larger loss on both gillnet and hook gears. However, these losses are not uniform for all hook and gillnet vessels. That is, vessels that rely on Gulf of Maine stocks would not be affected by a change in Georges Bank cod trip limits, whereas vessels that fish primarily on GB are more affected.

The estimated relative loss of total annual fishing revenue was lower for vessels under 50-feet for either Alternative 1A or 1B, although the Alternative 1A impact on the most affected small vessels was not substantially less (40.3 percent) than either medium (46.6 percent) or large (46.3 percent) vessels (Table 196). The

distribution of revenue impact was similar for both medium and large vessels indicating that neither vessel size class would be disproportionately affected relative to each other under either Alternative 1A or 1B. Since hook and gillnet vessels tend to be small, the economic impacts on small vessels of Alternatives 1C and 1D was proportionally greater than Alternatives 1A and 1B.

The relative revenue loss for small hook vessels was less than that of larger hook vessels, although not substantially so (Table 197). Unlike hook gear, small gillnet vessels were less affected than larger gillnet vessels but there was a greater difference in revenue loss with larger gillnet vessels being substantially more impacted at all percentiles than small gillnet vessels. For trawl gear, the distribution of revenue losses was similar across all size classes at least up to the 50th percentile. Above the 50th percentile small vessels tended to be proportionally less affected than either medium or large vessels and large vessels tended to be less impacted than medium vessels. As noted previously, due to the lower DAS reductions the revenue impacts for Alternative 1B were lower across all gear and size groupings than that of Alternative 1A.

Alternative 1A would have greatest revenue impact (*i.e.*, loss) on vessels from Maine home ports as compared to those vessels from other states (Table 198). The distribution of revenue loss was similar across all states except for New Jersey at the 10th percentile ranging from a loss of 42.8 percent in Rhode Island to 47.8 percent in Massachusetts. At the 25th percentile, Maine and Massachusetts's vessel revenue reductions were higher than all other states at 42.5 percent and 42.4 percent respectively. However, at higher percentiles Maine vessels were estimated to experience higher revenue loss than any other state at both the 50th and 75th percentiles.

Across all states, only New Jersey and Rhode Island (and quite likely New York) did not have any vessels with unchanged or increased fishing revenues under Alternative 1A. Vessels from these states are most likely to fish on GB or Southern New England and so would not be likely to benefit from an increase in the GOM cod trip limit.

Across port groups the relative distribution of estimated revenue losses was similar at and below the 25th percentile for the port groups of Boston, Gloucester, New Bedford, MA, and Portland, ME, Portsmouth, NH, and Upper Mid-Coast, Maine (Table 199). For these ports and port groups, the revenue losses on the most affected

vessels ranged from 43.0 percent in Boston to 45.9 percent in Portland. Revenue losses at the 50th percentile ranged from nearly 30 percent in Portsmouth to 43.6 percent in Portland. Overall, Portland, Maine had the highest revenue reduction at the 25th, 50th, and 75th percentile. However, the total impact on the ports of New Bedford and Gloucester would likely be greater because the number of vessels operating out of these ports is greater. Among other ports the groups including Point Judith, Provincetown, and South Shore Massachusetts all had roughly equivalent revenue losses across all percentiles. Revenue losses on home port vessels in states with proportionally more vessels that rely on GB cod would be comparatively more affected under Alternative 1C and 1D as compared to 1A and 1B than vessels from states that have greater reliance on Gulf of Maine stocks. As noted previously, revenue losses of Alternatives 1C and 1D are larger for vessels that fish predominantly on GB and fish for GB cod in particular. This is particularly notable for the Chatham/Harwich port group that is home to a concentration of hook and gillnet vessels.

Alternative 2—Reduction in Allocated DAS With Gear Modifications

Alternative 2 would implement a suite of measures that would require a number of gear changes over and above what current regulations require. Alternative 2 would also implement a set of area closures that differ from no action and differ from that of Alternative 1. The DAS would be similar to current regulations (under the FW 33 court order) except that under Alternative 2A vessels that fished in the GOM would take a 30 percent reduction in DAS instead of 20 percent while Alternative 2B would result in the same proportional DAS reduction for all vessels but would restrict the total number of DAS that could be fished in the GOM to 70 percent of allocated DAS. In all other respects there are no differences between 2A and 2B.

In addition to DAS and area controls, Alternative 2 has a number of proposed gear restrictions that have been designed to reduce fishing mortality to desired levels. Alternative 2 also includes a hard TAC as a backstop measure, in case any one of the other effort reduction measures are not as effective as anticipated. The analysis presented below reports the impacts of fishing revenues for Alternative 2 with and without the TAC backstop. In this manner, the economic impact of the management measures modeled in the

Closed Area Model can be contrasted with that of the TAC backstop. The Closed Area Model, however, does not include the impacts of some of the gear changes (haddock separator trawl, raised footrope trawl, mesh changes, etc). If these measures are as effective as expected, the revenue impacts would be more severe than those shown here for the alternative without the hard TAC. Nevertheless, removing the hard TAC from Alternative 2A and 2B and showing the economic impacts does demonstrate that these two alternatives may have slightly different distributive economic impacts.

Alternative 2B provides some flexibility to vessels to fish outside the GOM rather than be subject to a different DAS reduction. Because of this flexibility, the estimated gross revenue loss (Table 200) for Alternative 2B (\$30.2 million) was slightly less than that of 2A (\$31.6 million). This difference may be underestimated because the area closure model imposes constraints on fishing location decisions that are consistent with recent fishing history. This means that a vessel that never fished outside the GOM under the no action would not choose to do so under Amendment 13, even though it may be advantageous. Given this limitation, the revenue losses associated with Alternative 2B may be overestimated relative to Alternative 2A, which would tend to obscure the difference in relative economic effect between the two ways of administering DAS controls in the GOM.

As modeled, Alternative 2 does not meet conservation objectives without the hard TAC backstop. With a hard TAC, the added flexibility offered by the different DAS management options under Alternative 2A and 2B is eliminated because the hard TAC becomes more constraining than DAS allocations. This means that the estimated economic effects of the hard TAC backstop were the same regardless of the proposed DAS administration under Alternative 2A or 2B. The total loss of gross revenue was estimated to be \$64.2 million. Note that this impact may be overestimated because the effectiveness of the gear changes could not be quantified. Should the gear changes be as effective as anticipated, or more so, then the hard TAC may not be as constraining or would at least not be as constraining as predicted. Nevertheless, even though the economic impact would likely be lower it would probably still be greater than that estimated for Alternative 2A and 2B without the hard TAC backstop since that analysis underestimates revenue impacts because assumed catch rates, hence

fishing revenue, would be overestimated.

At the vessel-level the estimated revenue losses associated with Alternative 2 with the hard TAC were higher by about 30 percent at the 10th and 25th percentile. The difference in impact at the median was not quite as high but was still higher by 23 percent (-37.1 percent for Alternative 2 with a hard TAC as compared to -13.8 percent for Alternative 2 without a TAC backstop).

Without the TAC backstop the impact on annual estimated gross fishing revenue increased, as dependence on groundfish revenue increased (Table 201). The median loss for vessels that rely on groundfish was less than 1 percent, but was almost 25 percent for vessels with 75 percent or greater reliance on groundfish. Among those most dependent on groundfish, estimated revenue loss was 63 percent or more for 37 of 371 vessels.

For some vessels, the estimated revenue change was positive suggesting some vessels would see modest improvements in total fishing revenues under Alternative 2. Such an increase in gross revenue results relative to the No Action because of the increase in the GOM cod trip limit as well as some differences in area closures. Note that positive changes in revenues tend to be associated with vessels that are less dependent on groundfish.

With the hard TAC backstop the estimated revenue losses for vessels least dependent on groundfish would be greater but not by more than 6 percent at any given percentile. However, for vessels with greater dependence on groundfish for total fishing revenue, the estimated impact of the hard TAC backstop was much greater, particularly among the most affected vessels (*i.e.* at the 10th percentile). For example, the impact on gross revenues for vessels that depend on groundfish for 25 to 50 percent of revenue would be almost -33 percent with a hard TAC as compared to about -20 percent without a TAC backstop.

The estimated impact of Alternative 2 without the TAC backstop was generally less for vessels with gross sales of \$35,000 or less (Table 202). Across all categories of gross sales the largest reduction in gross revenue was 50.9 percent or greater for vessels with gross sales between \$100 and \$250 thousand. However, at the 25th and 50th percentile revenue losses within this sales category were similar to that of vessels with sales of between \$35,000 and \$100,000 and to vessels with sales in excess of \$250,000. Above the 50th percentile the proportional change in

revenue impacts was greatest for vessels with gross sales above \$250,000.

With a hard TAC backstop, the estimated revenue losses were larger across all categories of gross sales at all percentiles with revenue reductions at the 10th percentile of 70 percent or more for vessels with gross sales of \$35,000 to \$250,000. Estimated impact on the median vessel was highest (-49.9 percent) for vessels with gross sales of more than \$250,000 and lowest (-12.9 percent) for vessels with \$35,000 or less in gross sales.

Alternative 2 contains a modest increase in the GOM cod trip limit compared to what had been implemented during FY2001. However, Alternative 2 has a trip limit on GB cod that is much lower than that of the No Action which means that vessels that depend on GB cod for the majority of fishing revenue would be significantly affected under this particular Alternative. The difference in cod trip limits between GOM and GB is evident in the estimated revenue impacts of both gillnet and hook gear. Without a hard TAC backstop the revenue impacts for these two sectors show markedly different effects depending upon whether a vessel might fish in the GOM or GB as estimated revenue losses for gillnet vessels ranged from -56.9 percent at the 10th percentile to a gain of 0.7 percent at the 90th percentile (Table 203). The range of revenue loss on hook gear was even greater with 8 vessels experiencing a loss of 73.7 percent or more with the same number of vessels experiencing revenue increases of 6.3 percent at the 90th percentile. Revenue loss on vessels using trawl gear ranged between -33.4 percent and no change in revenue at the 10th percentile and 90th percentiles respectively. The disproportionate loss in revenue for hook and gillnet vessels operating on GB is due to the greater reliance on cod for fishing revenue as compared to trawl gear.

With the hard TAC backstop, the disparity across gear groups does not disappear altogether, but it is reduced. Specifically, at the 10th percentile gillnet and hook gear impacts were estimated to be -75.9 percent and -78.5 percent, respectively. The impact on trawl gear was still lower at 67 percent. The analysis showed a much smaller difference among gear groups than estimated impacts without the hard TAC. The median vessel impact across gear groups was similar ranging between -34 and -38.1 percent.

Without a hard TAC backstop, the relative impacts of Alternative 2 on vessels of different sizes were similar for Alternatives 2A and 2B (Table 204).

Across size classes the impacts on medium and large vessels were similar as there were only modest differences in revenue change at any percentile from the 10th to the 90th. By contrast, small vessels were substantially more affected at the 10th percentile (58.8 percent loss) than either medium (36.1 percent) or large (33.3 percent) vessels.

With a hard TAC backstop the impact was still proportionally greater on small vessels (-75.7 percent) at the 10th percentile but the relative distribution of impacts across vessels of differing sizes was similar at all other percentiles.

For trawl gear there was little difference among small, medium or large vessels in the distribution of revenue impacts (Table 205). For example, revenue impacts without a TAC backstop among the most negatively affected trawl vessels ranged from -32.4 percent for medium vessels and -35.1 percent for small vessels. Median impacts also fell within a relatively narrow range of -12.6 percent to -15.0 percent for large and medium trawl vessels, respectively. With a hard TAC backstop the relative distribution of impacts across trawl vessels was similar although estimated revenue impacts were consistently greater for small followed by medium then large vessels at the 10th, 25th, and 50th percentiles. At higher percentiles medium-sized vessels tended to be most impacted compared to other trawl vessels.

Both with and without the hard TAC backstop, small hook and small gillnet vessels tended to be comparatively more impacted than larger hook or gillnet vessels although both gear/size groupings were disproportionately affected relative to either trawl or gillnet gears. Without the TAC backstop, both small and larger gillnet vessels were similarly affected up to the 25th percentile but median impacts were lower for small gillnet vessels (-6.0 percent) compared to medium gillnet vessels (-14.4 percent). These larger gillnet vessels were estimated to experience larger revenue changes at higher percentiles as well. With the TAC backstop, efficiency gains from the increase in the GOM cod trip limit are lost as TACs. The TAC backstop, once reached, reduces overall fishing opportunities.

Without a TAC backstop, Alternative 2 measures would have least impact on New Jersey vessels and would have greatest overall impact on Massachusetts vessels (Table 206). The median vessel impact (-23.2 percent) was greater for Massachusetts vessels than any other state and the impact on the most affected vessels was -58.8

percent or more which exceeded the next closest state (New Hampshire) by almost 19 percentage points.

The overall impact on gross annual revenues was similar for Rhode Island and for New York/Connecticut vessels as revenue impacts ranged from -20.7 percent/-17.2 percent to no change/+0.7 percent in Rhode Island and New York/Connecticut respectively. Among the remaining states the relative impact on New Hampshire vessels was greater than that of Maine vessels since the estimated revenue loss was greater at all percentiles for New Hampshire than for Maine vessels.

The hard TAC backstop would increase estimated revenue reductions but the overall pattern of effects across differing states would be unchanged. The state of Massachusetts would still be most impacted followed by New Hampshire and Maine. The relative distribution of impacts on Rhode Island and New York/Connecticut would still be roughly equivalent and New Jersey vessels would be least affected.

Across all ports and port groups the largest reduction in annual fishing income would be in the port group of Chatham/Harwich with three-fourths of all vessels losing at least 29.7 percent of fishing revenue and half of all vessels losing more than half of fishing income. The impacts on these ports are directly related to the reduction in the GB cod trip limit as this port group is a center for the Cape Cod hook and gillnet fleet that relies heavily on GB cod for fishing revenue.

The Chatham/Harwich port group would still be the most impacted area under a TAC backstop with three-fourths of all vessels losing nearly 50 percent of annual fishing income. Among the most impacted vessels the estimated revenue loss was at least 77 percent.

Without a hard TAC backstop, the distribution of revenue changes was similar for the ports of Provincetown, Gloucester, New Bedford, Boston, and South Shore Massachusetts, and the New Hampshire Seacoast. Thus, even though the revenue losses among these ports do differ, Alternative 2 does not disproportionately disadvantage these ports over one another. Ports that may be expected to experience lowest revenue impact include Point Judith and the Eastern Long Island port group.

The hard TAC backstop would change the relative distribution of impacts across port groups. As noted previously, Chatham/Harwich would be most impacted but Gloucester would also be disproportionately affected whereas the relative distribution of impacts on the ports of New Bedford, New Hampshire

Seacoast, Portland, Portsmouth, Provincetown, and Upper Mid-Coast Maine would be similar.

Alternative 3—Area Management

As proposed, other than area-species TACs, Alternative 3 (area management) would not implement any specific new measures as these would be developed later by some yet to be determined form of area management team or other type of governing body. The area closure model was used to estimate the impacts of current measures that would remain in place as well as the economic impact of a hard TAC. As noted previously, the area closure model treats a hard TAC as equivalent to an individual vessel quota and so does not evaluate area-specific quotas without also prorating those quotas by species and areas to individual vessels. However, the area closure model also limits fishing choices to areas that had been fished by a given vessel. This means that the area closure model already incorporates some aspects that would be consistent with assignment of a species-area TAC so the results may reasonably approximate the impact of an area TAC particularly one that is based primarily on logbook records.

Other than area-specific TACs the default management measures including trip limits, area closures and DAS allocations are identical to Alternative 4. For this reason, the economic impact of the Alternative 3 measures with a hard TAC are discussed with Alternative 4 (section 5.4.4.5).

Alternatives 3, 4, and 4A—Hard TAC Alternatives

Alternative 3, 4 and 4A implement a hard TAC in addition to different suites of area closures, DAS allocations, and gear restrictions. In spite of these differences, the estimated impact of all three alternatives was approximately the same because the hard TAC becomes the primary measure that constrains individual vessels. Note that the gear differences between Alternatives 4 and 4A could not be taken into account because the base data for the area closure model included catch information for 1998–2001. These years would be consistent with Alternative 4A but would not reflect the effect of current gear restrictions that are also proposed for Alternative 4. How this effects the analysis is unclear. On the one hand, larger mesh associated with Alternative 4 may result in lower catch rates and the TAC might not be reached as quickly while on the other hand, DAS allocations are lower.

As noted previously, Alternative 3 was modeled in its default form as

though it were identical to Alternative 4. Therefore, in the following discussion, Alternatives 3 and 4 are referred to as a single alternative, called Alternative 3/4. Given that the default would likely be changed once the specific management areas, method for assigning TACs, and most importantly, mechanism for developing measures for each area have been determined, the estimated impact of Alternative 3/4 may be an upper-bound. Presumably, management measures by area would be designed so as to reduce overall economic impacts on area participants, but the form that these measures will take cannot be anticipated at this time.

For both Alternative 3/4 and 4A the total revenue loss from all species on groundfish trips was estimated to be \$59.9 million. Median revenue loss was estimated to be 35 to 36 percent (Table 208). Revenue losses for the most affected vessels would be at least 63.2 percent while revenue losses for the least affected vessels would be approximately 5 percent.

The relative distribution of impacts for both Alternative 3/4 and 4A are virtually identical. This does not necessarily mean that the two alternatives affect all vessels the same way. That is, the impact on the median vessel (or at any other percentile) may be the same for both alternatives but may not be the same vessel. The primary source of differential impact across Alternative 3/4 and 4A is likely to be the area closures particularly for vessels that fish within a limited range and/or within a relatively short season. However, even though the two Alternatives affect different vessels differently, the overall estimated impact on the groundfish fleet was similar.

The impact on gross revenue losses increases with dependence on groundfish (Table 209). Estimated revenue impacts ranged between -13.8 percent at the 10th percentile to -0.1 percent at the 90th percentile for vessels that rely on groundfish for less than one-quarter of annual fishing revenue.

By contrast, gross revenues for vessels most dependent on groundfish were estimated to decline by at least 70 percent for the 37 vessels at or below the 10th percentile. At the 90th percentile, vessels were estimated to lose between 35 and 37 percent of gross revenue for Alternative 3/4 and 4A, respectively.

At the 10th percentile, estimated revenue reductions ranged from 61 to 67 percent regardless of the amount of annual gross groundfish sales (Table 210). At the 25th percentile, the revenue reductions were lower (about 40 percent) for vessels with groundfish

sales of \$35,000 or less as compared to vessels with higher groundfish sales (52 to 55 percent). Similarly, the revenue changes for vessels with the least groundfish sales at higher percentiles were also lower than that of vessels with more than \$35,000 in groundfish sales at the same percentile. However, the relative distribution of revenue impacts was similar for each sales interval above \$35,000.

The relative distribution of estimated changes in annual fishing revenue was comparable across gear groups for both Alternative 3/4 and 4A (Table 211). Although the estimated revenue reduction at every percentile was consistently ordered from lowest (hook gear) to highest (trawl gear), the difference in impact at each percentile was no more than five percentage points. Thus, even though the total revenue loss would be largest on trawl gear (nearly 70 percent of total vessels), Alternative 3/4 would not place any given vessel at a competitive disadvantage based solely on gear.

The distributions of estimated revenue reductions were similar for all vessels size classes for both Alternatives 4 and 4A (Table 212). At the 10th percentile estimated losses were largest for small vessels (64.2 percent for Alternative 4A) as compared to medium (63.2 percent) and large vessels (58.7 percent), although these differences are not large. At all other percentiles estimated revenue reductions were higher for medium than for either small or large vessels, but once again, the difference across vessel length categories was less than 10 percentage points.

Alternatives 3/4 and 4A would have similar impacts among hook vessels of differing size although estimated revenue reductions among 10 percent of the most affected vessels would be greater for small (60.6 percent) than for large (52.2 percent) hook vessels. However, the difference between the two size classes of hook vessels is less than five percentage points at all other percentiles.

Small trawl vessels would be comparatively more affected by either Alternative 3/4 or 4A at all percentiles up to the median vessel as compared to either medium or large trawl vessels. Similarly, medium-sized trawl vessels were estimated to incur higher revenue losses than large vessels at all percentiles. Thus, Alternative 3/4 and 4A would tend to have disproportional effects across vessel size classes with large vessels being least impacted followed by medium and small vessels, although the difference in economic effect by vessel size class is not large.

The estimated revenue losses among gillnet vessels of differing size was similar with no more than four to five percentage points separating either size class across all percentiles. Thus, Alternative 3/4 and Alternative 4A would not result in disproportionate economic impacts among gillnet vessels of differing lengths.

The estimated revenue changes across different states would be similar for New Hampshire and Massachusetts vessels up to the 25th percentile (Table 214). Revenue reductions for Massachusetts (45.8 percent), Maine (43.5 percent) and New Hampshire (45.1 percent) were similar at the 25th percentile, but estimated reductions on New Hampshire vessels were larger than either Maine or Massachusetts at the 75th and the 90th percentiles.

Alternatives 3/4 and 4A would have the least impact on New Jersey vessels. The estimated revenue reduction on Rhode Island vessels was similar to that of New York/Connecticut vessels although Rhode Island vessels were more negatively affected at all percentiles.

Across ports or port groups median estimated revenue losses exceeded 50 percent in the ports of Gloucester, Portland, and Boston. This means that half of all vessels in these three port groups would lose more than half of annual fishing revenue under either Alternative 3/4 or 4A. Median revenue losses were lower in the port groups of Chatham/Harwich, New Bedford, New Hampshire Seacoast, Portsmouth, Provincetown, and Upper Mid-Coast Maine, but still were at least 44 percent. By contrast, median vessel revenue losses in Eastern Long Island and Point Judith were 13.5 percent and 26.1 percent respectively (Table 215).

Measures To Minimize Adverse Effects of Fishing on EFH

A level 1 habitat closure under Alternative 10B, as opposed to the proposed level 3 closure, would produce a decrease in total gross revenues of 1.3 percent for proposed Alternative 10B and between 1.3 percent and 12.8 percent for other alternatives (Table 294).

Under a level 3 closure, revenue impacts across species were more varied across alternatives than total revenue impacts. The impact on monkfish revenue was between 11 and 18 percent under any of the variants of Alternative 5. By contrast, scallop revenue impacts were largest under Alternative 5b (10.8 percent) but were less than 1.5 percent for Alternatives 5a, c, and d. Revenue losses for small mesh fisheries for whiting and squid were similar (about 3

percent) for Alternatives 5a, b, and c but were less than 1 percent for all others. Revenue losses for combined "other species (dogfish, skates, lobster, shrimp, herring, mackerel, tunas, and clams) were greatest for Alternatives 5b (12.7 percent) and 5c (11.4 percent) but were similar all other habitat alternatives (from 3.5 to 6.5 percent). Revenue losses for groundfish were highest for Alternative 5b (21.6 percent) and lowest for Alternative 10A (1.6 percent). With only a few exceptions, revenue losses for groundfish exceeded that of all other species across all alternatives. Revenue losses for combined summer flounder, black sea bass, and scup were 0.1 percent for all alternatives other than the variants of Alternative 5. Among these alternatives, revenue losses were similar for Alternatives 5a, c, and d.

Tuna Purse Seine Vessel Access to Groundfish Closed Areas

The Council considered 2 alternatives to the proposed action for tuna purse seines—no action, and access with restrictions. Under the no action alternative, there are no changes to current fishing practices. Fishing vessel revenues and operating costs are not expected to change. Therefore, there is no net change in the economic impacts under this option. As a result of the no action alternative, however, tuna purse seine vessels are limited in the area that they can fish. This may constrain their ability to fish at times that avoid the seasonal glut of tuna landings that result from the General Category sub-period openings. If this occurs and purse seine vessels land their catches at the beginning of a sub-period, ex-vessel prices could be depressed resulting in lower gross revenues for both the General and Purse Seine category vessels. It is not possible to predict how often this may occur, since the distribution of tuna varies considerably over time.

The access with restrictions option would allow tuna purse seine vessels to fish in all groundfish closed areas, but limits fishing in closed areas to water depths of 30 fathoms or greater (or alter nets to less than the depth of water) and excludes the vessels from any HAPC. Allowing vessels to fish in closed areas may reduce vessel operating costs because it expands the area available to locate and fish on tuna schools. While allowing tuna purse seine vessels to fish in three areas presently closed to them may decrease vessel costs, this option also significantly changes current access to the seasonal closures in the Gulf of Maine and the WGOM closed area. Most of the seasonal closures occur in the winter and early spring and are not in

effect during the purse seine fishing season. The Cashes Ledge closure (July through October, November if triggered) and the October and November closures of thirty minute square blocks 124 and 125 do occur during the purse seine season. In addition, the year round WGOM closure area may also be important to purse seine vessels. This option does provide some increased ability for purse seine vessels to avoid fishing during periods of high landings from General category vessels because it allows partial access to all groundfish year round closed areas. This may reduce the likelihood and extent of market gluts and result in higher ex-vessel prices for both categories of vessels. Because certain types of fixed gear are allowed in the groundfish closed areas (lobster and hagfish pots), allowing tuna purse seine vessels into these areas may increase the likelihood of gear conflicts. Given the small number of tuna purse seine sets and the historically low number of reported gear conflict incidents, the likelihood of significant gear conflicts is very low.

GB Gillnet Sector

An additional GB sector allocation that would allocate part of the groundfish resource to gillnet vessels on GB was not approved. Instead, the Council chose to develop a framework action at a later date when sufficient data were available to estimate the impacts of a sector gillnet fishery. If successful, economic benefits similar to those discussed for the GB hook sector would be expected.

Hand Gear Only Permit

The no-action alternative would not change any economic benefits or costs relative to the baseline. Alternative 2 would not change the trip limits but would remove the prohibition of issuing permits to vessels that had never held any such permit. Alternative 2 would have no additional economic impact on vessels that may participate in the fishery but would provide, albeit limited, an opportunity for new participants.

Other Capacity Control Alternatives to DAS Transfers

The Council also considered DAS absorption, permit transfer, DAS transfers, freeze on unused DAS, DAS reserve, and mandatory latent effort categorizations. Each of the capacity alternatives is designed to provide greater economic opportunity and flexibility in all fisheries while maintaining the character of the existing fleet and to achieve some long-term reduction in the number of vessels

permitted to fish in Northeast fisheries. Many of these alternatives require that with the transfer of its permits the selling vessel must retire from fishing in state or federal open and limited access fisheries. While this expands economic opportunities for some vessels, it eliminates participation of others in the groundfish and other fisheries. This may reduce participation in the capacity reduction programs. Measures which define effective effort may have widely varied impacts on permit holders depending on their history in the groundfish fishery, benefitting some and severely limiting others. For additional detail on the economic impacts of the other alternatives dealing with capacity control, see section 5.4.9.4.

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

Reporting and Recordkeeping Requirements

The proposed measures under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP; (10) expedited submission of a proposed SAP; (11) request to power down VMS for at least 1 month; (12) GB Hook Gear Cod Trip Limit Exemption declaration; (13) request for an LOA to participate in the GOM Cod Landing Exemption; (14) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (15) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (16) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (17) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (18) submission of a sector allocation proposal; (19) submission of a plan of operations for an approved sector allocation; (20) daily electronic catch and discard reports of GB cod, GB

haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs; and (21) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs.

Other Compliance Requirements

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

Participation in the CA I Hook Gear SAP would require observers to be on board each vessel. It is estimated that the cost of complying with this regulation would be \$1,150 per day at sea.

The required changes to mesh size were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be \$1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be \$7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was \$9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be \$18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be \$8,800. Finally, the requirement for groundfish vessels to fish with a haddock separator trawl or a flatfish net when fishing in the U.S./Canada Resource Sharing Understanding areas was estimated to affect 400 vessels. The average cost for these vessels to replace their nets with a flatfish net was estimated to be \$747, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately \$7,500.

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average, as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648-0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648-0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648-0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648-0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648-0202, (1 hr/response);
6. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648-0202, (5 sec/response)
7. VMS proof of installation, OMB Control Number 0648-0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648-0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648-0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648-0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648-0202, (5 min/response);
12. GB Hook Gear Cod Trip Limit Exemption declaration, OMB Control Number 0648-0202, (5 min/response);
13. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648-0202, (5 min/response);
14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area, OMB Control Number 0648-0202, (5 min/response);
15. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648-0202, (5 min/response);
16. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648-0202, (5 min/response);

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

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

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

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

21. Annual reporting requirement for sectors, OMB Control Number 0648-0202, (6 hours/response). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information; and

22. Trip notification for vessels participating in the Agreement Management Areas for the purpose of observer coverage, OMB Control Number 0648-0202, (5 min/response).

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (*see* 3ADDRESSES).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 21, 2004.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, new definitions for “Bottom tending mobile gear,” “DAS Lease,” “DAS Lessee,” “DAS Lessor,” “Hand gear,” “Sector,” “Static gear,” “Stock of concern,” “Sub-lease,” “Tub-trawl,” and “Tuna purse seine gear,” are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

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

* * * * *

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

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

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

* * * * *

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

* * * * *

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

* * * * *

Static gear, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving

to the gear, and includes gillnets, longlines, handgear, traps, and pots.

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

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

* * * * *

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

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

* * * * *

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

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

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

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

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to May 31, 2003.

* * * * *

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

* * * * *

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

* * * * *

(I) * * *

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

* * * * *

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

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

administrative action of the Department of Commerce.

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

* * * * *

(c) * * *

(2) * * *

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

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

(B) For vessels fishing with hook gear, and electing to fish under the GB Hook Gear Cod Trip Limit Program, as described in § 648.86(b)(2)(ii), an annual declaration as a participant of this program must be obtained according to instructions provided by the Regional Administrator. Once a vessel owner has

elected into this program, he/she may not fish outside of this trip limit program for the remainder of the fishing year.

* * * * *

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

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

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

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

* * * * *

(b) * * *

(1) * * *

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and

submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (*i.e.*, less than 23 inches (58.42 cm), total length) or "large" (*i.e.*, 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

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

§ 648.9 VMS requirements.

* * * * *

(b) * * *

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

* * * * *

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all

required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

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

(ii) At least twice per hour, 24 hours a day, throughout the year for all NE multispecies vessels that elect to fish with a VMS specified in § 648.10(b) or are required to fish with a VMS as specified in § 648.85(a).

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

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

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

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

(ii) *Letter of exemption.—(A)*

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

(B) *Issuance.* Upon receipt of an application, the Regional Administrator

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

* * * * *

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

§ 648.10 DAS notification requirements.

* * * * *

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

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

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

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

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

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

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

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(2)(iii) under the provisions of that program.

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

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

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

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(i), (ii), (iii), and (v) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii)

of this section, to provide the notifications required by paragraph (b) of this section, or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

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

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

that do call in are exempt from the prohibition specified in § 648.14(c)(2).

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

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

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

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

been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iv) of this section.

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

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

* * * * *

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

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

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

§ 648.14 Prohibitions.

(a) * * *

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

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to

remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.81(f)(2)(ii) and 648.80(g)(6)(i) and (ii), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

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

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

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

* * * * *

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(1) through (8).

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

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

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

(132) If fishing with trawl gear under a NE multispecies DAS in the Agreement Management Areas defined in § 648.85(a)(1), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

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

(134) If fishing under a NE multispecies DAS, enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in an approved Special Access Program (SAP) specified in § 648.85(b)(3) or (4).

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

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

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v) or (4)(v).

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

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

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

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

(142) If fishing under the Closed Area II Haddock SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(4)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(4)(i) through (x).

(143) Enter or fish in Closed Area II under the Closed Area II Haddock SAP outside of the season specified in § 648.85(b)(4)(iii).

(144) If fishing in the Closed Area II Haddock SAP specified in § 648.85(b)(4), exceed the number of trips specified in § 648.85(b)(4)(vi).

(145) If fishing in the Closed Area II Haddock SAP specified in § 648.85(b)(4), exceed the trip limits specified in § 648.85(b)(4)(viii).

(146) If fishing in the Closed Area I Hook Gear SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(5)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(5)(i) through (viii).

(147) Enter or fish in Closed Area I under the Closed Area I Hook Gear SAP outside of the season specified in § 648.85(b)(5)(iii).

(148) If the vessel is fishing under the Closed Area I Hook Gear SAP, fail to comply with the VMS requirements in § 648.85(b)(5)(iv).

(149) Enter or fish in Closed Area I specified in § 648.81(a), unless declared into the area in accordance with § 648.85(b)(5)(v).

(150) If fishing in the Closed Area I Hook Gear SAP specified in § 648.85(b)(5), exceed the trip limits specified in § 648.85(b)(5)(vi).

(151) Enter or fish in Closed Area I, specified in § 648.81(a), after the Closed Area I Hook Gear SAP is closed, as described in § 648.85(b)(5)(vii).

(152) If fishing in Closed Area I under the Closed Area I Hook Gear SAP, fail to carry an observer on board the vessel, as required under § 648.85(b)(5)(viii).

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the restrictions and conditions under § 648.85(b)(6)(i) through (iv).

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

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

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

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

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

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

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

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

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

(b) * * *

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

(2) [Reserved]

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

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

(c) * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

(11) If the vessel has been issued a limited access multispecies permit and

fishes under a multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

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

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

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

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

* * * * *

(18) [Reserved]

* * * * *

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

* * * * *

(23) [Reserved]

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4) or under the GB Hookgear Cod Trip Limit Program specified in § 648.86(b)(2)(ii).

* * * * *

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

* * * * *

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(i), (d)(2), (e)(2), (f)(2), and (g)(2).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi), with the exception of shrimp trawls fishing in the area described in § 648.81(h)(i).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as Lessor or Lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii)

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to

obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) If fishing under the GB Hookgear Cod Trip Limit Program specified in § 648.86(b)(ii), land fish on any Friday or Saturday.

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

* * * * *

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

* * * * *

8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

- (b) * * *
- (1) * * *
- (iii) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

- (iv) * * *

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

* * * * *

9. Section 648.80 is revised to read as follows:

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

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G1	(1)	(1)

Point	N. Lat.	W. Long.
G2	43°58'	67°22'
G3	42°53.1'	67°44.4'
G4	42°31'	67°28.1'
CI13	42°22'	67°20' (the U.S.-Canada Maritime Boundary)

¹ The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
CI13	42°22'	67°20' (the U.S.-Canada Maritime Boundary)
G6	42°20'	67°20'
G7	42°20'	69°30'
G8	42°00'	69°30'
G9	42°00'	(1)

¹ The intersection of the Cape Cod, MA, coastline and 42°00' N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

- (i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and
- (ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate Ioran C bearings
CI13	42°22'	67°20'	(1)
SNE1	40°24'	65°43'	(2)

¹ The U.S.-Canada Maritime Boundary.

² The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
G12	(1)	70°00'
G11	40°50'	70°00'
NL1	40°50'	69°40'
NL2	40°18.7'	69°40'
NL3	40°22.7'	69°00'
	(2)	69°00'

¹ South facing shoreline of Cape Cod.

² Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under

paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not

apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*—(A) *Trip gillnet vessels*.—(1) *Mesh size*. Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets*. A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

(3) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(4) *Tags*. Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(1) *Mesh size*. Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets*. A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as

provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(3) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(4) *Tags*. Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags*. Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(1) *Lost tags*. Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(2) *Replacement tags*. Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions*. Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An 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 2,000-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use

of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions*. For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM23	42°00'	69°50'
GM24	43°00'	69°50'
GM11	43°00'	70°00'

INSHORE RESTRICTED ROLLER GEAR
AREA—Continued

Point	N. Lat.	W. Long.
GM17	43°30'	70°00'
GM18	43°30'	(4)

¹ Massachusetts shoreline.

² Cape Cod shoreline on Cape Cod Bay.

³ Cape Cod shoreline on the Atlantic Ocean.

⁴ Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions*—(i) *Vessels using trawls*. Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine*. Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied

throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels*. When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels*. Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels*—(1) *Number of nets*. A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150.

(2) *Net size requirements*. Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(3) *Tags*. Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels*—(1) *Number of nets*. A Day gillnet vessel fishing under an NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(2) *Net size requirements*. Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(3) *Tags*. Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Obtaining and replacing tags*. See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions*. Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under an NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An 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 3,600-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are

available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10'	68°10'
C2	41°30'	68°41'
C14	41°30'	68°30'
C3	41°12.8'	68°30'
C4	41°05'	68°20'
C5	41°55'	67°40'
C1	42°10'	68°10'

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100

meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated

Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no regulated multispecies bycatch.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, 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, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if

overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing regulated species bycatch.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Bycatch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species.

(iv) Bycatch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a) (3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.
SM1	43°03'	70° 27'
SM2	42°57'	70° 22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

SMALL MESH AREA II

Point	N. Lat.	W. Long.
SM13	43°05.6'	69°55'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40'
SM16	42°41.5'	69°40'
SM17	42°36.6'	69°55'
SM13	43°05.6'	69°55'

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than 1/2-inch (1.2-cm) for the top leg, not larger than 5/8-inch (1.6-cm) for the bottom leg, and not larger than 3/4-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a

maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a) (3) or (4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45'	70°00'
NS2	41°45'	69°20'
NS3	41°30'	69°20'
C11	41°30'	69°23'
NS5	41°26.5'	69°20'
NS6	40°50'	69°20'
NS7	40°50'	70°00'
NS1	41°45'	70°00'

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as

provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a) (1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a) (3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35'	70°00'
SM2	41°35'	69°40'
SM3	42°49.5'	69°40'
SM4	43°12'	69°00'
SM5	43°41'	68°00'
G2	43°58'	67°22'
G1	(1)	(1)

¹ Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(i) [Reserved]

(ii) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. Lat.	W. Long.
41°35'	70°00'
42°49.5'	70°00'
42°49.5'	69°40'

N. Lat.	W. Long.
43°12'	69°00'
(1)	69°00'

¹ Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA [September 1 through November 20]

Point	N. Lat.	W. Long.
RF 1	42°14.05'	70°08.8'
RF 2	42°09.2'	69°47.8'
RF 3	41°54.85'	69°35.2'
RF 4	41°41.5'	69°32.85'
RF 5	41°39'	69°44.3'
RF 6	41°45.6'	69°51.8'
RF 7	41°52.3'	69°52.55'
RF 8	41°55.5'	69°53.45'
RF 9	42°08.35'	70°04.05'
RF 10	42°04.75'	70°16.95'
RF 11	42°00'	70°13.2'
RF 12	42°00'	70°24.1'
RF 13	42°07.85'	70°30.1'
RF 1	42°14.05'	70°08.8'

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA [November 21 through December 31]

Point	N. Lat.	W. Long.
RF 1	42°14.05'	70°08.8'
RF 2	42°09.2'	69°47.8'
RF 3	41°54.85'	69°35.2'
RF 4	41°41.5'	69°32.85'
RF 5	41°39'	69°44.3'
RF 6	41°45.6'	69°51.8'
RF 7	41°52.3'	69°52.55'
RF 8	41°55.5'	69°53.45'
RF 9	42°08.35'	70°04.05'
RF 1	42°14.05'	70°08.8'

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and

offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size

smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. Lat.	W. Long.
GRF1	43°15'	70°35.4'
GRF2	43°15'	70°00'
GRF3	43°25.2'	70°00'
GRF4	43°41.8'	69°20'
GRF5	43°58.8'	69°20'

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of $\frac{3}{8}$ -inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action

prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by

straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK EXEMPTION AREA

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58'	67°22'
G3	42°53.1'	67°44.4'
G4	42°31'	67°28.1'

GULF OF MAINE/GEORGES BANK EXEMPTION AREA—Continued

Point	N. Lat.	W. Long.
G5	41°18.6'	66°24.8'

¹ The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate Ioran C bearings
G6	40°55.5'	66°38'	5930-Y-30750 and 9960-Y-43500.
G7	40°45.5'	68°00'	9960-Y-43500 and 68°00' W. lat.
G8	40°37'	68°00'	9960-Y-43450 and 68°00' W. lat.
G9	40°30'	69°00'	
NL3	40°22.7'	69°00'	
NL2	40°18.7'	69°40'	
NL1	40°50'	69°40'	
G11	40°50'	70°00'	
G12		70°00' ¹	

¹ Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00' W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00' W. long. line.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with section § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies

permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size

for any sink gillnet not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow

additional nets not to exceed 160, counting deployed nets.

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An 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 2,000-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General

Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is

less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE

Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has a Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts

specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east-northeastly through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND EXEMPTION AREA

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

¹ Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30' W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
Sc1	(1)	73° 00'

Point	N. Lat.	W. Long.
Sc2	40°00'	73°00'
Sc3	40°00'	71°40'
Sc4	39°50'	71°40'
Sc5	39°50'	70°00'
Sc6	(2)	70° 00'
Sc7	(3)	70° 00'
Sc8	(4)	70° 00'

¹ South facing shoreline of Long Island, NY.

² South facing shoreline of Nantucket, MA.

³ North facing shoreline of Nantucket, MA.

⁴ South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
Sc9	41°00'	(5)
Sc10	41°00'	71°40'
Sc11	(6)	71°40'

⁵ East facing shoreline of the south fork of Long Island, NY.

⁶ South facing shoreline of RI.

(ii) *Exemption program requirements.*

(A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area.* (1) *Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions*—(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and

that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with section § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hookgear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (“crucifiers”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hookgear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An 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. Vessels

fishing with a valid NE multispecies limited access Handgear permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with section § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* (1) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels*—(1) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and

provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements—(1) Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on

the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing—(1) Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies—(i) Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes—(i) Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the

applicable provisions of the Harbor Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

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

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in

the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

10. Section 648.81 is revised to read as follows:

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

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. Lat.	W. Long.
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
CI4	41°30'	68°30'
CI1	41°30'	69°23'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board gear capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point N.	Lat.	W. Long.
CI11	41°00'	67°20'
CI12	41°00'	66°35.8'
G5	41°18.6'	66°24.8'
		(the U.S.-Canada Maritime Boundary)

CLOSED AREA II—Continued

Point N.	Lat.	W. Long.
CI13	42°22'	67°20' (the U.S.-Canada Maritime Boundary)
CI11	41°00'	67°20'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

- (i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;
- (ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;
- (iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or
- (iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and
 (B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50'	69°00'
CN1	40°20'	69°00'
CN2	40°20'	70°20'
CN3	40°50'	70°20'
G10	40°50'	69°00'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

- (i) Fishing with gears as described in paragraph (a)(2) of this section; or
 - (ii) Classified as charter, party or recreational vessel, provided that:
- (A) If the vessel is a party or charter vessel, it has a letter of authorization

issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

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

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area during the period specified by the letter of authorization.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (b)(2)(ii) and (iii) of this section.

(e) *Western GOM Area Closure.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

WESTERN GOM AREA CLOSURE ¹

Point	N. Lat.	W. Long.
WGM1	42°15'	70°15'
WGM2	42°15'	69°55'
WGM3	43°15'	69°55'

WESTERN GOM AREA CLOSURE ¹—Continued

Point	N. Lat.	W. Long.
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'

¹ A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section, or that are fishing with shrimp trawl gear, consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I
[March 1–March 31]

Point	N. Lat.	W. Long.
GM3	42°00'	(¹)
GM5	42°00'	68°30'
GM6	42°30'	68°30'
GM23	42°30'	70°00'

¹ Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II
[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00'	(¹)
GM2	42°00'	(²)
GM3	42°00'	(³)

**ROLLING CLOSURE AREA II—
Continued**
[April 1–April 30]

Point	N. Lat.	W. Long.
GM5	42°00'	68°30'
GM13	43°00'	68°30'
GM9	43°00'	(4)

- ¹ Massachusetts shoreline.
- ² Cape Cod shoreline on Cape Cod Bay.
- ³ Cape Cod shoreline on the Atlantic Ocean.
- ⁴ New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III
[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM4	42°00'	70°00'
GM23	42°30'	70°00'
GM6	42°30'	68°30'
GM14	43°30'	68°30'
GM10	43°30'	(4)

- ¹ Massachusetts shoreline.
- ² Cape Cod shoreline on Cape Cod Bay.
- ³ Cape Cod shoreline on the Atlantic Ocean.
- ⁴ Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV
[June 1–June 30]

Point	N. Lat.	W. Long.
GM9	42°30'	(1)
GM23	42°30'	70°00'
GM17	43°30'	70°00'
GM19	43°30'	67°32' or (2)
GM20	44°00'	67°21' or (2)
GM21	44°00'	69°00'
GM22	(3)	69°00'

- ¹ Massachusetts shoreline.
- ² U.S.-Canada maritime boundary.
- ³ Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V
[October 1–November 30]

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(1)

- ¹ Massachusetts shoreline.
- ² Cape Cod shoreline on Cape Cod Bay.
- ³ Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

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

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

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

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

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

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

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

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

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

GEORGES BANK SEASONAL CLOSURE AREAS
[May 1–May 31]

Point	N. Lat.	W. Long.
GB1	42°00'	(1)
GB2	42°00'	68°30'
GB3	42°20'	68°30'
GB4	42°20'	67°20'
GB5	41°30'	67°20'
C11	41°30'	69°23'
C12	40°45'	68°45'
C13	40°45'	68°30'
GB6	40°30'	68°30'
GB7	40°30'	69°00'
G10	40°50'	69°00'
GB8	40°50'	69°30'
GB9	41°00'	69°30'
GB10	41°00'	70°00'
G12	(1)	70°00'

- ¹ Northward to its intersection with the shoreline of mainland MA.

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

(i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;

(ii) That are fishing as charter/party or recreational vessels; or

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in

§ 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* With the exception of vessels fishing with shrimp trawl gear, the bottom tending mobile gear restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

WESTERN GOM HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'
WGM5	42°15'	70°00'
WGM6	43°15'	70°00'
WGM4	43°15'	70°15'

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CLH1	43°01'	69°03'
CLH2	43°01'	68°52'
CLH3	42°45'	68°52'
CLH4	42°45'	69°03'
CLH1	43°01'	69°03'

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

JEFFREY'S BANK HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
JB1	43°40'	68°50'

JEFFREY'S BANK HABITAT CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
JB2	43°40'	68°40'
JB3	43°20'	68°40'
JB4	43°20'	68°50'
JB1	43°40'	68°50'

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

CLOSED AREA I—NORTH HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CI1	41°30'	69°23'
CI4	41°30'	68°30'
CIH1	41°26'	68°30'
CIH2	41°04'	69°01'
CI1	41°30'	69°23'

CLOSED AREA I—SOUTH HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIH3	40°55'	68°53'
CIH4	40°58'	68°30'
CI3	40°45'	68°30'
CI2	40°45'	68°45'
CIH3	40°55'	68°53'

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIH1	42°00'	67°20'
CIH2	42°00'	67°00'
CIH3	41°40'	66°43'
CIH4	41°40'	67°20'
CIH1	42°00'	67°20'

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
NLH1	41°10'	70°00'
NLH2	41°10'	69°50'
NLH3	40°50'	69°30'
NLH4	40°20'	69°30'
NLH5	40°20'	70°00'
NLH1	41°10'	70°00'

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closure Area, the Cashes Ledge Closure Area, the Western GOM Area Closure, the GOM Rolling Closure Areas, the GB Seasonal Area Closure and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9' N.	68°36.0' W.
70	40°07.2' N.	68°38.4' W.
71	40°06.9' N.	68°46.5' W.
73	40°08.1' N.	68°51.0' W.
74	40°05.7' N.	68°52.4' W.
75	40°03.6' N.	68°57.2' W.
76	40°03.65' N.	69°00.0' W.
77	40°04.35' N.	69°00.5' W.
78	40°05.2' N.	69°00.5' W.
79	40°05.3' N.	69°01.1' W.
80	40°08.9' N.	69°01.75' W.
81	40°11.0' N.	69°03.8' W.
82	40°11.6' N.	69°05.4' W.
83	40°10.25' N.	69°04.4' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.6' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.1' N.	69°03.9' W.
88	40°02.65' N.	69°05.6' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.6' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.65' N.	69°24.4' W.
94	39°56.1' N.	69°26.35' W.
95	39°56.55' N.	69°34.1' W.
96	39°57.85' N.	69°35.5' W.
97	40°00.65' N.	69°36.5' W.
98	40°00.9' N.	69°37.3' W.
99	39°59.15' N.	69°37.3' W.
100	39°58.8' N.	69°38.45' W.
102	39°56.2' N.	69°40.2' W.
103	39°55.75' N.	69°41.4' W.
104	39°56.7' N.	69°53.6' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.4' N.	69°55.9' W.
107	39°56.9' N.	69°57.45' W.
108	39°58.25' N.	70°03.0' W.
110	39°59.2' N.	70°04.9' W.

Point	Latitude	Longitude
111	40°00.7' N.	70°08.7' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.2' N.	70°10.9' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.

Offshore Boundary

to 69		
120	40°06.4' N.	68°35.8' W.
121	40°05.25' N.	68°39.3' W.
122	40°05.4' N.	68°44.5' W.
123	40°06.0' N.	68°46.5' W.
124	40°07.4' N.	68°49.6' W.
125	40°05.55' N.	68°49.8' W.
126	40°03.9' N.	68°51.7' W.
127	40°02.25' N.	68°55.4' W.
128	40°02.6' N.	69°00.0' W.
129	40°02.75' N.	69°00.75' W.
130	40°04.2' N.	69°01.75' W.
131	40°06.15' N.	69°01.95' W.
132	40°07.25' N.	69°02.0' W.
133	40°08.5' N.	69°02.25' W.
134	40°09.2' N.	69°02.95' W.
135	40°09.75' N.	69°03.3' W.
136	40°09.55' N.	69°03.85' W.
137	40°08.4' N.	69°03.4' W.
138	40°07.2' N.	69°03.3' W.
139	40°06.0' N.	69°03.1' W.
140	40°05.4' N.	69°03.05' W.
141	40°04.8' N.	69°03.05' W.
142	40°03.55' N.	69°03.55' W.
143	40°01.9' N.	69°03.95' W.
144	40°01.0' N.	69°04.4' W.
146	39°59.9' N.	69°06.25' W.
147	40°00.6' N.	69°10.05' W.
148	39°59.25' N.	69°11.15' W.
149	39°57.45' N.	69°16.05' W.
150	39°56.1' N.	69°20.1' W.
151	39°54.6' N.	69°25.65' W.
152	39°54.65' N.	69°26.9' W.
153	39°54.8' W.	69°30.95' W.
154	39°54.35' N.	69°33.4' W.
155	39°55.0' N.	69°34.9' W.
156	39°56.55' N.	69°36.0' W.
157	39°57.95' N.	69°36.45' W.
158	39°58.75' N.	69°36.3' W.
159	39°58.8' N.	69°36.95' W.
160	39°57.95' N.	69°38.1' W.
161	39°54.5' N.	69°38.25' W.
162	39°53.6' N.	69°46.5' W.
163	39°54.7' N.	69°50.0' W.
164	39°55.25' N.	69°51.4' W.
165	39°55.2' N.	69°53.1' W.
166	39°54.85' N.	69°53.9' W.
167	39°55.7' N.	69°54.9' W.
168	39°56.15' N.	69°55.35' W.
169	39°56.05' N.	69°56.25' W.
170	39°55.3' N.	69°57.1' W.
171	39°54.8' N.	69°58.6' W.
172	39°56.05' N.	70°00.65' W.
173	39°55.3' N.	70°02.95' W.
174	39°56.9' N.	70°11.3' W.
175	39°58.9' N.	70°11.5' W.
176	39°59.6' N.	70°11.1' W.
177	40°01.35' N.	70°11.2' W.
178	40°02.6' N.	70°12.0' W.
179	40°00.4' N.	70°12.3' W.
180	39°59.75' N.	70°13.05' W.
181	39°59.3' N.	70°14.0' W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear*. From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of section 648.23(b)

(ii) *Lobster pot gear*. From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II*. (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
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Inshore Boundary

to 1		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 48		

Offshore Boundary

to 49		
1	39°59.3' N.	70°14.0' W.
2	39°58.85' N.	70°15.2' W.
3	39°59.3' N.	70°18.4' W.
4	39°58.1' N.	70°19.4' W.
5	39°57.0' N.	70°19.85' W.
6	39°57.55' N.	70°21.25' W.
7	39°57.5' N.	70°22.8' W.
8	39°57.1' N.	70°25.4' W.
9	39°57.65' N.	70°27.05' W.
10	39°58.58' N.	70°27.7' W.
11	40°00.65' N.	70°28.8' W.
12	40°02.2' N.	70°29.15' W.
13	40°01.0' N.	70°30.2' W.
14	39°58.58' N.	70°31.85' W.
15	39°57.05' N.	70°34.35' W.
16	39°56.42' N.	70°36.8' W.
21	39°58.15' N.	70°48.0' W.
24	39°58.3' N.	70°51.1' W.

Point	Latitude	Longitude
25	39°58.1' N.	70°52.25' W.
26	39°58.05' N.	70°53.55' W.
27	39°58.4' N.	70°59.6' W.
28	39°59.8' N.	71°01.05' W.
29	39°58.2' N.	71°05.85' W.
30	39°57.45' N.	71°12.15' W.
31	39°57.2' N.	71°15.0' W.
32	39°56.3' N.	71°18.95' W.
33	39°51.4' N.	71°36.1' W.
34	39°51.75' N.	71°41.5' W.
35	39°50.05' N.	71°42.5' W.
36	39°50.0' N.	71°45.0' W.
37	39°48.95' N.	71°46.05' W.
38	39°46.6' N.	71°46.1' W.
39	39°43.5' N.	71°49.4' W.
40	39°41.3' N.	71°55.0' W.
41	39°39.0' N.	71°55.6' W.
42	39°36.72' N.	71°58.25' W.
43	39°35.15' N.	71°58.55' W.
44	39°34.5' N.	72°00.75' W.
45	39°32.2' N.	72°02.25' W.
46	39°32.15' N.	72°04.1' W.
47	39°28.5' N.	72°06.5' W.
48	39°29.0' N.	72°09.25' W.
to 70		

(2) *Restricted period*—(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of section 648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
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Inshore Boundary

to 49		
182 ..	40°05.6' N.	70°17.7' W.
183 ..	40°06.5' N.	70°40.05' W.
184 ..	40°11.05' N.	70°45.8' W.
185 ..	40°12.75' N.	70°55.05' W.
186 ..	40°10.7' N.	71°10.25' W.
187 ..	39°57.9' N.	71°28.7' W.
188 ..	39°55.6' N.	71°41.2' W.
189 ..	39°55.85' N.	71°45.0' W.
190 ..	39°53.75' N.	71°52.25' W.
191 ..	39°47.2' N.	72°01.6' W.
192 ..	39°33.65' N.	72°15.0' W.
to 70		

Offshore Boundary

to 182		
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Point	Latitude	Longitude
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 192		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of 648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60' N.	68°40.60' W.
194	40°11.60' N.	68°53.00' W.
195	40°14.00' N.	69°04.70' W.
196	40°14.30' N.	69°05.80' W.
197	40°05.50' N.	69°09.00' W.
198	39°57.30' N.	69°25.10' W.
199	40°00.40' N.	69°35.20' W.
200	40°01.70' N.	69°35.40' W.
201	40°01.70' N.	69°37.40' W.
202	40°00.50' N.	69°38.80' W.
203	40°01.30' N.	69°45.00' W.
204	40°02.10' N.	69°45.00' W.
205	40°07.60' N.	70°04.50' W.
206	40°07.80' N.	70°09.20' W.
to 119		

Point	Latitude	Longitude
Offshore Boundary		
69	40°07.90' N.	68°36.00' W.
70	40°07.20' N.	68°38.40' W.
71	40°06.90' N.	68°46.50' W.

Point	Latitude	Longitude
72	40°08.70' N.	68°49.60' W.
73	40°08.10' N.	68°51.00' W.
74	40°05.70' N.	68°52.40' W.
75	40°03.60' N.	68°57.20' W.
76	40°03.65' N.	69°00.00' W.
77	40°04.35' N.	69°00.50' W.
78	40°05.20' N.	69°00.50' W.
79	40°05.30' N.	69°01.10' W.
80	40°08.90' N.	69°01.75' W.
81	40°11.00' N.	69°03.80' W.
82	40°11.60' N.	69°05.40' W.
83	40°10.25' N.	69°04.40' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.60' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.10' N.	69°03.90' W.
88	40°02.65' N.	69°05.60' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.60' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.75' N.	69°24.40' W.
94	39°56.50' N.	69°26.35' W.
95	39°56.80' N.	69°34.10' W.
96	39°57.85' N.	69°35.05' W.
97	40°00.65' N.	69°36.50' W.
98	40°00.90' N.	69°37.30' W.
99	39°59.15' N.	69°37.30' W.
100	39°58.80' N.	69°38.45' W.
102	39°56.20' N.	69°40.20' W.
103	39°55.75' N.	69°41.40' W.
104	39°56.70' N.	69°53.60' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.40' N.	69°55.90' W.
107	39°56.90' N.	69°57.45' W.
108	39°58.25' N.	70°03.00' W.
110	39°59.20' N.	70°04.90' W.
111	40°00.70' N.	70°08.70' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.20' N.	70°10.90' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 206		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of section 648.23(b).
(ii) [Reserved].

11. Section 648.82 is revised to read as follows:

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

(a) Except as provided in § 648.17 and paragraph (a)(2) of this section, a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(I), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories*. All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category*. This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given

fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified

in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

(5) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved].

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The

cod trip limit will be adjusted proportionally to the trip limit for cod, as specified in § 648.86(b). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to May 31, 2002). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in section § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip

reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies permits and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh

Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS—(A) Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS—(A) Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as

22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS—(i) Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (e) of this section, shall not occur if the Regional Administrator:

(i) Determines that the Amendment 13 projected target biomass levels, for relevant stocks specified in Amendment 13, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on such stocks; and

(ii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program. Starting in fishing year 2006, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

(f) *Good Samaritan credit.* See § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day

gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved].

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days time out of the non-exempt gillnet

fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) *NE Multispecies DAS Leasing Program.* (1) *Program description.* For fishing years 2004 and 2005, eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and

requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time throughout the fishing year, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an

enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History*. DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing*. In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS*. Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased*. A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS.

(v) *History of leased DAS use and landings*. Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C and D vessels*. A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction*. A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) *Duration of lease*. A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel*. A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004.

(x) *Leasing by vessels fishing under a Sector allocation*. A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(1) *DAS Transfer Program*. Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions*. (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section,

will be reduced by 40 percent upon transfer.

(v) Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation*. A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS*. Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements*. An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed.

Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application*. Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application*. The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete

or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

12. Section 648.83 is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the

fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

13. Section 648.84 is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

14. Section 648.85 is revised to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

WESTERN U.S./CANADA AREA

Point	N. Lat.	W. Long.
USCA 1	42° 20'	68° 50'
USCA 2	39° 50'	68° 50'
USCA 3	39° 50'	66° 40'
USCA 4	40° 40'	66° 40'
USCA 5	40° 40'	66° 50'
USCA 6	40° 50'	66° 50'
USCA 7	40° 50'	67° 00'

WESTERN U.S./CANADA AREA—
Continued

Point	N. Lat.	W. Long.
USCA 8	41° 00'	67° 00'
USCA 9	41° 00'	67° 20'
USCA 10	41° 10'	67° 20'
USCA 11	41° 10'	67° 40'
USCA 12	42° 20'	67° 40'
USCA 1	42° 20'	68° 50'

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. Lat.	W. Long.
USCA 12	42° 20'	67° 40'
USCA 11	41° 10'	67° 40'
USCA 10	41° 10'	67° 20'
USCA 9	41° 00'	67° 20'
USCA 8	41° 00'	67° 00'
USCA 7	40° 50'	67° 00'
USCA 6	40° 50'	66° 50'
USCA 5	40° 40'	66° 50'
USCA 4	40° 40'	66° 40'
USCA 15	40° 30'	66° 40'
USCA 14	40° 30'	65° 44.3'
USCA 13	42° 20'	67° 18.4'
USCA 12	42° 20'	67° 40'

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all

recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. The VMS unit will

be polled at least twice per hour, regardless of whether the vessel has declared into the U.S./Canada Management Areas.

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraphs (b)(3) and (4) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(6)(i) and (ii) of this section. No other type of fishing gear may be on the vessel during a trip to a U.S./Canada Management Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock separator trawl.* A haddock separator trawl is defined as a groundfish trawl, modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal, large-mesh separating panel constructed with a minimum of 6.5-inch (16.5-cm) square

or diamond mesh must be installed between the selvages joining the upper and lower panels, as described in paragraphs (a)(6)(i)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(1) *Two-seam bottom trawl nets.* For two-seam nets, the separator panel must be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes.

(2) *Four-seam bottom trawl nets.* For four-seam nets, the separator panel must be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel must be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder trawl net.* A flounder trawl net is defined as a two-seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m), and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3 feet (0.91 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod possession restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels fishing in either of the U.S./Canada Management Areas described in paragraph (a)(1) of this section may not possess more than 500 lb (226.8 kg) of cod per DAS, not to exceed 5 percent of the total catch on board, unless otherwise restricted under this part.

(B) *Haddock possession limit—(1) Initial haddock possession limit.* The initial haddock possession limit is

specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(2) and (3) of this section.

(2) *Implementation of haddock possession limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section.

(C) *Yellowtail flounder possession limit—(1) Initial yellowtail flounder possession limit.* The initial yellowtail flounder possession limit is specified under § 648.86(g), unless adjusted pursuant to paragraph (a)(3)(iv)(C)(2) and (3) of this section.

(2) *Implementation of yellowtail flounder possession limit for Western and Eastern U.S./Canada Areas.* When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall prohibit, through rulemaking consistent with the Administrative Procedure Act, retention of yellowtail flounder for vessels fishing in the Western U.S./Canada Area and close the Eastern U.S./Canada Area as specified under paragraph (a)(3)(iv)(E) of this section.

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph

(a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv) (A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area.* When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels fishing with gear capable of catching groundfish, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for haddock within the SAP identified as the Closed Area II Haddock Access Area, described in paragraph (b)(4) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. The reports must include at least the following information: Total pounds/kilograms of cod, haddock and yellowtail flounder caught (and total lb of cod, haddock, and yellowtail flounder discarded).

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding.* At any time, the Regional Administrator, in

consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in place until changed through the framework or FMP amendment process.

(b) *Special Access Programs.* A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies—(i) Implementation through framework.* A SAP may be proposed by the Council and approved by NMFS through the framework process described under § 648.90, or by the Regional Administrator through the expedited process, provided the SAP meets the requirements specified in paragraph (b)(1)(iii) of this section.

(ii) *Expedited implementation.* A SAP may be approved by the Regional Administrator, in consultation with the Council, provided the SAP meets the requirements specified in paragraph (b)(1)(iii) of this section, and provided the impacts of the SAP fall within the range of the impacts analyzed in paragraphs (b) (3) through (6) of this section (*i.e.*, CA II Yellowtail Flounder SAP, CA II Haddock SAP, CA I Hook Gear Haddock SAP and SNE/MA Winter Flounder SAP) or a future management action. If the SAP meets the criteria specified in paragraph (b)(1)(iii) of this section, the Regional Administrator will notify the Council of the receipt of the SAP proposal within 21 days from the date the application is received. NMFS will then publish a notice in the **Federal Register** requesting comment on the proposed SAP, allowing a 30-day comment period. Within 60 days from the end of the comment period, after

consideration of comments from the public and the Council, the Regional Administrator will make a determination of the approvability of the SAP. Notification of an approved SAP will be made through notification in the **Federal Register**.

(iii) *Requirements for implementing a SAP.* In order to be approved and implemented, a SAP must meet the following requirements:

(A) Sufficient information must be available to determine that the SAP would not adversely impact efforts to control fishing mortality on stocks of concern (*i.e.*, stocks where overfishing is occurring or that are overfished);

(B) Vessels fishing under the SAP could only harvest and land NE multispecies stock(s) in which the previous year's catch was less than the allocated TAC for that stock;

(C) The SAP must not result in exceeding this TAC of the harvested stock, causing a stock to become overfished, or result in overfishing;

(D) The number of vessels or trips that may occur in the access program must be specified, as well as the estimated catch rate of all species that are likely to be caught;

(E) Implementation of the SAP must not alter measures that minimize, to the extent practicable, the adverse impact of fishing activity on habitat;

(F) The SAP must incorporate one or more of the following provisions in order to ensure there is no increase in fishing mortality on any stock of concern: Adoption of a bycatch TAC for a stock of concern, adequate observer coverage to monitor the catch of stocks of concern, specialized gear or fishing techniques to avoid or reduce stocks of concern, mitigation of increased fishing mortality on the stock of concern in the SAP through overall effort reduction or effort redirection in order to avoid a net increase in bycatch mortality;

(G) The SAP must occur within a defined area;

(H) Participation in the SAP must not be limited to vessels from a particular state or subdivision;

(I) The SAP must reduce discards and discard mortality to the extent practicable;

(J) The SAP must specify the type of data reporting required to monitor the status of harvest and include a realistic plan of implementation; and

(K) The Regional Administrator must be able to conclude that adherence to the conditions of the SAP can be assured in light of available enforcement resources and the enforcement record of vessel owners and operators of vessels.

(2) *SAPs harvesting stocks other than NE multispecies—(i) Implementation*

through framework. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90, or by the Regional Administrator through the expedited process, provided the non-multispecies SAP meets the requirements specified under paragraph (b)(2)(iii) of this section.

(ii) *Expedited implementation.* A non-multispecies SAP may be approved by the Regional Administrator according to the same procedures specified in paragraph (b)(1)(ii) of this section, provided the non-multispecies SAP meets the requirements of paragraph (b)(2)(iii) of this section.

(iii) *Requirements for implementing a non-multispecies SAP.* In order to be approved and implemented, a SAP must meet the following requirements:

(A) Sufficient information must be available to determine that the SAP would not adversely impact efforts to control fishing mortality on stocks of concern (*i.e.*, stocks where overfishing is occurring or that are overfished);

(B) The number of vessels or trips that may occur in the access program must be specified, as well as the estimated catch rate of all species that are likely to be caught;

(C) Implementation of the SAP must not alter measures that minimize, to the extent practicable, the adverse impact of fishing activity on habitat;

(D) The SAP must incorporate one or more of the following provisions in order to ensure there is no increase in fishing mortality on any stock of concern: Adoption of a bycatch TAC for a stock of concern, adequate observer coverage to monitor the catch of stocks of concern, specialized gear or fishing techniques to avoid or reduce stocks of concern, mitigation of increased fishing mortality on the stock of concern in the SAP through overall effort reduction or effort redirection in order to avoid a net increase in bycatch mortality;

(E) The SAP must occur within a defined area;

(F) Participation in the SAP must not be limited to vessels from a particular state or subdivision;

(G) The SAP must reduce discards and discard mortality to the extent practicable;

(H) The SAP must specify the type of data reporting required to monitor the status of harvest and include a realistic plan of implementation; and

(I) The Regional Administrator must be able to conclude that adherence to the conditions of the SAP can be assured in light of available enforcement

resources and the enforcement record of vessel owners and operators of vessels.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area*. The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER ACCESS AREA

Point	N. Lat.	W. Long.
Ytail 1	41°30'	67°20'
Ytail 2	41°30'	66°34.8'
G5	41°18.6'	66°24.8'
		(the U.S.–Canada Maritime Boundary)
CII 2	41°00'	66°35.8'
CII 1	41°00'	67°20'
Ytail 1	41°30'	67°20'

(iii) *Season*. Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period June 1 through December 31.

(iv) *VMS requirement*. All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II

Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the areas specified in paragraphs (b)(3)(v)(A) and/or (B) of this section, provided the vessel fishes in the additional area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the other area(s) fished and fishes during such time as specified in paragraph (b)(4)(iii) of this section (*i.e.*, CA II Haddock SAP). The declaration areas are as follows:

(A) Closed Area II Haddock Access Area, as defined in paragraph (b)(4)(ii) of this section.

(B) The Closed Area II Haddock Access Area, as defined in paragraph (b)(4)(ii) of this section, and the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section.

(vi) *Number of trips per vessel*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(viii) *Trip limits*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished*. Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements*. Vessels fishing with trawl gear under a NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a

haddock separator trawl or flounder trawl net.

(4) *Closed Area II Haddock SAP*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Haddock SAP, and may fish in the Closed Area II Haddock Access Area, as described in paragraph (b)(4)(ii) of this section, for the period specified in paragraph (b)(4)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described under paragraph (a)(1)(ii) of this section is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area is available from the Regional Administrator upon request.

(ii) *Closed Area II Haddock Access Area*. The U.S./Canada Closed Area II Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
CIIH 1	42°12'	67°11' (intersection of 42°12' with the U.S./Canada Maritime Boundary)
CIIH 2	42°11'	67°20'
CII 3	42°22'	67°20' (the U.S./Canada Maritime Boundary)
CIIH 1	42°12'	67°11' (intersection of 42°12' with the U.S./Canada Maritime Boundary)

(iii) *Season*. Eligible vessels may fish in the Closed Area II Haddock SAP during the period May 1 through February 28 (or 29).

(iv) *VMS*. All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration*. For the purposes of selecting vessels for observer deployment, a vessel must provide

notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(4)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Haddock SAP must declare into this area through VMS in accordance with instructions to be provided by the Regional Administrator. In addition to fishing in the Closed Area II Haddock SAP, a vessel, on the same trip, may also declare its intent to fish in the areas specified in paragraphs (b)(4)(v)(A) and (B) of this section, provided the vessel fishes under the more restrictive provisions of the areas declared and fishes during such time as specified in paragraph (b)(3)(iii) of this section (*i.e.*, CA II Yellowtail flounder SAP). The declaration areas are as follows:

(A) Closed Area II Yellowtail Flounder Access Area, as defined in paragraph (b)(3)(ii) of this section.

(B) The Closed Area II Yellowtail Flounder Access Area, as defined in paragraph (b)(3)(ii) of this section and the area outside of Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section.

(vi) *Number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, there is no limit on the number of trips per vessel.

(vii) *Maximum number of trips.* Unless otherwise restricted by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, there is no maximum number of trips specified for the fishery.

(viii) *Trip limits.* A vessel fishing in the Closed Area II Haddock SAP may not possess more than one-fifth of the cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section. The trip limit for haddock is specified under § 648.86(a).

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Haddock SAP, as specified in paragraph (b)(4)(v) of this section, may not fish, during the trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under a NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section may not fish with, or possess on board, any fishing gear other than a

haddock separator trawl or flounder trawl net.

(5) *Closed Area I Hook Gear SAP—(i) Eligibility.* Vessels issued a NE multispecies permit and fishing with hook gear are eligible to participate in the Closed Area I Hook Gear SAP, and may fish in Closed Area I Hook Gear Access Area, as described in paragraph (b)(5)(ii) of this section, for the period specified in paragraph (b)(5)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the area is not closed as specified under paragraph (b)(5)(vii) of this section. Copies of a chart depicting this area is available from the Regional Administrator upon request.

(ii) *The Closed Area I Hook Gear Access Area.* The Closed Area I Hook Gear Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR ACCESS AREA

Point	N. Lat.	W. Long.
CAI Hk 1	41°24.5'	69°18.5'
CAI Hk 2	41°25.5'	69°14.5'
CAI Hk 3	41°8'	68°59.5'
CAI Hk 4	41°7'	69°4'
CAI Hk 1	41°24.5'	69°18.5'

(iii) *Season.* Eligible vessels may fish in the Closed Area I Hook Gear SAP during the period September 16 through December 31, provided the area is not closed according to the provisions specified in paragraph (b)(5)(vi) of this section.

(iv) *VMS.* Eligible vessels intending to fish in the Closed Area I Hook Gear SAP must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* Prior to departure from port, a vessel intending to participate in the Closed Area I Hook Gear SAP must declare into that area through VMS, in accordance with instructions to be provided by the Regional Administrator.

(vi) *Cod trip limit.* A vessel fishing in the Closed Area I Hook Gear SAP may fish for, possess, and land up to 400 lb (181.4 kg) of cod per trip.

(vii) *Closure.* At any time during the fishing year, if the Regional Administrator projects that 35 mt of cod will be caught from within the Closed Area I Hook Gear Access Area, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, shall

close the Closed Area I Hook Gear Access Area.

(viii) *Observers.* Industry-funded observers are required on all trips declared into the Closed Area I Hook Gear SAP.

(6) *SNE/MA Winter Flounder SAP.* A vessel fishing for summer flounder west of 72° 30' W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under a NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder of board;

(iii) The vessel must not be fishing under a NE multispecies DAS; and

(iv) Fishing for, retention, and possession of NE multispecies other than winter flounder is prohibited.

15. Section 648.86 is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock—(1) NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under a NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under a NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments—(A) Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional

Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) *Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC.* At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*—(1) *GOM cod landing limit.*

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a

subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into

the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) *GB Hook Gear Cod Trip Limit Program.* A NE multispecies DAS vessel electing to fish exclusively with hook gear for the entire fishing year may land cod in the amounts specified in paragraphs (b)(2)(iii)(A) through (D) of this section, during the seasons specified, provided the vessel annually declares into the GB Hook Gear Cod Trip Limit Program as described in § 648.4(c)(2)(iii)(B). Vessels fishing under the GB Hook Gear Cod Trip Limit Program are prohibited from fishing north of the exemption line defined under paragraph (b)(4) of this section. Vessels may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b). Seasonal restrictions of this program are as follows:

(A) *July 1 through September 15:* Vessels are confined to landing NE multispecies on Sunday through Thursday only, and may land up to 2,000 lb (907.2 kg) of cod per DAS. No multispecies landings are allowed on Friday or Saturday.

(B) *September 16 through December 31:* Vessels may land up to 600 lb (272.2 kg) of cod per DAS, on any day of the week.

(C) *January 1 through March 31:* Vessels may land up to 2,000 lb (907.2 kg) of cod per DAS, on any day of the week.

(D) *April 1 through June 30:* Vessels are prohibited from fishing under a NE multispecies DAS.

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hauled weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the

mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to

transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved].

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder—(1) Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. Lat.	W. Long.
SYT13	(1)	70°00'
SYT12	41°20'	70°00'
SYT11	41°20'	69°50'
SYT10	41°10'	69°50'
SYT9	41°10'	69°30'
SYT8	41°00'	69°30'
SYT7	41°00'	68°50'
USCA1	42°20'	68°50'
USCA12	42°20'	67°40'
NYT1	43°50'	67°40'
NYT2	43°50'	66°50'
NYT3	44°20'	66°50'
NYT4	44°20'	67°00'

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA—Continued

Point	N. Lat.	W. Long.
NYT5	(2)	67°00'

¹ South facing shoreline of Cape Cod, MA.
² East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements: (A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods April through May, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is

subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. Lat.	W. Long.
SYT1	38°00'	(1)
SY2	38°00'	72°00'
SY3	39°00'	72°00'
SY4	39°00'	71°40'
SY5	39°50'	71°40'
USCA2	39°50'	68°50'
SYT7	41°00'	68°50'
SYT8	41°00'	69°30'
SYT9	41°10'	69°30'
SYT10	41°10'	69°50'
SYT11	41°20'	69°50'
SYT12	41°20'	70°00'
SYT13	(2)	70°00'

¹ East facing shoreline of Virginia.
² South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements: (A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess

on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

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

16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The framework adjustment must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC,

unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5-year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector may be subject to enforcement action. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless otherwise specified, all vessels fishing under an approved Sector must adhere to the following NE multispecies management measures: Permitting restrictions, reporting and recordkeeping requirements, gear restrictions designed to minimize habitat impacts, and year-round closed areas.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate

in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(2) *Operations Plan.* Each Sector must submit an Operations Plan to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The Operations Plan must contain at least the following elements:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope

of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) The sector and all participants in the sector would be jointly and severally liable for any violations of applicable Federal fishery regulations.

(c) *Approval of a Sector by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (c)(1) of this section have been determined to comply with the requirements of this section, NMFS will solicit public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator, in consultation with the Council, may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(d) *Approved Sector allocation proposals—(1) GB Cod Hook Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (e)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (d) of this section, and all Sector participants comply with the requirements of the Operations Plan and the requirements of this section.

(j) *GB Cod Hook Sector Area (GBCHSA).* The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. Lat.	W. Long.
HS 1	70°00'	(1)
HS 2	70°00'	42°20'
HS 3	67°40'	42°20'
HS 4	67°40'	41°10'
HS 5	67°10'	41°10'
HS 6	67°10'	41°00'
HS 7	67°00'	41°00'
HS 8	67°00'	40°50'
HS 9	66°50'	40°50'
HS 10	66°50'	40°40'
HS 11	66°40'	40°40'
HS 12	66°40'	40°30' (inter-section with EEZ)

GEORGES BANK COD HOOK SECTOR AREA—Continued

Point	N. Lat.	W. Long.
Follow the U.S. EEZ boundary south to HS13		
HS 13	66°44.3'	41°30' (inter-section with EEZ)
HS 14	66°45.5'	39°00'
HS 15	71°40'	39°00'
HS 16	71°40'	(2)

¹ The east facing shoreline of Cape Cod, MA
² The south facing shoreline of Rhode Island

(ii) *Eligibility.* All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation.* For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(1)(i) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements.* A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

17. Section 648.88 is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally.

(2) *Restrictions:*

(i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit.* A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit.* A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit.* A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

18. Section 648.89 is revised to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and

recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes (inches)
Cod	22 (58.4 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions*—(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

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

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to

the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

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

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the

participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.*

A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) Fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the fish are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

19. Section 648.90 is revised to read as follows:

§ 648.90 NE multispecies assessment and framework procedures and specifications.

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) *NE multispecies.* (1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to

continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH;

fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, *etc.*) and DAS baselines, *etc.*; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS

allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a

proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern

within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

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

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a

result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to

protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS.* The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55(d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate

time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

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

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

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

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

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

(d) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted

as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) Category C and D vessels that lease NE multispecies DAS. (A) A monkfish Category C or D vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

21. In Section 648.94, paragraph (f) is revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this

paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

* * * * *

22. In Section 648.322, paragraph (b)(6) is revised to read as follows:

§ 648.322 Skate possession and landing restrictions.

* * * * *

(b) * * *

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

* * * * *

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