DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100923469–1211–02]

RIN 0648–BA27

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

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

ACTION: Final rule.

SUMMARY: This final rule partially approves Framework Adjustment (FW) 45 to the NE Multispecies Fishery Management Plan (FMP) and implements the approved measures. FW 45 was developed by the New England Fishery Management Council (Council) to make adjustments necessary to ensure that conservation and management objectives of the FMP, including preventing overfishing, rebuilding overfished stocks, achieving optimum yield (OY), and minimizing the economic impact of management measures on affected vessels, are being met in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Specifically, this action revises the biological reference points and stock status for pollock, updates annual catch limits (ACLs) for several stocks for fishing years (FYs) 2011–2012, adjusts the rebuilding program for Georges Bank (GB) yellowtail flounder, increases scallop vessel access to the Great South Channel Exemption Area, approves five new sectors, modifies the existing dockside and at-sea monitoring requirements, revises several sector administrative provisions, establishes a Gulf of Maine (GOM) Cod Spawning Protection Area, and refines measures affecting the operations of NE multispecies vessels fishing with handgear. This action approves the Council's proposed FY 2011 U.S./Canada Management Area total allowable catch (TAC), acceptable biological catch (ABC), and ACL for GB yellowtail flounder, but replaces them with new catch limits for this stock through a parallel emergency action, included as part of this final rule, based on the International Fisheries Agreement Clarification Act (IFACA) that provides new flexibility in setting catch limits for this stock. In addition, this action disapproves a measure to delay fishing industry responsibility for paying for at-sea monitoring coverage costs in FY 2012. This action is necessary to ensure that the fishery is managed on the basis of the best available science, to comply with the ABC control rules adopted in Amendment 16 to the FMP, and to enhance the viability of the fishery.

DATES: This rule is effective at 0001 hr on May 1, 2011. The specification of the GB yellowtail flounder ABC and ACL and their distribution are effective May 1, 2011, through October 24, 2011.

ADDRESSES: Copies of FW 45, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the draft Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. A supplemental EA was also prepared for this action that outlines analysis in support of increased FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC, ABC, and ACL implemented by this action. Also, an errata sheet was prepared to augment the FW 45 EA's analysis of the impacts of the proposed action on distinct population segments of Atlantic sturgeon and loggerhead sea turtles. The draft IRFA prepared by the Council was expanded upon in the preamble to the proposed rule for this action. The Final Regulatory Flexibility Act (FRFA) analysis consists of the IRFA, public comments and responses, and the summary of impacts, and alternatives contained in the Classification section of the preamble of this final rule and applicable sections of Framework 45. Copies of the small entity compliance guide, the errata sheet for the FW 45 EA, and the supplemental EA associated with this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298. The FW 45 EA/RIR/IRFA, errata sheet, supplemental EA prepared for this action, and the relevant analyses for Amendment 16 and other recent actions are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov*. Copies of recent stock assessments for stocks managed by the FMP are also accessible via the Internet at *http://www.nefsc.noaa.gov/groundfish*.

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

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, *phone:* 978–281–9141, *fax:* 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 (April 27, 2004; 69 FR 22906) included the establishment of rebuilding programs for stocks managed by the FMP and measures necessary to end overfishing, rebuild overfished stocks, and help mitigate the economic impacts of effort reductions in the fishery to the extent practicable. In addition to revising existing days-at-sea (DAS) measures and substantially expanding sector measures, Amendment 16 (April 9, 2010; 75 FR 18262) established a process for specifying ABCs and ACLs and distributing available catch among components of the fishery that catch regulated species and ocean pout, and also specified accountability measures (AMs) necessary to prevent overfishing on these stocks and address overages of ACLs, as required by the Magnuson-Stevens Act. 16 U.S.C. 1801 *et seq.* In another action, FW 44 (April 9, 2010; 75 FR 18356), NMFS set the ACLs for FYs 2010 through 2012, and distributed such allocations among the various components of the fishery that catch these stocks.

The Council developed FW 45 as part of the established framework adjustment process to revise measures necessary to ensure consistency with the FMP in order to prevent overfishing and rebuild overfished stocks, while achieving OY in the fishery and minimizing economic impact to the extent practicable. Updated stock assessments for pollock and GB yellowtail flounder conducted in 2010 require the ACLs originally established under FW 44 pursuant to the ABC/ACL process established in Amendment 16 to be updated based upon revised stock status for pollock and a revised rebuilding program for GB yellowtail flounder. Further, following the transition to sectors under Amendment 16, the Council realized that several changes to existing measures are necessary to make the Amendment 16 measures work more effectively, as described below.

This rule also implements the parallel, but separate, emergency action that replaces the FW 45 FY 2011 GB yellowtail flounder TAC, ABC, and ACL based on the flexibility to increase catch limits provided by the IFACA, which President Obama signed into law on January 4, 2011. This Act provides authority to the Council and NMFS to increase the FY 2011 U.S./Canada Management Area TAC, ABC, and ACL for GB yellowtail flounder originally proposed by the Council under FW 45 and approved by this action. Specifically, the new statute recognizes the U.S./Canada Resource Sharing Understanding (Understanding) as an international agreement for the purposes of section 304(e)(4)(A)(ii) of the Magnuson-Stevens Act. Based on this recognition, the IFACA provides for additional flexibility regarding the range of catch levels that may be considered for GB yellowtail flounder, and allows for a higher yearly TAC and, therefore, ABC and ACL for this stock in FY 2011, provided that overfishing is ended immediately and that the fishing mortality rate (F) ensures rebuilding consistent with the Understanding. The justification for implementing these increases through emergency action, as provided for in section 305(c) of the Magnuson-Stevens Act, is explained in the preamble to the proposed rule and is not repeated here.

Following the passage of the IFACA, NMFS requested a special meeting of the Transboundary Management Guidance Committee (TMGC), a group that consists of NMFS, Council members and staff, and United States fishing industry representatives and their counterparts in the Department of Fisheries and Ocean of Canada (DFO) that makes recommendations of the yearly TACs for stocks managed by the Understanding, to reconsider the FY 2011 U.S./Canada Management Area TAC for GB yellowtail flounder pursuant to the IFACA and the Understanding. On February 9, 2011, the TMGC held a conference call to consider revising the FY 2011 TAC for this stock, and concluded that the original combined U.S./Canada Management Area TAC for GB yellowtail flounder (1,900 mt) could be increased to 2,650 mt for FY 2011.

A proposed rule to implement measures proposed in FW 45 was published on March 3, 2011 (76 FR 11858), with public comments accepted through March 18, 2011. That proposed rule included a detailed description of the proposed management measures, and other factors that influenced the development of this action. Specifically, that rule indicated that NMFS was considering disapproving the FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC adopted by the Council under FW 45, and implementing the increased TAC for this stock agreed to by the TMGC on February 9, 2011, through a parallel, but separate emergency action pursuant to section 305(c) of the Magnuson-Stevens Act. This parallel emergency action was proposed and justified in the same **Federal Register** notice as the proposed rule for this action, and is being promulgated as a final rule in this action as well. NMFS also published, at the same time as and in conjunction with the proposed rule for FW 45, a proposed rule to approve the FY 2011 operations plans and sector contracts for 19 sectors authorized by Amendment 16 and FW 45 (February 28, 2011; 76 FR 10852). Public comments on that rule were accepted through March 15, 2011. If approved, that rule would also specify the annual catch entitlements (ACEs, or sector quotas) for each stock allocated to each sector pursuant to Amendment 16 and sector rosters submitted to NMFS on December 1, 2010. This roster deadline was later extended to allow vessels involved in an ownership change to either join a sector or change its sector affiliation. A final rule implementing approved FY 2011 sector operations plans and ACE is expected to publish in conjunction with this final rule and become effective on May 1, 2011.

Disapproved Measures

Delay in Industry Responsibility for At-Sea Monitoring Coverage

In Amendment 16, the Council established monitoring measures to ensure that sector allocations of the ACLs for particular species could be accurately monitored. These measures included the requirement for sectors to develop and pay for an at-sea monitoring program beginning in FY 2012 that meet a minimum level of coverage based on the precision of bycatch estimates. In the development of these measures, the Council noted that "effective management of sectors requires that catch be accurately known." Thus, the at-sea monitoring provisions were developed to ensure that landings were accurately monitored for each sector.

To reduce monitoring costs to industry, the Council proposed to delay the requirement for the fishing industry to pay for at-sea monitoring coverage in FW 45 by one year. However, without industry funding, NMFS funding would be the sole source for any at-sea or observer monitoring coverage during FY 2012. During the deliberation of this measure, NMFS expressed continued concern about the Council's reliance upon NMFS funding to fully support a provision required by the FMP, particularly the specific at-sea monitoring coverage levels outlined for sector-developed at-sea monitoring programs in Amendment 16 for FY 2012. Because NMFS' funding is not guaranteed and depends upon Congressional appropriations, it is likely that funding levels will fluctuate on a yearly basis and may not be sufficient to fully fund the at-sea monitoring coverage requirements in the FMP. The NMFS budget for FY 2012 has yet to be finalized. Accordingly, NMFS remains uncertain whether sufficient funding will exist in FY 2012 to provide sufficient coverage to accurately monitor sector catch, as required under Amendment 16.

NMFS has determined, therefore, that the proposed delay of industry funding for at-sea monitoring coverage in FY 2012 is inconsistent with the FMP and the requirements of the Magnuson-Stevens Act. First, such a delay, without sufficient federal funding for at-sea monitoring, would likely fail to maintain conservation and management measures that are necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, as required by section 303(a)(1) of the Magnuson-Stevens Act. As noted above, Amendment 16 indicated that sufficient at-sea monitoring coverage is necessary to ensure that catch is accurately known. Without the requirement for the industry to fund at sea monitoring in the absence of sufficient federal funding, it would not likely be possible to obtain sufficient accurate catch information, including information on discards that is most reliably acquired through observer and at-sea monitoring coverage. As a result, it would not likely be possible to effectively estimate F, evaluate whether overfishing is occurring, and develop ACLs and other measures that would prevent overfishing and rebuild overfished stocks. Further, by reducing the likelihood that sufficient funding will be available to provide adequate at-sea monitoring coverage necessary to accurately monitor catch in the fishery, the disapproved measure would have undermined measures in Amendment 16 that helped to ensure that the standardized reporting methodology is capable of assessing the amount and type of bycatch occurring in the fishery, as required in section 303(a)(11). Accordingly, NMFS has disapproved

the measure to delay making the industry responsible for the costs associated with at-sea monitoring in FY 2012 to the extent that the federal funds are not available. NMFS intends to pay for at least some level of at-sea monitoring coverage in 2012, as it has done every year, based on the amount of available funding, and will work toward trying to secure the funds necessary to fully support such coverage in 2012. However, industry shall be responsible for that balance of at-sea monitoring coverage costs that are not covered by available Federal funding starting in FY 2012.

Approved Measures

The following summarizes the approved FW 45 measures, based on the order in which applicable provisions appear in the regulations at 50 CFR part 648. These measures build upon the provisions implemented by previous management actions, and are intended to either supplement or replace existing regulations, as described for each measure. This final rule also includes, through authority granted to NMFS by section 305(d) of the Magnuson-Stevens Act, revisions to regulations that are not specifically identified in FW 45, but that are necessary to implement measures to achieve, but not exceed the sub-ACLs available to the common pool fishery during FY 2011 and to correct errors in, or clarify, existing provisions, as described further below. A more detailed explanation of the rationale for each approved measure can be found in the proposed rule for this action.

Although NMFS proposed to disapprove the FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC, ABC, and ACL originally adopted by the Council under FW 45, NMFS ultimately decided not to disapprove these measures through this final rule, based upon further review of the FW 45 measures and applicable law. Disapproval of the TAC, ABC, and ACL proposed by FW 45 was not appropriate, because disapproval of a measure is only permissible if it is inconsistent with Magnuson-Stevens Act requirements and other applicable law. In the context of FW 45, these catch limits are consistent with the FMP and the Magnuson-Stevens Act requirements and other applicable law. These catch limits comply with the Magnuson-Stevens Act requirements to end overfishing and rebuild overfished stocks within 10 years. In addition, the FW 45 catch limits comply with the advice of the Council's Scientific and Statistical Committee in setting an ABC for this stock using the ABC control rule specified in the FMP and the best available scientific information. Further, the FW 45 ABC and ACL for GB yellowtail flounder incorporate both scientific and management uncertainty, consistent with the National Standard 1 guidelines. The fact that these proposed specifications for GB yellowtail flounder could be increased pursuant to IFACA does not undermine their approvability in FW 45. Moreover, if the emergency rule increasing the ACL expires before the Council has recommended a new ACL for FY 2012, the approved Framework 45 measure could go into place automatically, thereby avoiding a gap in TACs, ABCs and ACLs for this stock.

Accordingly, this final rule approves the FY 2011 GB yellowtail flounder TAC, ABC, and ACL in FW 45, but temporarily replaces them, through NMFS' emergency action authority provided in section 305(c) of the Magnuson-Stevens Act, with the revised TAC, ABC, and ACL described further below in Item 5 of this preamble.

This parallel emergency action increasing FW 45's specifications of FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC, ABC, and ACL is justifed by, and based on, new legal authority stemming from the January 4, 2011, enactment of the IFACA, as more fully explained in the preamble to the proposed rule for this action. Pursuant to the requirements of IFACA that any new catch levels still prevent overfishing and are consistent with the U.S. Canada Understanding, NMFS held a TMGC conference call. As noted in the preamble of the proposed rule for this action, based on this TMGC conference call, a report was generated that concluded that the higher FY 2011 TAC for this stock specified in the proposed rule for this action and described further in Item 5 of this preamble would still likely prevent overfishing (i.e., result in a F below F at maximum sustainable yield (F_{MSY}, or F_{ref}, as listed in the Understanding)) and result in a 5 percent increase in median biomass from 2011 to 2012. Therefore, the increased TAC is consistent with the provisions of the IFACA and National Standards 1 and 8 of the Magnuson-Stevens Act because it prevents overfishing, is consistent with the F outlined in the Understanding, continues to rebuild this overfished stock, optimizes OY, and minimizes adverse economic impacts to fishing communities through higher catch limits and increased revenues, without compromising conservation objectives of the FMP and applicable law. Further, consistent with National Standard 9 of the Magnuson-Stevens Act, an increased TAC reduces bycatch and associated bycatch mortality in the fishery by increasing the amount of GB yellowtail flounder that can be caught during FY 2011 and minimizing incentives to discard this stock and others caught concurrently. However, this increase in catch limits for GB yellowtail flounder is only valid for the duration of the emergency and one extension (i.e., FY 2011). To justify comparable increases in catch limits for future fishing years, the Council must adjust the FMP to establish a new rebuilding program and timeline consistent with IFACA as more fully discussed below in item 2.

1. Status Determination Criteria for Pollock

Based upon an updated peer-reviewed benchmark stock assessment conducted in July 2010 (Stock Assessment Workshop, or SAW, 50), pollock is not overfished or subject to overfishing. Thus, this species no longer requires the rebuilding program established in Amendment 16. As noted in the preamble of the proposed rule for this action, NMFS implemented an emergency action on July 20, 2010 (75 FR 41996) to incorporate the results of this assessment and update the status determination criteria and the associated FY 2010 ABC and ACL for this species. These increased catch limits were renewed through July 17, 2011, or until replaced by another action through a notice published on December 1, 2010 (75 FR 74661). Therefore, formally integrating the results of the 2010 pollock stock assessment, updated status determination criteria, ABC, and ACLs for this species into the FMP through this final rule is necessary to replace the measures implemented by the emergency action that would expire in July 2011. Table 1 lists the revised status determination criteria, with numerical estimates of these parameters listed in Table 2. The revised biomass target parameter for pollock, where spawning stock biomass is at maximum sustainable yield (SSB*MSY*) or its proxy, is SSB at 40 percent maximum spawning potential (MSP). The maximum F threshold is the F*MSY* proxy, or F*40%MSP*.

TABLE 1—DESCRIPTION OF THE UPDATED POLLOCK STATUS DETERMINATION CRITERIA

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

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

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

2. Rebuilding Program for GB Yellowtail Flounder

Recent estimates of the status of GB yellowtail flounder conducted by the Transboundary Resource Assessment Committee (TRAC) in July 2010 indicate that overfishing is not occurring, but that the stock is still in an overfished condition (TRAC 2010/05). This report concludes that it is not possible to rebuild this stock by 2014, the end of the eight-year rebuilding period originally adopted in FW 42 (October 23, 2006; 71 FR 62156), with a 75 percent probability of success even at F = 0. Accordingly, this action revises the GB yellowtail flounder rebuilding program to rebuild the stock by 2016, with a 50-percent probability of success. This revision extends the rebuilding program for this stock out to a 10-year rebuilding period and lowers the probability of success from 75 percent to 50 percent in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

IFACA allows the Secretary and the Council to extend the rebuilding period for stocks, or portions of stocks, managed by the Understanding. However, because IFACA was enacted after FW 45 was developed and approved by the Council, the extension of the rebuilding period for GB yellowtail flounder was restricted to 10 years. To maintain increases in GB yellowtail flounder catch comparable to the emergency increase for FY 11 after the emergency increase for FY 2011 expires, the Council would need to consider revising the FMP's rebuilding program and timeline for this stock consistent with the flexibility provided by IFACA. This would allow the Council to further mitigate the adverse economic impacts of efforts to rebuild this stock beyond that which was considered by the Council in the development of the revised GB yellowtail flounder rebuilding program included in FW 45. Therefore, NMFS recommends that the Council reevaluate the GB yellowtail flounder rebuilding program approved under FW 45, and consider extending the rebuilding program for this stock consistent with IFACA and implementing, if justified, the higher catch limits for this stock for future FYs.

3. Overfishing Levels and ABCs for Particular Stocks

This action revises the OFLs and ABCs of particular stocks, including GB cod, GB haddock, GB yellowtail flounder, and pollock for FYs 2011 and 2012. Revisions to the OFLs and ABCs for pollock and GB yellowtail flounder are based upon the updated assessments and revised rebuilding strategies for these stocks, as described in Items 1 and 2 of this preamble, respectively, and on the flexibility afforded by IFACA for GB yellowtail flounder, as described in Item 5 of this preamble. Revisions to the OFLs and ABCs for the GB cod and GB haddock stocks are based upon updated TRAC assessments of the eastern components of the stock. It is anticipated that the FY 2012 values of the ABCs for GB cod, GB haddock, and GB yellowtail flounder will be revised during 2011, based on new transboundary stock assessments conducted by the TRAC, and will likely be specified again in conjunction with the FY 2012 U.S./Canada Management Area TAC levels, as further described in Item 5 of this preamble. Table 3 contains the OFLs and ABCs for FYs 2011 and 2012 approved under FW 45, with the exception of GB yellowtail flounder.

For GB yellowtail flounder, the FY 2011 U.S. ABC shown in Table 3 represents a revised shared U.S./Canada Management Area TAC based upon, and consistent with, determinations and decisions about this stock by the TMGC, pursuant to the Understanding and the flexibility afforded by the IFACA. Because the U.S./Canada Management Area represents the entire stock area for GB yellowtail flounder, the shared U.S./Canada Management Area TAC for this stock that is available to the U.S. fishery also represents the ABC for this stock. The revised ABC agreed to by the TMGC is consistent with the provisions of IFACA and the harvest strategy of the Understanding that requires overfishing to be prevented and the facilitation of the rebuilding of overfished stocks. NMFS is implementing the revised FY 2011 ABC for this stock as a separate, but parallel, action to FW 45 pursuant to its emergency action authority specified in section 305(c) of the Magnuson-Stevens Act, as further described in the proposed rule for this action. As noted above, the duration of this proposed revision to the GB yellowtail flounder ABC is limited by the Magnuson-Stevens Act to 180 days (i.e., through October 24, 2011), but may be extended to make the revised ABC and ACL effective for the duration of FY 2011 (through April 30, 2012).

TABLE 3—REVISIONS TO OVERFISHING LEVELS AND ACCEPTABLE BIOLOGICAL CATCHES

Stock	OFL (mt, live weight)		U.S. ABC (mt, live weight)	
	FY 2011	FY 2012	FY 2011	FY 2012
GB cod	7,311	*8,090	4,766	*5,364
GB haddock	59,948	*51,150	34,244	*29,016
GB yellowtail flounder:				
Proposed in FW 45	3,495	*4,335	**1,458	*1,222
Emergency Action	3,495	*4,335	1,099	*1,222
White hake	4,805	5,306	3,295	3,638
Pollock	21,853	19,887	16,900	15,400

*Preliminary estimates that may be revised in 2012 based on TRAC and TMGC considerations.
**This value represents the flexibility afforded by IFACA and described further in Item 5 of this preamble that supersedes the 1,099 mt FY 2011 GB yellowtail flounder U.S. ABC originally adopted by the Council in FW 45.

4. Revisions to ACLs

Similar to adjustments in the OFLs and ABCs described in Item 3 of this preamble, this action revises the ACLs for several stocks, including GB cod, GB haddock, GB yellowtail flounder, white hake, and pollock. Pursuant to Magnuson-Stevens Act requirements and the process specified in Amendment 16, the ACLs adopted in this action are lower than the ABCs listed above for these stocks to account for management uncertainty, as detailed in Appendix II of FW 45 (*see* **ADDRESSES**) and summarized in the proposed rule for this action. For most stocks and components of the fishery (ABC components), the default adjustment (reduction) to the catch level for a fishery component to account for management uncertainty was 5 percent. For stocks with less management uncertainty, the adjustment was 3 percent, and for those stocks or components with more management uncertainty, the adjustment was 7 percent. The total ACL for a stock represents the catch limit for a particular FY, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, state-waters catch, and non-groundfish fisheries).

The allocation of yellowtail flounder to the scallop fishery is not changed by this action. Thus, the SNE/MA yellowtail flounder allocations to the scallop fishery listed in Tables 5 and 6 are the same amounts implemented under FW 44, with the allocation of SNE/MA yellowtail flounder remaining at 82 and 127 mt, live weight, during FYs 2011 and 2012, respectively; the GB yellowtail flounder allocations to the scallop fishery listed in Tables 11 and 12 remain at 200.8 and 307.5 mt, live weight, during FYs 2011 and 2012, respectively. No specific allocation of Cape Cod (CC)/GOM yellowtail flounder is made to the scallop fishery, because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock will be considered part of the "other sub-component" of the ACL.

Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas in the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the ACL components, "total TAC" means "total ACL." For FY 2011, this means 10 percent of 1,416 mt (141.6 mt) for GB yellowtail flounder, as listed in Table 11.

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

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

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

[Mt, live weight]

Stock	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
GB cod	4,540	4,301	0	0	48	191

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

[Mt, live weight]

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

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

[Mt, live weight]

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

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

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

[Mt, live weight]

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

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

[Mt, live weight]

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

The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel/permit enrollment in all sectors and the cumulative Potential Sector Contributions (PSCs) associated with those sectors. Table 9 lists the preliminary distribution of the groundfish sub-ACL between common pool and sectors based on rosters submitted to NMFS as of December 1, 2010. FY 2011 sector rosters will not be finalized until May 1, 2011, because the owners of individual permits signed up to participate in sectors have until April 30, 2011, to drop out of a sector and fish in the common pool and can either join a sector or change its sector affiliation based on an ownership change that occurred after December 1, 2011. Therefore, it is possible that the FY 2011 sector sub-ACL listed in Table 9 and the final rule to approve the FY 2011 sector operations plans will be changed at a later date. Based on the final sector rosters, NMFS intends to publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change. In addition, it is almost certain that all of the FY 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2012 due to annual changes to the sector rosters and changes to the ABCs for GB cod, GB haddock, and GB yellowtail flounder based on the specification of Canadian TACs for these stocks, as described above in Item 5 of this preamble.

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

[Mt, live weight]*

Stock	Groundfish sub-ACL		Common pool sub-ACL		Sector sub-ACL	
	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
GB cod	4,301	4,841	99	111	4,202	4,730
GB haddock	30,840	26,132	129	109	30,711	26,023
GB yellowtail flounder:						

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

[Mt, live weight]*

Stock	Groundfish sub-ACL		Common pool sub-ACL		Sector sub-ACL	
	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
Proposed in FW 45**	790.7	686.3	23.7	20.6	767	665.7
Emergency Action***	1,142	1,142	17.4	17.4	1,124.6	1,124.6
White hake	2,974	3,283	35	39	2,939	3,244
Pollock	13,952	12,612	138	125	13,814	12,487

* Preliminary estimate that may be revised based on updated sector rosters and TRAC and TMGC considerations.
** These values represent an increase from the ACLs adopted by the Council in FW 45, as described further in Item 5 of this preamble.
*** These values represent an estimate of the ACLs adopted by the Council in FW 45 based upon preliminary sector roster information and do not reflect updated rosters submitted to NMFS.

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

Annual TACs for transboundary stocks jointly managed with Canada as part of the Understanding (Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder) are determined through a process involving the Council, the TMGC, and the U.S./Canada Steering Committee. The recommended FY 2011 TACs for Eastern GB cod and Eastern GB haddock were based on the most recent stock assessments (TRAC Status Reports for 2010), and the fishing mortality strategy shared by NMFS and the DFO. The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod and Eastern GB haddock for FY 2011 is 1,050 mt and 22,000 mt, respectively. The annual allocation shares between countries for FY 2011 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Applying this formula results in an allocation of 19 percent of the shared Eastern GB cod TAC to the U.S. and 81 percent for Canada, or a FY 2011 quota of 200 mt for the U.S. and 850 mt for Canada. Applying the same formula for Eastern GB haddock results in an allocation of 43 percent of the shared TAC to the U.S. and 57 percent to Canada, or a FY 2011 quota of 9,640 mt for the U.S. and 12,540 mt for Canada.

For GB yellowtail flounder, the TMGC originally recommended, the Council adopted, and NMFS approved under FW 45, a combined U.S./Canada Management Area TAC of 1,900 mt, resulting in a FY 2011 quota of 1,045 mt for the U.S. and an 855 mt quota for Canada. However, the TMGC agreed to a revised shared GB yellowtail flounder TAC for FY 2011 of 2,650 mt that is being implemented through a parallel emergency action, based on the new flexibility provided by IFACA for FY 2011, as discussed above in this preamble.

Table 10 lists the FY 2011 U.S./Canada Management Area TACs for all stocks managed by the Understanding, with the FY 2011 GB yellowtail flounder TAC reflecting the increased TAC recommended by the TMGC following its February 9, 2011, conference call.

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

[In parentheses]

		Eastern GB cod	Eastern GB haddock	GB Yellowtail flounder
Proposed in FW 45	Total Shared TAC	1,050	22,000	1,900
	U.S. TAC	200 (19%)	9,640 (43%)	1,045 (55%)
	Canada TAC	850 (81%)	12,540 (57%)	855 (45%)
Emergency Action	Total Shared TAC	1,050	22,000	2,650
	U.S. TAC	200 (19%)	9,640 (43%)	1,458 (55%)
	Canada TAC	850 (81%)	12,540 (57%)	1,193 (45%)

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

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

[Mt, live weight]

Action	Total ACL*	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Proposed in FW 45	1,045	790.7	200.8	0	0	53.5

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

[Mt, live weight]

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

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

[Mt, live weight]

Action	Total ACL	Groundfish sub-ACL	Scallop fishery	Mid-water trawl herring fishery	State waters ACL sub-component	Other ACL sub-components
Proposed in FW 45	1,045	686.3	307.5	0	0	51.2
Emergency Action	1,426	1,046	307.5	0	0	77

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

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

6. Incidental Catch TACs and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B DAS Program), in order to limit the amount of catch of these stocks caught under such programs. The incidental catch TACs apply to catch (landings and discards) on trips that end on a Category B DAS (either Regular or Reserve B DAS). Catch of such stocks on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward incidental catch TACs, but rather the overall common pool sub-ACL for that stock. Because pollock is no longer considered overfished or subject to overfishing, this action removes this species from the list of stocks of concern, and eliminates the incidental catch TAC for this stock.

This final rule specifies incidental catch TACs applicable to the NE multispecies special management programs for FYs 2011 and 2012, based on the common pool sub-ACLs listed in Item 4 of this preamble (see Tables 13–15). As noted above, FY 2011 sector rosters will not be finalized until May 1, 2011. Therefore, the amount of the common pool sub-ACL may change based upon changes to the number of vessels participating in the common pool during FY 2011. Based on the final rosters, NMFS will publish a rule in early May 2011 to modify these sub-ACLs, and notify the public if these numbers change.

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

[Mt, live weight]

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

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

[Mt, live weight]

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

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

[Mt, live weight]

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

In addition to the incidental catch TAC for GB cod, overall fishing effort by both common pool and sector vessels in the Closed Area I Hook Gear Haddock SAP is also controlled by an overall TAC for GB haddock, the target species for this SAP. For FY 2011, the overall haddock TAC for the Closed Area I Hook Gear Haddock SAP applicable to both common pool and sector vessels participating in this SAP is 3157.5 mt (6,961,096 lb or 3,157,553 kg) based on TACs specified in FW 44. Once this overall haddock TAC is caught, the Closed Area I Hook Gear Haddock SAP will be closed to all groundfish vessels for the remainder of FY 2011.

7. Great South Channel Exemption Area

This action eliminates the yellowtail flounder spawning closure areas within the Great South Channel Exemption Area, and allows all scallop vessels, including limited access general category (LAGC) scallop vessels, to fish within this area throughout the entire year in accordance with applicable scallop regulations. Since the August 31, 2006, rulemaking (71 FR 51779) that created the Great South Channel Exemption Area and the associated yellowtail flounder spawning closure areas, the general category scallop permits have become limited access permits subject to an individual fishing quota (IFQ) that limit the amount of scallops and, therefore, regulated species and ocean pout, particularly yellowtail flounder, caught by these vessels. Thus, the main justification for the spawning protection areas for LAGC scallop vessels is no longer relevant.

8. GOM Cod Spawning Protection Area

To protect spawning aggregations of GOM cod and prevent fishing from interfering with spawning activity, this final rule creates the GOM Cod Spawning Protection Area. This area is rectangular in shape and is located just south of the Isle of Shoals off the New Hampshire coastline, with its long axis oriented in a northwest to southeast direction. All commercial fishing vessels using gear capable of catching groundfish are prohibited from fishing within the proposed area from June 1 through June 30 of each year, while all recreational vessels (private and charter/party vessels) are prohibited from using gear capable of catching groundfish in the area from April 1 through June 30 of each year. For commercial vessels, only vessels fishing with "exempted gear," as defined in the current regulations, are allowed into this area during the closure periods. Exempted gear includes pelagic hook and line gear, pelagic longline gear, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls with a properly configured grate, and surfclam and ocean quahog dredges. Therefore, because midwater trawl gear and purse seine gear is not listed as exempted gear, vessels fishing with these gear types may not fish in this area during June of each year. Only pelagic hook-and-line gear, as defined in the current regulations, is allowed to be used in the area by recreational vessels. The catch or possession of any regulated species or ocean pout by vessels using the exempted gear from April 1 through June 30 of each year is prohibited. Both recreational and commercial vessels are allowed to transit the proposed area, provided all gear is stowed according to existing regulations.

9. Handgear A and B Measures

Cod Trip Limit

Through this final rule, the cod trip limits applicable to NE multispecies Handgear A (limited access) and B (open access) vessels are revised to be specific to either the GOM or GB cod stock, including any adjustments to such trip limits. Handgear A vessels are subject to an initial cod limit of 300 lb (135 kg) per trip for both the GOM and GB cod stocks, until NMFS adjusts the cod trip limit applicable to common pool vessels fishing under a NE multispecies DAS for either of these stocks below 300 lb (135 kg) per trip. Once either the GOM or the GB cod trip limit for common pool DAS vessels is reduced below 300 lb (135 kg) per DAS, the applicable cod trip limit for Handgear A vessels will be adjusted to be the same as the daily limit for common pool DAS vessels. For example, if only the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area (i.e., the area specified for the GOM cod trip limit) would also be reduced to 250 lb (113.4 kg) per trip; however, under this example, the cod trip limit for a Handgear A vessel fishing for GB cod south of the GOM Regulated Mesh Area (RMA) (the GB cod stock area is considered the GB, SNE, and MA RMAs) would be maintained at 300 lb (135 kg) per trip.

The initial Handgear B cod limit for both the GOM and GB stocks is maintained at 75 lb (90.7 kg) per trip, but will be adjusted proportional (rounded up to the nearest 25 lb (11.4 kg)) to any changes in the daily GOM or GB cod trip limits for DAS vessels in the future, as necessary. For example, if the GOM cod trip limit was reduced by 50 percent from 800 lb (362.9 kg) per DAS to 400 lb (181.4 kg) per DAS, then the cod trip limit for a Handgear B vessel fishing in the GOM Regulated Mesh Area would also be reduced by 50 percent to 37.5 lb (17 kg), rounded to the nearest 25 lb (11.3 kg), or 50 lb (22.7 kg) per trip. In this example, the cod trip limit for a Handgear B vessel fishing for GB cod south of the GOM RMA would be maintained at 75 lb (90.7 kg) per trip.

To fish for GB cod south of the GOM Regulated Mesh Area for a particular period of time, the owner or operator of a Handgear A or B vessel must obtain and retain on board a paper letter of authorization (LOA) from the Regional Administrator (RA) to fish, unless otherwise noted below. The minimum participation period for this LOA is 7 consecutive days to minimize the administrative burden of this provision, consistent with existing practice for LOAs issued to DAS vessels. Once a vessel owner or operator has obtained a paper LOA to fish south of the GOM RMA, the owner or operator may not fish in the GOM RMA for the duration of the LOA. This requirement is necessary to more effectively enforce this measure. Alternatively, the owner or operator of a Handgear A permitted vessel, who does not obtain the paper LOA, but elects or is required to have a VMS may fish for GB cod south of the GOM RMA by declaring an intent to fish for GB cod south of the GOM RMA prior to each trip via a vessel monitoring system (VMS) (i.e., when fishing in multiple broad stock areas on the same trip). If a vessel declares via VMS instead of obtaining a paper LOA, this VMS declaration is required on a trip-by-trip basis, and no minimum participation period is necessary. These declarations enable at-sea enforcement personnel to identify the applicable cod trip limits and effectively enforce the appropriate regulations during boarding operations.

Access to Seasonal Closure Areas

To ensure that handgear-permitted vessels are provided an opportunity to fish during at least the early part of the FY, this action exempts both Handgear A and B vessels from the GB Seasonal Closure Area defined in § 648.81(g), and allows Handgear A vessels to also fish in the Sector Rolling Closure Areas defined in § 648.81(f)(2)(vi)(A) through (C), and depicted in section 4.3.3 of FW 45. These latter areas represent smaller portions of the GOM Rolling Closure Areas, and enable Handgear A vessels fishing in the GOM a greater chance at catching some of the available sub-ACLs for cod and haddock during a particular FY before such trip limits are reduced to prevent the ACL from being exceeded.

10. Dockside/Roving Monitor Requirements

Delay in Requirement for Industry To Fund Dockside/Roving Monitors

To address concerns regarding the ability of the fishing industry to pay for the costs of a dockside/roving monitoring program, as originally implemented under Amendment 16 in 2010, this action delays the industry's responsibility for paying for dockside/roving monitoring coverage until FY 2013. None of the costs associated with dockside/roving monitors during FYs 2011 and 2012 will be imposed upon the owner or operator of a NE multispecies vessel. NMFS will attempt to provide sufficient dockside/roving monitoring coverage to observe the offloads of up to 100 percent of sector trips and, starting in FY 2012, common pool trips as well, if funds are available. If funds are not available for monitoring 100 percent of commercial groundfish trips, NMFS must first provide dockside/roving monitor coverage to trips that do not have an observer, at-sea monitor, or an approved electronic monitoring program. To enable dockside/roving monitors to more easily identify trips that are assigned an observer or at-sea monitor, vessels must declare whether an observer or at-sea monitor has been assigned to that trip via the trip-start hail report. For FY 2011, NMFS estimates that it has sufficient funding to cover approximately 100 percent of sector trips that are not assigned an observer or at-sea monitor. NMFS will specify coverage levels for FY 2012 based upon available NMFS funding.

Dockside/Roving Monitoring Program Requirements Beginning in FY 2013

Starting in 2013, sectors must develop and pay for a dockside/roving monitoring program as part of their annual operations plans, common pool vessels will be subject to dockside/roving monitoring upon the transition to a trimester TAC AM, vessels must comply with the trip-start and trip-end hail reporting requirements associated with at-sea and dockside monitoring programs, and dockside/roving monitoring service providers must observe the landings of 20 percent of all common pool and sector trips in a statistically random manner. To facilitate administration and compliance with the dockside/roving monitoring operational standards specified at § 648.87(b)(5), this action revises the regulations at § 648.82(n)(2)(iv) to clearly state that the owner or operator of each common pool vessel subject to dockside/roving monitoring requirements must contract for such services with a service provider approved by NMFS by 2013. The need for vessel owners to contract with a specific service provider is necessary in the absence of any NMFS-controlled dockside/roving monitoring program in which NMFS can act as a mediator between the fishing industry and approved service providers. Further, because each individual permit is considered a separate legal entity, NMFS is not inclined to mandate that common pool vessels use a particular service provider in a particular FY in order to increase competition among service providers and potentially

decrease costs to the affected vessel owners. Groups of vessel owners, however, may elect to contract with the same service provider to help lower the costs associated with such requirements.

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

Vessels issued a limited access NE multispecies Handgear A, Handgear B, and Small Vessel category permit are exempt from any dockside/roving monitoring requirements when operating in the common pool. Given this exemption, it is not possible for dockside/roving monitor service providers to provide statistically random coverage of all common pool trips, as required under Amendment 16, because not all common pool trips are subject to dockside/roving monitoring requirements. Therefore, the dockside/roving monitoring coverage regulations have been revised to accommodate this exemption, and specify that service providers must provide random coverage of all trips subject to the dockside/roving monitoring requirements.

Trip-End Hail Requirement

To facilitate dockside intercepts by both state and Federal enforcement personnel, beginning in FY 2011, all sector vessels and common pool vessels fishing under a DAS must submit a trip-end hail report via VMS prior to returning to port on each trip. Vessels subject to dockside monitoring (i.e., sector vessels starting in FY 2010 and common pool vessels starting in FY 2012) are required to submit both a trip-start and a trip-end hail report for that trip, consistent with current practice. The trip-end hail report must contain the same information as the trip-end hail report implemented by Amendment 16.

Inspection of Fish Holds

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

11. Sector Measures

Distribution of the PSC From Cancelled Permits

As described in Amendment 16, a PSC represents an individual permit's portion of the total historical landings of each regulated species or ocean pout stock during FYs 1996–2006 by all permits, including those in confirmation of permit history (CPH), that were eligible to participate in the NE multispecies fishery as of May 1, 2008. If a permit had been cancelled after May 1, 2008, its historic landings between FYs 1996–2006 have still been used to calculate the total landings by eligible permits.

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

Beginning in FY 2011, the PSC of all valid permits, including those held in CPH, that are eligible to participate in the fishery must be recalculated as of June 1 of each year, unless another date is specified by the RA, to redistribute the landings histories of cancelled permits to all remaining eligible permits. To do so, the PSCs for each stock calculated pursuant to the process specified in Amendment 16 must be multiplied by a factor of "1/PSC of the remaining permits." These recalculated PSCs shall then be used to calculate ACEs for each sector during the following FY. For FY 2012 and beyond, a PSC that is calculated on June 1, shall affect sector ACE for the FY that begins on May 1, of the following year.

This provision means that each permit's PSC may increase on a yearly basis to reflect its higher portion of the historic landings of each regulated species and ocean pout stock due to the removal of the landings histories of any permits that were cancelled by June 1 of each year. This will ensure that the yearly PSC calculations reflect eligible permits at the beginning of each FY (May 1), and allow NMFS time to process such renewals. On or about July 1 of each year, NMFS will inform permit holders of updated PSCs through a permit holder letter sent to owners of a valid limited access NE multispecies permit or CPH.

The FW 45 proposed rule specified that the RA would recalculate FY 2011 PSCs for each permit using valid permits as of May 1, 2011, to update PSCs for FY 2011 and reflect permits cancelled through FY 2010. However, to ensure that permit owners had sufficient information to make informed decisions about whether or not to participate in sectors before the start of FY 2011 on May 1, 2011, the RA recalculated FY 2011 PSCs for each permit using valid permits as of February 11, 2011, to reflect permits cancelled through that date. This information was sent out to permit holders on February 11, 2011, to facilitate their decision to join a sector based on measures proposed in FW 45. The RA will recalculate PSCs for each permit as of June 1, 2011, to account for permits cancelled through FY 2010 and determine the PSCs that will be used to calculate FY 2012 sector ACE for each stock, consistent with the procedures outlined above.

Operations Plan Requirements

Amendment 16 specified that sectors must submit final rosters, proposed operations plans, including rosters and associated environmental analyses by September 1, so that NMFS could review such documents as part of the process to approve sector operations for the following FY. Based on industry input, this action increases the flexibility of these deadlines by requiring sectors to submit preliminary rosters and proposed operations plans to NMFS by September 1, and final rosters by December 1 of each year. Following further industry input submitted during the public comment period for this action and ongoing discussions with industry participants, NMFS will allow for a limited opportunity for additional changes to FY 2011 sector rosters to accommodate changes in vessel ownership that occurred after the submission of final sector rosters on

December 1, 2010. This window to reopen FY 2011 sector rosters began on March 24, 2011, and will end on April 30, 2011. A sector is not required to accept additional changes to sector rosters during this window; each sector may decide whether or not a member may leave the sector, and whether or not to accept new members. Reopening the rosters is intended to provide additional flexibility to new permit holders without disrupting the organization of sectors. An announcement of this limited opportunity to reopen sector rosters was sent out to all sector managers on March 16, 2011, and to all limited access NE multispecies permit holders on March 23, 2011. In future years, a window for additional sector roster changes would begin with the publication of proposed measures for the common pool for the following year and end on April 30, and would be limited to ownership changes occurring after the December 1 roster deadline. These measures are designed to provide NMFS with the information it needs to review or conduct environmental analyses associated with draft sector operations plans, while allowing vessel owners additional time to decide whether to participate in sectors, or which sector to join during the following FY.

Sector Exemptions

To reduce dockside/roving monitoring costs, especially due to infrequent landings of regulated species in more southerly ports, this action allows sectors to request an exemption from the dockside/roving monitoring requirements implemented under Amendment 16. Therefore, because Amendment 16 specified that sectors cannot request an exemption from the existing reporting requirements, this rule removes dockside/roving monitoring requirements from the list of reporting requirements at § 648.87(c)(2)(i). This enables sectors to request exemptions, or at least partial exemptions, from the dockside/roving monitoring requirements to minimize monitoring costs for sector trips targeting monkfish in southern waters, for example.

12. Authorization of New Sectors

This final rule authorizes the creation of five new sectors, include the State of Maine Permit Banking Sector, the State of Rhode Island Permit Bank Sector, the State of New Hampshire Permit Bank Sector, the Commonwealth of Massachusetts Permit Bank Sector, and the Sustainable Harvest Sector III, as described in Section 4.2.1 of the FW 45 EA. All operational aspects of these sectors are specified in their annual operations plans, as submitted to NMFS. Details of these operations plans were published in a parallel rulemaking, as noted above. Vessels/permits participating in these sectors must comply with the existing sector provisions, unless otherwise exempted by a future action.

13. Measures for FY 2011 Under RA Authority

The FMP provides authority for the RA to implement certain types of inseason management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs, as described further below. Although these measures were not proposed by the Council for implementation through FW 45, this final rule makes the public aware of measures implemented for FY 2011 by the RA. Once effective, the RA may revise these measures, as necessary, to ensure that the objectives of the FMP, including preventing the sub-ACLs from being exceeded, are met during FY 2011. Any necessary adjustments will be implemented through an inseason action consistent with the Administrative Procedures Act and communicated to the affected public.

Initial FY 2011 Common Pool Trip Limits

The current regulations at § 648.86(o) allow the RA to revise trip limits applicable to common pool vessels if the RA projects that the catch of any NE multispecies stock allocated to common pool vessels will exceed the pertinent sub-ACL in order to prevent exceeding the common pool sub-ACL. Table 16 summarizes the initial FY 2011 common pool trip limits as adjusted by the RA. These initial trip limits were developed after considering changes to the FY 2011 common pool sub-ACLs and sector rosters, catch rates of these stocks during FY 2010, price of fish during FY 2010, bycatch considerations, the potential for differential DAS counting during FY 2011, public comment on proposed trip limits, and other available information. Although the slow catch rate of SNE/MA yellowtail flounder by common pool vessels in FY 2010 suggests that the trip limit could be increased substantially to increase the catch of this stock in FY 2011, due to concerns that a potential increased SNE/MA yellowtail flounder trip limit would increase the bycatch and discard of SNE/MA winter flounder (a stock that cannot be possessed by any vessel to help ensure this stock rebuilds according to the approved rebuilding program), only a small increase in the trip limit for this stock is implemented at this time.

TABLE 16—INITIAL FY 2011 TRIP LIMITS FOR THE COMMON POOL

Stock	Initial FY 2011 limit
GOM cod	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	1,000 lb (453.6 kg) per trip.
GB haddock	10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	250 lb (113.4 kg) per trip.
GB winter flounder	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder	500 lb (226.8 kg) per DAS, up to 2,000 (907.2 kg) per trip.
GB yellowtail flounder	1,500 (680.4 kg) per trip.
SNE/MA yellowtail flounder	500 lb (226.8 kg), up to 2,000 (907.2 kg) per trip.
American plaice	unrestricted.
Pollock	unrestricted.
Witch flounder	250 lb (113.4 kg) per trip.
White hake	1,500 lb (680.4 kg) per trip.
Redfish	unrestricted.

Differential DAS Counting for Common Pool Vessels

Following the implementation of Amendment 16 measures, the FMP requires that the RA implement a differential DAS counting rate for FY 2011 if the catch of the relevant stocks by common pool vessels is projected to exceed the pertinent common pool groundfish sub-ACLs during FY 2010. The differential DAS counting factor that will apply to common pool vessels is based on the proportion of the sub-ACL projected to be caught by common pool vessels during FY 2010, rounded to the nearest tenth. If the RA projects that common pool catch will exceed the sub-ACL for multiple regulated species within a particular area, then the most restrictive differential DAS counting factor will apply.

Catch information available through March 19, 2011, indicates that common pool catch of witch flounder during FY 2010 has exceeded the witch flounder sub-ACL by 32 percent. As defined at § 648.82(n)(1)(i), any differential DAS counting rate to address an overage of the witch flounder sub-ACL shall be applied to Category A DAS used in the Offshore GOM Differential DAS Area, the Offshore GB Differential DAS Area, and the Inshore GB Differential DAS Area. Therefore, beginning on May 1, 2011, any Category A DAS used by common pool vessels in the Offshore GOM Differential DAS Area, the Offshore GB Differential DAS Area, and the Inshore GB Differential DAS Area shall be charged at a rate of 1.3:1, or 31 hours for each 24 hr fished (i.e., 1.3 times 24-hr DAS counting), for the time spent fishing in the applicable DAS counting areas specified above. Differential DAS shall accrue based upon the first VMS position into the applicable differential DAS counting area, and the first VMS position outside of the applicable differential DAS counting area. NMFS provides an estimate of the status of the common pool catch throughout the year at the following address: *http://www.nero.noaa.gov/ro/fso/reports/common_pool/Common_Pool_Summary.html*.

Delayed Opening of the Eastern U.S./Canada Area

The regulations at § 648.85(a)(3)(iv)(D) provide the RA the authority to adjust various measures in order to optimize the harvest of the transboundary stocks managed under the Understanding. Pursuant to this authority, NMFS is postponing the opening of the Eastern U.S./Canada Area for common pool vessels fishing with trawl gear in FY 2011 from May 1, 2011, through July 31, 2011. This measure delays trawl fishing in the Eastern U.S./Canada Area during the time when cod bycatch is likely to be very high, and should prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder, as well as other valuable stocks such as winter flounder.

Similar to restrictions implemented in FY 2009 and FY 2010, the proposed rule for this action proposed to limit the amount of cod that could be caught by common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2011, to 5 percent of the Eastern GB cod TAC available for common pool vessels. This was intended to further constrain fishing mortality on GB cod and prolong access to this area. The proposed rule for this action inaccurately specified this cod bycatch limit as 10 mt, but, inadvertently, that was based upon 5 percent of the Eastern GB cod TAC available to all groundfish vessels, not just common pool vessels as intended. The correct number for cod bycatch for just common pool vessels in FY 2011 is 477 lb (216.4 kg), based on a calculation of vessels that will be in the common pool according to sector rosters submitted to NMFS as of December 1, 2010. Because this bycatch amount is very low and difficult to effectively monitor in a timely manner and because no common pool vessels actually fished in the Eastern U.S./Canada Area during FY 2010, NMFS has not implemented the proposed cod bycatch limitation for common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area from May 1, 2011, through July 31, 2011.

Closed Area II Yellowtail Flounder/Haddock SAP

The current regulations provide the RA with the authority to determine the total number of allowed trips by common pool vessels into the Closed Area II Yellowtail Flounder/Haddock SAP to target yellowtail flounder based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by FW 40B (June 1, 2005; 70 FR 31323), no trips to this SAP should be allocated if the available GB yellowtail flounder catch, after considering the amount of catch of this stock that would occur outside of the SAP, is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 2,250,000 lb (1,020,600 kg)). The difference between the minimum level of GB yellowtail flounder sub-ACL necessary to allow targeting of yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP and the updated FY 2011 GB yellowtail flounder sub-ACL of 1,142 mt (2,517,679 lb; or 1,142,019 kg) specified in Table 11 is only 267,679 lb (121,419 kg). Based on past fishing practices, it is likely that catch rates outside of this SAP are more than adequate to fully harvest the FY 2011 GB yellowtail flounder sub-ACL, leaving little, if any, quota available to open this SAP to targeting GB yellowtail flounder. Thus, the FY 2011 GB yellowtail flounder sub-ACL is considered insufficient to warrant opening of this SAP to targeting yellowtail flounder. Therefore, based on existing authority, no trips are allocated by this final rule to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2011. Further, as required at § 648.85(a)(3)(iii)(B) and (x)(A), this final rule specifies that the SAP is open from August 1, 2011, through January 31, 2012, and prohibits the use of the flounder net by both common pool and sector vessels in this SAP during FY 2011. All limited access NE multispecies vessels can still fish in this SAP during FY 2011, but must only fish with a haddock separator trawl, a Ruhle trawl, or hook gear while in the SAP area.

14. Corrections and Clarifications

This final rule corrects or clarifies a number of inadvertent errors, omissions, and provisions in existing regulations in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP, or to more effectively administer and enforce existing provisions pursuant to the authority provided to the Secretary in section 305(d) of the Magnuson-Stevens Act. The following measures are listed in the order in which they appear in the regulations. The proposed rule for this action discusses the reason why such corrections are necessary.

Amendment 16 requires the owner or operator of any vessel issued a limited access NE multispecies permit fishing on either a common pool or a sector trip to declare its intent to fish within one or more of the NE multispecies broad stock areas (BSAs) and provide the vessel trip report (VTR) serial number for the first page of the VTR for that particular trip via VMS or interactive voice response (IVR) system prior to leaving port at the start of a fishing trip and to submit a VMS catch report detailing the amount of each species retained in each BSA for trips that fish in more than one BSA per trip. To eliminate duplicative reporting requirements, this final rule modifies

the timing requirements for the submission of the VMS catch report in § 648.10(k)(1) to require all limited access NE multispecies vessels, regardless of the number of broad stock areas fished, to submit the VMS catch report listing the VTR serial number applicable for that trip prior to crossing the VMS demarcation line upon its return to port following each fishing trip on which regulated species were caught.

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

To close a perceived loophole that could have allowed a vessel carrying passengers for hire to possess and land fish smaller than the minimum fish size specified for commercial vessels and to sell their catch from such operations, this action revises the regulations at § 648.82(a)(2) to also state that, in addition to a vessel fishing under a NE multispecies DAS, a vessel issued a NE multispecies limited access permit may not fish under a sector trip or under the limited access NE multispecies Small Vessel Category or Handgear A permits, if such vessel carries passengers for hire for any portion of a fishing trip.

This action modifies the phrase "vessels participating in sectors" to read "vessels/permits participating in sectors" in the regulations at §§ 648.87(b)(1)(i)(A) and 648.90(a)(4)(iii)(E)(*2*) to reflect that vessels issued permits, including those held in CPH, can participate in sectors.

To provide more flexibility to sectors, Amendment 16 allowed the transfer of ACE between sectors, and also permitted carrying over ACE from one FY to the next. To clarify how the ACE carry over provision shall be applied, this action revises the regulations at § 648.87(b)(1)(i)(C) to state that a NE multispecies sector may carry over up to 10 percent of its allocated ACE for each stock, with the exception of GB yellowtail flounder, into the following FY. This provision limits the applicability of ACE carry over to only 10 percent of the ACE allocated to a sector at the start of a FY and not 10 percent of the total ACE available to a sector at the end of the fishing year, which may include any ACE acquired from another sector as part of an ACE transfer. The preamble of the proposed rule for this action included text that could be interpreted to mean that a sector could not carry over any ACE if it had harvested more than 90 percent of its original ACE allocation for that stock by the end of the FY. This interpretation does not reflect the intent of NMFS in clarifying the amount of ACE that can be carried over into the next FY. Consistent with the proposed regulatory text, the intent of NMFS was to merely clarify that the amount of ACE that can be carried over for each stock shall be calculated based upon the amount of ACE originally allocated to that sector. For example, if a sector was originally allocated 100 mt of GOM cod at the beginning of FY 2010, that sector would be allowed to carry over up to 10 mt of GOM cod into FY 2011, even if it had acquired an additional 50 mt from another sector through an ACE transfer. Thus, the amount of ACE that could be carried over into FY 2011 would be based upon the 100 mt originally allocated to that sector for FY 2010, not the 150 mt that the sector had ultimately acquired by the end of FY 2010. Finally, NMFS clarifies that it interprets the term "unused ACE" in the context of the regulations at § 648.87(b)(1)(i)(C) to mean any ACE that has not been fished by the sector originally allocated that ACE, or leased to another sector during that FY.

In addition to the revisions to the calculation of PSCs noted above for cancelled permits, this final rule revises the regulatory text describing the calculation of PSCs at § 648.87(b)(1)(i)(E)(*1*) and (b)(1)(i)(E)(*2*) to clarify and more accurately reflect the processes that were, and continue to be, applied to implement such calculations. Specifically, this rule clarifies that the landings histories of any limited access NE multispecies permit, including those that were put into CPH, and those of an open access NE multispecies handgear permit that eventually qualified for, and resulted in, the issuance of a limited access NE multispecies Handgear A permit during FYs 1996 through 2006 shall be used to calculate the PSCs for each valid permit as of June 1 each year. In addition, these revisions include an example of the landings of regulated species and ocean pout that may not be used to calculate PSC; namely, any landings of yellowtail flounder by scallop vessels operating under a scallop DAS. Finally, this rule clarifies that the PSC that results from such a calculation is considered the PSC for each stock.

The regulations at §§ 648.87(b)(1)(iii)(C) and (viii) allow sectors to transfer ACE for up to 2 weeks into the subsequent FY, and provide NMFS with 61 days to process ACE transfers and determine whether a sector has exceeded its ACE for the previous FY. Such measures are dependent upon the completion of NMFS' evaluation of year-end sector catch, including sector ACE overages, and may not fully account for the timing of NMFS' year-end evaluation process. Therefore, to allow for additional time to complete these tasks, if necessary, the phrase "unless otherwise instructed by NMFS" is being added to reference to the 2-week and 61-day deadlines in the regulatory text.

Comments and Responses on Measures Proposed in the FW 45 Proposed Rule

Twenty-four comments were received during the comment period on the proposed rule for this action from 13 individuals, 4 fishing industry groups (the Northeast Hook Fisherman's Association (NEHFA), the Associated Fisheries of Maine (AFM), the Northeast Seafood Coalition (NSC), and the Northeast Sector Support Network (NSSN)), 4 conservation groups (Center for Biological Diversity (CBD), Oceana, Food and Water Watch (FWW), and PEW Environmental Trusts (PEW)), 1 dockside/roving monitor service provider (AIS, Inc.), 1 community group (Penobscot East Resource Center (PERC)), and the Council. Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. Comments on the overarching sector measures implemented in 2010 by Amendment 16, or the anticipated or realized impacts of those measures, are not addressed in this preamble. Please note in considering the responses to comments below that NMFS may only approve or disapprove measures proposed in a fishery management plan, amendment, or framework adjustment and may not change or substitute any measure in a substantive way, pursuant to section 304(a)(3) of the Magnuson-Stevens Act.

General Comments

Comment 1: The CBD commented that the EAs prepared in support of both FW 45 and the 2011 sector operations plans do not adequately evaluate the impacts on a number of species proposed for listing under the Endangered Species Act (ESA), particularly Atlantic sturgeon and loggerhead sea turtles. The CBD noted that the GOM distinct population segment (DPS) and the New York Bight and Chesapeake Bay DPSs of Atlantic sturgeon were proposed to be listed as threatened and endangered

under the ESA, respectively, by NMFS' Northeast Regional Office on October 6, 2010 (75 FR 61872), while the Northwest Atlantic loggerhead sea turtle DPS was proposed to be listed as endangered under the ESA on March 16, 2010 (75 FR 12598). They contend that the FW 45 and FY 2011 sector operations plans EAs rely upon previous assessments of impacts to protected species specified in the Amendment 16 EIS that was completed on October 16, 2009. Therefore, they claimed that the analysis for these actions is not appropriate, given the proposed listings of Atlantic sturgeon and loggerhead sea turtles occurred after previous analysis was completed. Further, they indicated that the FW 45 EA does not consider impacts of eliminating the yellowtail flounder closure areas in the Great South Channel Exemption Area, noting that sea turtles are present in this area at the time that the yellowtail flounder spawning protection areas were in effect.

Response: NMFS agrees that the analysis originally included in the FW 45 EA did not describe the impacts to DPS of Atlantic sturgeon and loggerhead sea turtles. To meet the ESA requirements of § 402.12(a), NMFS has updated the analysis supporting this action in an addendum to the FW 45 EA to include analysis of FW 45 measures on the DPS for these species in light of their proposed listings. This impacts analysis concluded that the measures implemented under this final rule are not likely to jeopardize the continued existence of Atlantic sturgeon between now and the time a final listing determination will be made, and concludes that there will be no significant impact on Atlantic sturgeon or loggerhead sea turtles for the duration of this regulation. It also concluded that a conference, per the ESA regulations, for the proposed loggerhead sea turtle DPS is not required based on the determinations and the incidental take statement in the 2010 Biological Opinion for the Multispecies FMP. For Atlantic sturgeon, NMFS Sustainable Fisheries Division engaged in an informal conference with NMFS Protected Resources per the ESA regulations, and no additional measures were recommended by NMFS Protected Resources. While it is possible that there may be interactions between Atlantic sturgeon or loggerhead sea turtles on the one hand and, on the other, gear used in the NE multispecies fishery, based on prior analyses and current observer bycatch data for the groundfish fishery, the number of interactions that will occur between now and the time a final listing determination will be made is not likely to cause an appreciable reduction in survival and recovery. A final listing determination for the Atlantic sturgeon DPS is expected by October 6, 2011. With the publication of a final listing rule, the existing Section 7 consultation for the NE multispecies fishery would need to be reinitiated, consistent with the requirement to reinitiate formal consultation where discretionary Federal agency involvement or control of the action has been retained and a new species is listed that may be affected by the action. During the reinitiation, the effects of the NE multispecies fishery on the five DPS for Atlantic sturgeon would be fully examined.

Comment 2: Oceana stated that there are no effective AMs for several stocks managed by the FMP, and that FW 45 must include AMs for all stocks managed under the FMP, including stocks not allocated to sectors under Amendment 16 (SNE/MA winter flounder, ocean pout, windowpane flounder, Atlantic halibut, and Atlantic wolffish). Oceana cited the January 21, 2010, letter from NMFS to the Council informing the Council that AMs for these stocks should be implemented as quickly as possible through a future Council action, and stated that the FW 45 final rule is the first opportunity to implement such measures.

Response: Because of the timing needed to more fully account for the bycatch of haddock in the Atlantic herring fishery before herring fishing operations began to increase rapidly during the early fall, the Council elected to develop FW 46 to revise the existing allocations of portions of the GOM and GB haddock ACL to the herring fishery before they worked on any other actions in 2011. Further, because the Council intended to develop an action later on in 2011 that would implement NE multispecies ACLs for FYs 2012–2014, the Council decided to address outstanding issues associated with AMs for ocean pout, windowpane flounder and Atlantic halibut through the next action, or FW 47.

Consistent with the Magnuson-Stevens Act, Amendment 16 implemented AMs that would be sufficient to prevent overfishing of any stock managed by the FMP in FYs 2010 and 2011. However, because Amendment 16 did not provide a specific allocation of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, or Atlantic wolffish to sectors, these stocks are not subject to any sector-specific AMs, which is acknowledged by NMFS in the letter cited in the comment. The ACL available to the commercial NE multispecies fishery for each of these stocks is allocated entirely to common pool vessels, and the only specific AM established for these stocks during FYs 2011 and 2012 is the differential DAS counting AM specified for common pool vessels at § 648.82(n). NMFS has determined there is no immediate need for FW 45 to implement AMs for these stocks, as overfishing is prevented during FYs 2010 and 2011, and any overages of the FY 2010 or 2011 ACLs would be addressed, at least partially, through differential DAS counting applicable to common pool vessels in FY 2011 or 2012, respectively (*see* § 648.90(a)(5)(ii)). In making this determination, NMFS points out that, pursuant to section 304(a)(3) of the Magnuson-Stevens Act, it may only approve or disapprove measures proposed in a fishery management plan, amendment, or framework action, and may not change or substitute any measure in a substantive way. Therefore, since FW 45 does not include any measure to disapprove regarding AMs for these stocks, NMFS finds that it should approve the measures that are consistent with the Magnuson-Stevens Act and other applicable law for all of the other stocks with the understanding that the Council has committed to address the lack of specific AMs for these stocks in FW 47. This leads to the functional equivalence of disapproving and remanding the entire framework to address the lack of a required measure, but without sacrificing the implementation of those measures that are needed to ensure conservation for all of the other stocks.

Comment 3: Oceana suggested that FW 45 must include AMs for yellowtail flounder caught by the Atlantic sea scallop fishery, based on the premise that the FMP must include measures that account for all catches of regulated species and ocean pout stocks by other fisheries. Oceana acknowledged that the Council developed AMs to account for yellowtail flounder catch in the scallop fishery as part of Amendment 15 to the Atlantic Sea Scallop FMP. However, they are concerned that such AMs will not become effective until at least 6 months into FY 2011 for the scallop fishery (the scallop FY begins on March 1 of each year) and may not be adequate to ensure that any overages of the FY 2010 yellowtail flounder sub-ACLs allocated to the scallop fishery are addressed during FY 2011. Further, they claimed that it is unclear how the proposed Amendment 15 yellowtail flounder AMs for the scallop fishery

would be implemented in FY 2011, particularly if preliminary data indicate that the yellowtail flounder sub-ACLs for the scallop fishery may be exceeded. They suggested that NMFS should better explain how such AMs would be implemented during FY 2011. In addition, Oceana recommended that NMFS implement an inseason closure provision as an interim measure to prevent excessive harvest of yellowtail flounder until the Amendment 15 AMs become effective, pursuant to the National Standard 1 Guidelines at § 600.310(g)(2).

Response: The AMs applicable to the NE multispecies fishery are consistent with the National Standard 1 Guidelines and sufficient to prevent overfishing on each stock by all components of the fishery that catch regulated species and ocean pout, including yellowtail flounder catch by scallop vessels prior to the implementation of measures proposed in Amendment 15 to the Atlantic Sea Scallop FMP. If these components of the fishery exceed their allocations, and the overall ACL for a particular stock is exceeded, the AMs applicable to the NE multispecies fishery, including those specified for sectors and the common pool, will be triggered to ensure that overfishing does not occur on the stock as a whole (*see* § 648.90(a)(5)(ii)).

The proposed rule for Amendment 15 to the Atlantic Sea Scallop FMP published on April X, 2011 (76 FR XXXXX). This rule, and its associated EIS, contains a complete description of the yellowtail flounder AMs for the scallop fishery, including the closure of specific statistical areas that have the highest bycatch of yellowtail flounder by the scallop fishery if either the GB or SNE/MA yellowtail flounder sub-ACL allocated to the scallop fishery is exceeded in the previous FY. This rule also clarifies the Council proposal that any overage of either the GB or SNE/MA yellowtail flounder sub-ACLs allocated to the scallop fishery for FY 2010 shall have a resulting AM applied as soon as Amendment 15 is implemented during FY 2011, but only if the FY 2010 overall ACL for SNE/MA yellowtail flounder is exceeded.

As explained in the response to Comment 2 above, pursuant to section 304(a)(3) of the Magnuson-Stevens Act, NMFS may only approve or disapprove measures proposed in a fishery management plan or amendment, and may not change or substitute any measure in a substantive way. Therefore, NMFS does not have the legal authority to implement AMs to account for potentially excessive yellowtail flounder bycatch in the scallop fishery through this final rule. Such AMs were not adopted by the Council in FW 45, and the AMs in place for yellowtail flounder stocks for FY 2011 are sufficient to address any excessive catch by the scallop fishery until the AMs proposed in Amendment 15, if approved, become effective. Finally, both the common pool and sector AMs currently in place are adequate to ensure that overfishing does not occur on yellowtail flounder, even if the implementation of Amendment 15 is delayed until later in FY 2011. As of March 22, 2011, available data indicated that the scallop fishery caught 76,508 lb of GB yellowtail flounder and 401,313 lb of SNE/MA yellowtail flounder during FY 2010 in the scallop fishery (March 1, 2010, through February 28, 2011). This represents 24 percent of the GB yellowtail flounder and 135 percent of the SNE/MA yellowtail flounder allocated to the scallop fishery in the FW 44 final rule. It is projected that the common pool will only harvest 7.7 mt (16,976 lb) of its 75-mt (165,347-lb) sub-ACL for SNE/MA yellowtail flounder, leaving 148,371 lb of SNE/MA yellowtail flounder unharvested during FY 2010. In addition, all sectors have cumulatively caught only 42.6 percent (100 mt, or 220, 462 lb) of the overall sub-ACL of this stock allocated to sectors (234.7 mt, or 517,425 lb) through March 12, 2011. Therefore, even after incorporating the 103,689 lb (47 mt) of SNE/MA yellowtail flounder caught by the scallop fishery in excess of the allocation to that fishery during FY 2010, it is highly unlikely that the overall FY 2010 ACL for SNE/MA yellowtail flounder will be exceeded, and that the implementation of any AMs to prevent overfishing of this stock will be necessary. While it is still too early to accurately predict future bycatch rates, based upon available data, it is unlikely that the scallop fishery bycatch of yellowtail flounder during FY 2011 will exceed allocated sub-ACLs before Amendment 15 AMs, if approved, become effective. Thus, the current lack of scallop-specific AMs is not a serious conservation or management problem in the fishery.

Finally, Oceana's recommendation to establish an interim in-season closure AM is not required by applicable law. Neither the Magnuson-Stevens Act nor the National Standard 1 Guidelines mandate the use of fishery closures or the use of in-season controls as AMs. Reactionary AMs similar to the differential DAS counting AM may be used and can be are just as valid as inseason AMs. Although an FMP can include in-season closures, under the cited national standard guideline, neither NMFS nor the Council is obligated to institute such closures. In-season closures are merely one tool that may be used by the Council and NMFS to prevent overfishing and ensure that ACLs are not exceeded. In any event, short of a temporary emergency action or Secretarial amendment, NMFS is not in a position to implement this kind of AM in deciding whether to approve or disapprove FW 45. Accordingly, NMFS has not implemented yellowtail flounder AMs for the scallop fishery through this final rule.

Status Determination Criteria for Pollock

Comment 4: Both PEW and an industry group (NSC) supported revisions to the status determination criteria for pollock and its associated revisions to stock status and ABCs and ACLs. Both groups applauded the rapid incorporation of updated scientific information into the FMP, with the industry group stating that such measures ensure that significant economic benefits of higher catch limits for this species will continue in future FYs.

Response: NMFS agrees that it is appropriate to incorporate updated scientific information into management measures as quickly as possible. Therefore, the proposed revisions to the status determination criteria for pollock and associated ABCs and ACLs are implemented through this action.

Rebuilding Program for GB Yellowtail Flounder

Comment 5: PEW opposed the proposed reduction of the GB yellowtail flounder rebuilding program from the existing 75-percent probability of success to a 50-percent probability of success. PEW stated that a 50-percent probability of success is not adequate because the chance of failure is too high. They further stated that maximizing catch should not be the highest priority when managing the rebuilding of an overfished stock. They suggested that the existing rebuilding program with a minimum 75-percent probability of success should be maintained, noting that typical statistical analyses rely upon a 95-percent probability of success.

Response: The decision to extend the GB yellowtail flounder rebuilding program is based on a number of factors beyond simply increasing catch over the short term. Updated stock assessment conducted by the TRAC indicated that the strength of the 2005 year class was much lower than originally estimated. Therefore, the stock is no longer

expected to rebuild by 2014 with a 75-percent probability of success. Although extending the rebuilding timeframe to 10 years reduces the probability of success to 50 percent, the extension is still within the probability limits recognized by courts which have reviewed challenged FMPs. Although a rebuilding program with a higher probability of success would be more likely to rebuild overfished stocks within established rebuilding timeframes than one with a lower probability, based on analysis supporting FW 45, the revised rebuilding program is still capable of rebuilding the stock within the established rebuilding period. Faced with this information, the Council elected, consistent with National Standard 8, to revise the rebuilding program for this stock in way to minimize the adverse economic impacts on fishing communities to the extent practicable, without compromising the conservation requirements of the FMP or the Magnuson-Stevens Act. NMFS agrees with the Council that allowing for increased catch over the short-term, while still ending overfishing and enabling the stock to rebuild more effectively, balances the multiple and somewhat competing objectives of the national standards of the Magnuson-Stevens Act. Further, extending the rebuilding timeframe increases the capacity of the Council to negotiate yearly TACs with Canadian representatives through the TMGC process, as Canadian law does not have a requirement for a defined rebuilding period. Maintaining successful collaborative management with Canada is crucial to ensuring the effective management of this transboundary stock by preventing overfishing and continuing to rebuild this overfished stock. Therefore, NMFS approves and implements the proposed revisions to the GB yellowtail flounder rebuilding program.

ACLs

Comment 6: Oceana recommended that NMFS disapprove the proposed allocation of yellowtail flounder to the scallop fishery because it relies upon an outdated analysis of the expected catch of yellowtail flounder by the scallop fishery and is inconsistent with the use of the best available scientific information mandated by National Standard 2. Instead, they recommend that NMFS implement allocations that are based on updated estimates of actual anticipated yellowtail flounder catch by the scallop fishery during FY 2011.

Response: NMFS recognizes that there are updated estimates of anticipated catch of yellowtail flounder by the scallop fishery. However, as noted in the FW 45 EA, there is uncertainty associated with these estimates. For example, Table 113 of the FW 45 EA illustrates that scallop catches of yellowtail flounder have not shown clear trends, despite the increased abundance of yellowtail flounder in recent years. If the updated estimates of yellowtail flounder bycatch underestimate actual catch by the scallop fishery, as implied in Oceana's comment, then the yellowtail flounder sub-ACLs allocated to the scallop fishery are likely to be exceeded, which could result in overfishing this stock. Overages of the yellowtail flounder sub-ACL, if leading to the overage of the overall ACL for a stock, would trigger AMs for the directed groundfish fishery to account for such an overage and ensure that overfishing does not occur in the future. Any AMs that may be triggered by exceeding this sub-ACL could redistribute either common pool or sector fishing effort, resulting in adverse biological impacts on a wider range of species compared to the existing allocations. In addition, lowering the yellowtail flounder allocations to the scallop fishery based upon this updated information puts much more total revenue and optimum yield at risk than maintaining the existing allocations, particularly if AMs are triggered and the available scallop or yellowtail flounder catch is not fully harvested. Although updated estimates of the expected yellowtail flounder bycatch in the scallop fishery are less than the existing allocations, maintaining the existing allocations to the scallop fishery, on balance, will likely reduce the chance of a derby fishery in the scallop fishery, better achieve the biological targets for both scallops and yellowtail flounder, and place less revenue and optimum yield at risk for both fisheries. Thus, there are potentially substantial adverse economic and biological impacts associated with revising these allocations using the updated bycatch estimates.

As noted above, NMFS may only approve or disapprove measures proposed in a fishery management plan or amendment, and may not change or substitute any measure in a substantive way. The yellowtail flounder allocation to the scallop fishery is a continuation of the allocation implemented by FW 44. NMFS cannot substitute another alternative for this provision as part of this final rule. Even if NMFS could disapprove the FW 45 yellowtail flounder allocation to the scallop fishery, the yellowtail flounder allocation to the scallop fishery for FY 2011 would revert to that implemented by FW 44 which is the same as proposed in FW 45. Therefore, NMFS has not revised the FY 2011 yellowtail flounder allocations to the scallop fishery in this final rule.

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

Comment 7: One industry group (NSC) strongly supported the proposed action to disapprove the FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC and associated ABC and ACLs, and to implement a revised FY 2011 TAC, ABC, and ACL for this stock based upon revised recommendations of the TMGC following the recent adoption of IFACA. They noted that the adoption of IFACA represents new information and unforeseen circumstances that justify the use of emergency Secretarial authority to revise this TAC. They also group suggested that the updated TAC prevents overfishing and rebuilds stock consistent with broader goals of section 304(e) of the Magnuson-Stevens Act, provides very important economic benefits to both the groundfish and scallop fisheries, and results in an increased chance of achieving OY in these fisheries.

Response: NMFS agrees with the substance of this comment, although, as noted above in the background section of this preamble, instead of disapproving the FW 45 TAC for this stock, NMFS has approved it, because the originally proposed TAC is still consistent with the FMP and applicable law. However, NMFS is replacing the FW 45 TAC for this stock with the revised FY 2011 TAC, pursuant to emergency Secretarial authority, for the reasons stated in the preamble of the proposed rule for this action.

GOM Cod Spawning Protection Area

Comment 8: Four individual private recreational anglers opposed the proposed GOM Cod Spawning Protection Area, while one environmental group (PEW) and one community group (PERC) strongly supported the implementation of this area. While one recreational angler was opposed to closure areas in general, the other three anglers indicated that such a closure unnecessarily and unfairly prevents small private recreational vessels from accessing cod closer to shore. Two of these respondents suggested that the GOM cod stock is improving and does not warrant further action to protect spawning aggregations. They indicated that, if further protection

for this stock is necessary, they would prefer alternative measures, including possession or size limits. One respondent also claimed that fishing with hook gear does not disturb spawning aggregations. In contrast, both PEW and PERC supported this provision because it was based on a careful analysis of available scientific information. They recommended that the Council and NMFS should continue to identify and protect additional key habitat areas for spawning fish. Further, PERC advised that mid-water trawl gear should not be allowed in this area because they claim that this gear catches large amounts of groundfish stocks and would undermine efforts to rebuild overfished stocks.

Response: NMFS agrees that the GOM cod stock is recovering. The latest stock assessment, the Groundfish Assessment Review Meeting (GARM) III, indicates that the stock is nearly rebuilt (i.e., that SSB is nearly at the level to sustain MSY), but notes that the success of continued rebuilding relies upon the strength of recent year classes, particularly the 2003 and 2005 year classes. Therefore, without continuing high levels of recruitment, the stock may not be able to achieve and maintain a high level of biomass.

Council efforts to specifically protect spawning aggregations of GOM cod date back to the implementation of FW 26 in 1999 (January 15, 1999; 64 FR 2601). That action revised the existing GOM Rolling Closure Areas established under FW 25 (March 31, 1998; 63 FR 15326), and reclassified their designation as "inshore 'cod spawning' closures." The intended purpose of such measures under FW 26 was to protect cod during the spawning season, because cod stocks are "particularly vulnerable to fishing pressure" during spawning periods. Thus, since 1998, commercial fishing vessels have been excluded from areas in which cod are likely to be spawning. However, private recreational and charter/party vessels, including those fishing with gear capable of catching groundfish, have been able to access these areas even during the spawning season for GOM cod.

As noted in the FW 45 EA and the preamble to the proposed rule for this action, the GOM Cod Spawning Protection Area is intended to provide protection to spawning cod by limiting all fishing activities using gear that may catch groundfish in a discrete area and during a time in which cod spawning activity is documented to be occurring. The area and season proposed in FW 45 was based on research conducted by the University of New Hampshire in collaboration with the Northeast Consortium. This research represents the first study in which western Atlantic cod were examined on such a fine scale to determine both temporal and spatial distribution of this species. According to this research, cod spawning within the GOM Cod Spawning Protection Area exhibit site fidelity, congregate in this specific area for the duration of the spawning season, and return to this area each year to spawn. These fish represent a "discrete management unit" that is confirmed by genetic study, and constitute the largest distinctly identified spawning group left in the western Atlantic Ocean. Further, this research documents that trawl-caught fish are affected by fishing activity, requiring several days to resume normal behavioral patterns following capture. Finally, this study reiterated a concern expressed by members of the fishing industry and state resource management agencies that the recreational fishing fleet, particularly charter/party vessels, that continue to be able to access spawning aggregations of cod may decrease the rate at which the GOM cod stock rebuilds. Thus, continued fishing pressure or disruption to spawning activity could adversely affect cod recruitment within the GOM.

As proposed, the GOM Cod Spawning Protection Area prohibits both commercial and recreational vessels fishing with gear considered to be capable of catching groundfish from fishing in this area from April through June of each year. Under this measure, all vessels are treated equally, and neither group has access to this area during this time. This is in contrast to the existing GOM Rolling Closure Areas in that commercial vessels are prohibited from fishing for groundfish in these areas, but recreational vessels can target groundfish in these areas throughout the spawning season. Although the GOM Cod Spawning Protection Area would essentially close some near-shore fishing grounds to recreational vessels during the spawning season, this measure would not eliminate small vessel access to available cod resources. This area is relatively small (roughly 82 square miles, or 212 square km) and represents the only area closure applicable to recreational vessels at all, let alone during the spawning season. Therefore, recreational vessels have access to available cod resources in other locations and throughout the rest of the FY. Finally, while measures such as possession or size limits are capable of affecting fishing mortality, such measures cannot protect or improve recruitment in the same way that area closures can. FW 45 does not propose to further reduce fishing mortality on this stock. Instead, this provision is intended specifically to reduce fishing activity on spawning aggregations and, in turn, preserve opportunities for successful recruitment of this stock in the future. Because the preservation of sufficient levels of recruitment is critical for the continued success of efforts to rebuild GOM cod, possession or size limits would not effectively achieve the objectives for the GOM Cod Spawning Protection Area in FW 45. Existing regulations, including the GOM Seasonal Rolling Closure Areas at § 648.81(f) and the Sector Rolling Closure Areas at § 648.81(f)(2)(vi), already prohibit vessels fishing on either a sector or a common pool trip from targeting regulated species and ocean pout in this area during April and May. For these reasons, NMFS has approved the GOM Cod Spawning Protection Area, including the proposed prohibition of midwater trawl gear fishing in this area during June of each year.

Handgear A and B Measures

Comment 9: Two commercial fishermen strongly supported any measures that would benefit small vessels fishing near shore with handgear. One of these individuals indicated that fishing with handgear has no detrimental effects to stock recovery or bycatch because all fish can be released alive. Because they consider handgear to be a more sustainable gear type, PERC further stated that NMFS should expand opportunities for the use of handgear instead of restricting their trip limits.

Response: NMFS believes the measures implemented by this final rule, including revisions to handgear trip limits, exemption of handgear vessels from common pool dockside monitoring requirements, and access to seasonal closure areas encourage participation in the NE multispecies fishery by handgear vessels, and minimize economic impacts to such vessels, without compromising efforts to end overfishing and rebuild overfished stocks.

Comment 10: The NEHFA and PERC suggested that handgear vessels should be given a specific sub-ACL to avoid being adversely impacted by potentially excessive catch by common pool vessels.

Response: The Council considered specifying a specific sub-ACL for handgear vessels during the development of FW 45, but did not ultimately adopt such a measure due to a concern that allocation decisions

cannot be implemented through a FW action. The Council ultimately concluded that such allocations must rather be implemented through an amendment to the FMP because they are considered substantial revisions to existing management measures and require additional public input. NMFS agrees with this interpretation.

Comment 11: The NEHFA and one commercial fisherman supported the proposed revisions to the cod trip limits applicable to handgear vessels. They indicated that such revisions will provide relief from the impacts of the "race to fish" during the early part of the FY in the common pool.

Response: NMFS agrees, and has implemented these revisions through this final rule.

Comment 12: One commercial fisherman, PERC, and the NEHFA expressed support for the proposed requirement for handgear vessels to be issued a LOA to fish south of the GOM RMA for GB cod. NEHFA recommended that vessel owners could request a LOA annually when renewing their NE multispecies permits, declare through the permit renewal application that the vessel would be fishing south of the GOM RMA for the duration of the FY and not have to request a LOA, or be issued a LOA automatically through a Web site similar to the existing NMFS VTR Web site. This group contends that these recommendations would help minimize the burden on fishermen and NMFS. In addition, NEHFA was concerned that the issuance of the LOA would adversely impact the ability of vessel owners to participate in other fisheries.

Response: NMFS implements the requirement for handgear vessels fishing south of the GOM RMA to either obtain a paper LOA or declare their intent to fish south of the GOM via VMS through this final rule. Under the LOA provisions implemented through this final rule and existing protocols, a vessel owner could specify that he/she intends to fish south of the GOM RMA for the entire year and be issued a LOA to reflect that decision during the annual renewal of his/her NE multispecies permit. Automated or web-based declaration and issuance of this LOA would require further consideration by NMFS, including ensuring that such declarations do not compromise the enforceability of the LOA, would not unintentionally restrict the ability of vessel operators to fish in the area of their choosing, and can be technically administered. NMFS has the authority to revise the mechanism by which such LOAs are issued to fishery participants and could implement the recommendations offered by the public in the future if feasible. Any changes to how LOAs are issued will be communicated to all affected stakeholders through a permit holder letter, as appropriate.

Comment 13: The NEHFA supported the proposed exemption of vessels issued a limited access NE multispecies Handgear A permit from the GB Seasonal Closure Area and allowing such vessels to fish in the Sector Rolling Closure Areas in the GOM. The NEHFA noted that Handgear A vessels are currently precluded from fishing in the GOM until June or July based on the existing GOM Rolling Closure Areas. This group stated that, without exemptions, Handgear A vessels will not remain economically viable due to competition with other gear types for available common pool sub-ACLs. They contested that the proposed exemptions would provide needed economic relief through increased access to traditional fishing grounds that are within reach of the small Handgear A vessels. Another commercial fisherman also supported these measures, stating that they would help small vessels compete against larger and more efficient vessels in the common pool. Both PEW and PERC supported promoting the use of handgear through these proposed measures, stating that handgear is the gear type with the least impacts to habitat and the fishery.

Response: NMFS agrees with the comments, and this final rule implements the proposed exemption.

Dockside/Roving Monitoring Requirements

Comment 14: The NSC questioned the utility of dockside/roving monitoring requirements, suggesting that FW 45 should eliminate such requirements completely. The NSC believes the current requirements to be highly inefficient, representing an unsustainable and unjustified cost to the fishing industry. Further, they suggested that NMFS should allow sectors to use dockside monitoring data as a proxy for dealer data in the weekly sector catch reports submitted to NMFS to increase the utility of the dockside/roving monitoring program. Finally, NSC indicated that roving monitors should not have to observe offloads to a truck and also to a dealer, asserting that roving monitors should only be required to observe offloads from the vessel to a truck, to increase the efficiency and reduce costs associated with these provisions.

Response: The Council considered completely eliminating dockside/roving monitoring requirements during the development of FW 45. However, due to lingering concerns over the ability to enforce existing provisions to monitor sector ACE and minimize incentives to misreport catch, the Council retained dockside/roving monitoring requirements in FW 45. NMFS may only approve or disapprove measures proposed in FW 45, and may not change or substitute any measure in a substantive way. Therefore, NMFS cannot eliminate dockside/roving monitoring requirements through this final rule.

During the development of Amendment 16, it was anticipated that sectors would rely upon dockside/roving monitor data to document sector landings immediately following a vessel's offload until the official dealer reports become available approximately a week later. This practice has been discussed with sector managers through several sector workshops held during 2009 and 2010. NMFS recognizes that dockside/roving monitoring data cannot currently be reported as part of the weekly sector catch reports submitted to NMFS based upon existing guidance and database structures. To date, many dockside/roving monitoring data are not systematically collected in a format that can be easily transferred to a catch monitoring database. Instead, they are often merely scanned images of a dockside/roving monitor report. NMFS has the regulatory authority to accept dockside/roving monitoring data in the future and may reconsider the acceptance of dockside/roving monitoring data if such data become available in an acceptable electronic format. Further, dealer landings, as documented through official dealer reports, have been the standard by which landings are monitored for many years, and were used as the basis for the calculation of potential sector contributions and, therefore, sector ACE. Accordingly, even if dockside/roving monitor data could be considered as a proxy for dealer landings in weekly sector catch report, dealer landings data would continue to be the official record of species landed by each federally permitted vessel.

The Council required sectors to develop and implement an independent third-party weighmaster system satisfactory to NMFS for monitoring landings and utilization of ACE. The original intent of dockside/roving monitoring coverage was to verify landings of a vessel at the time it is weighed by a dealer to certify the landing weights are accurate as reported on the official dealer report for compliance purposes. Therefore, NMFS implemented regulations under

Amendment 16 that require that a roving monitor must observe the offloads from a vessel to a truck and again from the truck to a dealer, unless the vessel offloads directly to a dealer. These regulations were based upon a pilot program and existing dockside/roving monitoring programs developed in other regions and in Canada. During sector implementation workshops conducted in 2009 and 2010, and ongoing communications with sector managers, NMFS indicated that it would allow a roving monitor to only observe offloads from a vessel to a truck, provided a representative from the dealer ultimately receiving the fish was present at the time of the offload, and that all fish were weighed at the time of the offload. This ensures that the weight of fish offloaded corresponds to the weight of the fish recorded in the official dealer report, consistent with the intent of Amendment 16. Thus, existing regulations and protocols already allow for the behavior requested by the NSC in their comment.

Comment 15: The NEHFA, PERC, PEW, and one commercial fisherman supported exempting vessels issued a limited access NE multispecies Handgear A or a Small Vessel Exemption permit or an open access NE multispecies Handgear B permit that is fishing in the common pool from the existing dockside/roving monitoring requirements. They stated that dockside/roving monitoring costs may be more than the value of fish landed on a particular trip and would make the operation of such permits economically unviable. The NEHFA also noted that many handgear vessels are launched and retrieved at public boat ramps, thereby creating logistical difficulties for waiting for the dockside/roving monitor to arrive because a boat may be forced to move off of the dock to accommodate the launching of other boats. This group also contended that the current system of monitoring landings is sufficient for these vessels due to the small amount of fish landed on each trip. Finally, PERC suggested that handgear vessels fishing in sectors should also be exempted from the dockside/roving monitoring requirements.

Response: NMFS agrees that the costs associated with the existing dockside/roving monitoring requirements could make fishing with a Handgear A, Handgear B, or Small Vessel Exemption permit uneconomical for the reasons noted above and specified in FW 45. Therefore, NMFS implements the proposed exemption from the common pool dockside/roving monitoring requirements for these permit categories through this final rule. Because the Council did not adopt a provision that would have exempted sector vessels fishing with a handgear permit from the dockside/roving monitoring requirements as part of FW 45, NMFS cannot implement such a provision through this action.

Comment 16: Three commercial fishermen and two commercial fishing industry groups (AFM and NSC) opposed the proposal to require dockside/roving monitors to inspect the fish holds of vessels offloading groundfish. AIS, Inc., a dockside/roving monitoring service provider, also expressed concerns that the proposed requirement for dockside monitors to inspect fish holds presents safety issues. All commenters highlighted the risk of serious injury from having dockside/roving monitors board vessels, climb down ladders into the fish holds, and inspect the holds or other compartments for fish that have not been offloaded. AIS noted that there are no standards in FW 45 that address potentially dangerous conditions in inspecting holds, or requirements for vessels to provide a standardized safe boarding system. AIS also stated that there is no guidance as to how to inspect fish holds, including whether dockside monitors must inspect piles of ice or look for fish in other compartments, giving the impression that dockside/roving monitors may be acting as enforcement personnel instead of data collectors. Several commenters suggested that this potential risk will force vessel owners to buy more insurance to ensure that they are adequately covered for any potential liability lawsuits that might result from this provision. In doing so, they contested that this would contradict the FW 45 economic analysis that indicates that this measure should not impact either vessel owners or service providers. They noted that, even if the dockside/roving monitoring service providers had sufficient insurance coverage, vessel owners might still be sued and face financial liability from the injury claims of individual dockside/roving monitors. Further, they claimed that the proposed rule does not provide any rationale that enhanced enforceability is needed, or that underreporting is occurring. They contested that the existing provisions that require dockside/roving monitors to ask vessel operators if all fish have been offloaded, and classify providing false statements to dockside/roving monitors as a violation, should be sufficient to enforce this provision. They recommended that NMFS Office of Law Enforcement should inspect fish holds, instead of dockside/roving monitors.

Response: As noted throughout the development of Amendment 16 and FW 45 by both fishing industry representatives and NMFS, the transition to expanded sector management and ACLs increases incentives to misreport or under report catch and landings. Dockside/roving monitoring programs established in other regions of the United States and Canada that are managed by harvest quotas are considering, or have required, dockside/roving monitors to inspect fish holds to ensure that all fish are offloaded. The potential for dockside/roving monitors to inspect fish holds was explicitly discussed throughout the development of Amendment 16 as part of both the Council process and parallel meetings to discuss the development of sector measures sponsored by the Gulf of Maine Research Institute. Section 4.2.3.5.4 of the Amendment 16 FEIS documents this discussion and clearly indicates that to be approved as a dockside/roving monitor, a dockside/roving monitor must meet several criteria, including:

> "Physical capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as a dockside/roving monitor. The physician must understand the monitor's job and working conditions, including the possibility that a monitor may be required to climb a ladder to inspect fish holds."

Therefore, the general public, including both vessel owners and dockside/roving monitoring service providers, were well aware of the potential that dockside/roving monitors might be required to inspect fish holds and the risks that such activity might incur. However, no comments opposing this practice were raised to NMFS during the public comment period on the Amendment 16 proposed rule.

The final rule implementing Amendment 16 measures did not require dockside/roving monitors to inspect the fish holds based, in part, on a pilot dockside/roving monitoring program conducted in the summer of 2009. Similar to comments received on this action, some safety concerns were identified with inspecting fish holds during the pilot program, even though fish holds were actually inspected as part of that pilot program. As a result, in the Amendment 16 proposed (74 FR 69382; December 31, 2009) and final rules, NMFS intentionally included language in the dockside/roving monitoring program operational

standards at § 648.87(b)(5)(ii)(B)(*1*) that allow individual dockside/roving monitors or service providers to inspect fish holds if they elect to do so.

Section 311 of the Magnuson-Stevens Act provides the Secretary of Commerce with the general authority to enforce the provisions of the Magnuson-Stevens Act. NMFS acknowledges that existing dockside/roving monitoring provisions make it a violation for a vessel operator to provide false statements to a dockside/roving monitor about whether all catch is offloaded. However, that is just one of many ways to ensure compliance with existing regulations. NMFS does not agree that such measures are completely sufficient to ensure that all catch is offloaded. The only way to validate statements made by a vessel operator is to actually inspect fish holds. NMFS Office of Law Enforcement personnel already have the authority to board and inspect vessels. However, requiring dockside/roving monitors to also inspect fish holds, as anticipated during the development of Amendment 16, provides another means to ensure that vessel operators are complying with existing requirements, and that all fish that are landed are recorded in dealer databases or other data sources such as dockside/roving monitor reports. Dockside/roving monitors are not enforcement personnel, but their observations, including the reports summarizing the offloads of individual trips, are available to law enforcement personnel, as described in Section 4.2.3.5.4 of the Amendment 16 FEIS and the existing regulations at § 648.87(b)(4). The training provided to dockside/roving monitors by NMFS explicitly states that it is the dockside/roving monitor's responsibility to account for all catch, whether or not it is properly weighed or recorded by other parties. Monitors must record any species that is not weighed in their incident report to facilitate compliance with existing requirements. Therefore, based on the need to ensure that NMFS is accurately monitoring the amount of fish landed, NMFS has retained the requirement that dockside/roving monitors must inspect fish holds as part of this final rule.

NMFS recognizes that dockside/roving monitors must proceed with caution when conducting inspections of fish holds. As part of the dockside/roving monitoring training curriculum and certification process overseen by NMFS, individual dockside/roving monitors are trained and tested for competency in safety procedures, including slips, trips, and falls; electrical safety; climbing stairs and ladders; overhead dangers; unstable items; and fire. In addition, NMFS will likely require all previously certified dockside/roving monitors to attend a refresher safety training session on issues specific to boarding vessels and inspecting fish holds. Based on examples in other U.S. and Canadian fisheries, NMFS is currently developing standardized protocols that outline the major elements that dockside/roving monitors must comply with when inspecting fish holds. These elements include, but are not limited to, requesting permission from the vessel captain to board a vessel, following the instructions of the vessel's captain and crew to safely enter and exit the fish holds, and inspecting only areas of the vessel that would normally be used to store fish. Such standards will be integrated into the dockside/roving monitoring training curriculum developed and conducted by the Northeast Fishery Observer Program.

The dockside/roving monitor service provider approval standards adopted in Amendment 16 explicitly included the requirement for service providers to have adequate insurance to cover injury, liability, or accidental death that might befall dockside/roving monitors. NMFS recognizes that despite such coverage, individual dockside/roving monitors still have the capacity to bring a lawsuit against vessel owners for any injuries incurred while inspecting fish holds. NMFS encourages sectors and dockside/roving monitor service providers to seek agreement on how to best address the issues and problems raised by the comment. As to whether FW 45 sufficiently considers possible increases in cost for liability insurance for inspecting fish holds, NMFS does not have sufficient information to do so. While NMFS has information on the amount and type of insurance dockside/roving monitoring service providers have purchased, it would be difficult for NMFS to speculate on the costs of additional insurance for individual vessels. However, NMFS is committed to reviewing the requirement to inspect fish holds and the costs associated with it over time as more information becomes available.

Comment 17: Two industry groups (AFM and NSC) supported the proposal to delay the industry's responsibility for dockside and at-sea monitoring costs until FY 2013. They stated that this accurately reflects the fishing industry's inability to pay for the high costs of such monitoring at this time. However, the NSC cautioned that the economic viability of the fishing industry is not likely to improve sufficiently to enable sectors to cover such monitoring costs in FY 2013. Accordingly, they recommended that the Council and NMFS should consider further postponing industry responsibility for such costs until the fishing industry is profitable again. In contrast, PEW suggested that sectors should be in a better position to assume monitoring costs in FY 2013. PEW offered that the proposed delay would help ensure the success of the established sector program, arguing that the long-term benefits of fishing under sectors outweigh any potential impacts associated with reduced dockside monitoring in the short term.

Oceana opposed delaying industry responsibility for dockside and at-sea monitoring costs, claiming that NMFS does not have the authority to modify sector monitoring provisions in a FW action because such a measure would be a fundamental change in the FMP and that implementing this delay through a FW action would circumvent the public process. Citing a recent court case (*Oceana, Inc.* v. *Evans,* 384 F. Supp. 2d 203, 255 (D.DC 2005)), they contended that such measures can only be modified through an amendment, with an associated NEPA document. They also suggested that the proposed delay would undermine the Magnuson-Stevens Act requirements to monitor bycatch and implement measures to ensure accountability for ACLs, especially considering the concerns expressed by NMFS in a November 15, 2010, letter to the Council highlighting concerns about the potential limitation of NMFS funding in 2012 to support dockside and at-sea monitoring. FWW echoed this concern, noting that this might cause a "gap in the necessary enforcement required due to increased incentives for high-grading, misreporting, and underreporting." They recommended that delaying or removing monitoring costs should be based on vessel size/capacity, or an individual business's revenue.

Response: NMFS recognizes that the costs of requiring the fishing industry to pay for sufficient at-sea monitoring coverage could reduce profitability. However, a FMP must continue to maintain measures that prevent overfishing and promote the long-term health and stability of the fishery, as required by section 303(a) of the Magnuson-Stevens Act. As noted above, NMFS is concerned that relying exclusively on available NMFS funding for at-sea monitoring coverage during FY 2012 may reduce the amount of at-sea monitoring coverage available during that FY due to the yet uncertain amount of available NMFS funding for FY 2012. NMFS agrees that delaying industry responsibility for paying for at-

sea monitoring coverage may reduce the amount of at-sea monitoring coverage during FY 2012 and undermine efforts to obtain accurate information regarding catch in the fishery. Therefore, NMFS has disapproved the proposed measure to delay industry responsibility for the costs at-sea monitoring coverage during FY 2012. NMFS expects at least some funding that will offset at least some of the at-sea monitoring coverage costs during FY 2012. Accordingly, the fishing industry would only be responsible for the costs of at-sea monitoring coverage that is not accounted for by available Federal funding.

As noted in the FW 45 EA, delaying industry responsibility for funding dockside/roving monitoring coverage in FYs 2011 and 2012 will immediately reduce operational costs to industry, without reducing the availability of landings information. This is because the dockside/roving monitoring data are primarily used for enforcement purposes, not catch monitoring. The trip-end hail report, in conjunction with the requirement for dockside/roving monitors to inspect fish holds implemented by this final rule, is intended to provide sufficient information to ensure compliance with existing regulations. Moreover, NMFS is expected to have sufficient funding in FY 2011 to continue the levels of observer and at-sea monitoring coverage for both sector and common pool trips implemented in FY 2010, and to augment that with sufficient dockside/roving monitoring coverage for trips not monitored by observers or at-sea monitors. Even if insufficient funding available to NMFS results in a short-term reduction in dockside/roving monitoring data, NMFS agrees that such reductions in data would likely be offset by long-term benefits of fishing under sectors. Therefore, NMFS is approving the delay in industry responsibility for dockside/roving monitoring costs through this final rule. Further changes could be considered by the Council through a future management action, but because NMFS does not have the authority to revise measures adopted by the Council in FW 45, NMFS cannot unilaterally postpone industry responsibility for such costs beyond FY 2012 through this action.

NMFS disagrees that the proposed postponement of industry responsibility for dockside/roving and at-sea monitoring costs represents a fundamental revision of the FMP and would circumvent the public process. First, the fundamental dockside/roving and at-sea monitoring provisions implemented by Amendment 16 are retained. The only aspect of these provisions that changes through FW 45 is the entity paying for the costs of such monitoring. Although NMFS will pay for at last some of the costs of dockside/roving and at-sea monitoring coverage for FYs 2011 and 2012, and will endeavor to achieve the coverage requirements specified in Amendment 16 for industry-funded dockside/roving and at-sea monitoring coverage, these changes do not constitute a fundamental change to the FMP requiring an amendment to the FMP. Second, the Council fully anticipated that measures adopted under Amendment 16 could be revised in the future through a FW action. This is documented in the Amendment 16 FEIS's executive summary when it states, "The periodic adjustment process is modified so that all measures adopted can be adjusted on a framework action" (see page 10 of that document) and in Section 4.2.8. This was codified in the regulations at § 648.90(a)(2)(iii) and (c)(1)(i). Both the Amendment 16 FEIS and the proposed regulations to implement Amendment 16 measures were made available for extensive public comment. Therefore, because the fundamental aspects of the Amendment 16 sector and common pool monitoring measures are not affected by the proposed delay in responsibility for monitoring costs, and that the public was afforded substantial opportunity to comment on the ability of the Council and NMFS to revise existing management measures through a FW action as part of the Amendment 16 proposed rule, NMFS has not remanded this provision back to the Council for implementation through an amendment to the FMP.

Sector Measures

Comment 18: FWW claimed that it was unfair to distribute the PSCs of cancelled NE multispecies permits to all valid limited access NE multispecies permits, suggesting that it was a poor use of available and "un-owned" quota. Instead, they recommended that the PSC of cancelled permits should be distributed to state-operated permit banks. They contended that this would signify a return to the general public for the use of its resources.

Response: NMFS disagrees that it is unfair to distribute the PSCs of cancelled NE multispecies permits to all valid limited access NE multispecies permits. The National Standard 4 Guidelines state that, if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocations shall be "fair and equitable to all such fishermen." The proposed distribution to all valid limited access permits is consistent with National Standard 4 because it treats all permits equally and distributes PSCs associated with cancelled permits among all permits that may participate in the NE multispecies fishery. Therefore, NMFS implements this measure through this action.

Comment 19: An individual commercial fisherman recommended that sector rosters should be reopened now that common pool trip limits are proposed. He contended that there was not enough information about potential common pool trip limits to make an informed decision whether to join a sector by either the September or December sector roster deadlines. The Council also suggested that NMFS consider reopening sector rosters for the reasons noted above following public input at the March 17, 2011, Groundfish Oversight Committee meeting.

Response: As highlighted in Item 11 of this preamble and in a March 23, 2011, letter to permit holders, based on industry input, NMFS is allowing for a limited opportunity for additional changes to FY 2011 sector rosters to accommodate changes in vessel ownership that occurred after the submission of final sector rosters on December 1, 2010. This window to reopen FY 2011 sector rosters began on March 23, 2011, and will end on April 30, 2011. In future years, a window for additional sector roster changes would begin with the publication of proposed measures for the common pool for the following year and end on April 30, and would be limited to ownership changes occurring after the December 1 roster deadline. This is intended to provide vessel owners with the information they need to make an informed decision about whether to participate in sectors during the following FY, without undermining public consideration of likely sector operations in the following fishing year by substantially revising sector rosters following an opportunity to comment on proposed sector operations plans.

Comment 20: One industry group (NSSN) and the Council supported the proposed delay of the existing 14-day window for sectors to complete ACE transfers after the end of the FY to ensure that sectors had sufficient time to consider and incorporate final NMFS evaluations of sector catch before they sought to acquire additional ACE to rectify any overages of sector ACE from the previous FY.

Response: NMFS agrees, and implements revisions to the existing regulations at § 648.87(b)(1)(iii)(C) and (b)(1)(viii) to allow for additional time that might be necessary to determine

estimates of final sector catch and balance sector overages from the previous FY through this action.

Comment 21: PEW expressed strong support for the approval of new sectors, including state-operated permit banks. They suggested that permit banks offer an important mechanism for preserving fishing opportunities for small-scale fishermen operating out of small ports and helping to protect against excessive consolidation in the fishery.

Response: NMFS agrees and approved the creation of new sectors, including state-operated permit banks through this final rule.

Comment 22: FWW stated that there was some conflicting language about the approval of new sectors as part of FW 45. In the preamble to the FW 45 proposed rule, they state that language suggests that new sectors have not been approved, yet language on page 39 of the FW 45 EA states that they are already approved and will become effective on May 1, 2011. Overall, however, comments by FWW did not outright oppose the implementation of new state-operated permit bank sectors, but rather suggested that such permit banks are indicative of their underlying concern with the privatization that occurs with catch shares. They suggest an alternative approach that would allow catch shares to be rented out to eligible entities. This would avoid the need to fund permit banks with taxpayer dollars and allow the Federal government to control pricing so that cost of fishing is always reasonable and can facilitate participation of small vessels in the fishery, thereby allowing managers to prioritize environmental, economic, and social goals of the fishery.

Response: Five new sectors were adopted by the Council in FW 45. However, to become effective, these sectors must still be approved by the Secretary through proposed and final rulemaking. Therefore, the language in the FW 45 EA incompletely described the process for approving sectors and their operations on a yearly basis. The Council adopted the creation these new sectors as part of FW 45, but they are not officially approved until the Secretary approves measures contained in FW 45 and the regulations implementing such provisions. Because the creation of these sectors is consistent with the FMP and applicable law, they are officially approved through FW 45 and implemented through this final rule. However, to operate on a yearly basis, all sectors must submit an operations plan and contract by specific deadlines. These yearly operations plans must further be approved by the sector through a separate rulemaking from the rulemaking to approve the creation of such sectors.

In their comment, FWW suggested that rather than allocating fishing privileges to fishing entities, fishery managers should require eligible fishing entities to rent fishing rights. As noted above, NMFS cannot substitute existing management measures with FWW's suggested approach through this final rule. However, this approach could be considered by the Council through a future management action. Nevertheless, it should be noted that their proposal would likely increase operational costs to all vessel owners that are interested in actively participating in the NE multispecies fishery, as both small and large vessels would be potentially obligated to purchase catch shares at the beginning of each FY. Depending on other operational costs associated with each particular vessel, it may not be feasible to continue to participate in the fishery given such expenses. This could lead to economic impacts to both these entities and supporting fishing communities that would be beyond those associated with the current management regime. Further, it may not be fair and equitable to impose different costs on different vessels based on size alone. Accordingly, FWW's proposal may not be consistent with National Standards 4 and 8 of the Magnuson-Stevens Act, as summarized in FWW's comment.

Measures for FY 2011 Under RA Authority

Comment 23: One commercial fisherman expressed concern that the proposed initial common pool trip limits for FY 2011 are insufficient to allow vessels to cover operational expenses. He stated that he prefers higher DAS counting rates and proportional increases in trip limits to allow vessel owners/operators to cover expenses and decrease bycatch by turning discards into landings. The Council also suggested that NMFS consider increasing trip limits and DAS counting so common pool trips are profitable and ACLs are not exceeded during FY 2011, following public input at the March 17, 2011, Groundfish Oversight Committee meeting.

Response: Because the realized fishing activity and associated expenses for each vessel may be very different, as documented in the Amendment 16 FEIS, it is very difficult to determine the appropriate combination of trip limits and DAS counting rates that would ensure that all common pool trips are profitable. Some vessel owners/operators may elect to target some species early in the FY based on historic operations and operator knowledge, while others may prefer to operate later in the FY to target other species and capitalize on the generally higher prices during the winter when fish supply is lower. Therefore, any combination of trip limits and DAS rates would likely benefit some, but not all vessels operating in the common pool.

The RA has the authority to revise trip limits and DAS rates to ensure that the common pool achieves, but does not exceed allocated sub-ACLs throughout the FY. Generally, NMFS has endeavored to ensure that the fishery remains open throughout the FY to provide the most flexibility in fishing operations to accommodate seasonal distribution of fish, fluctuations in market price, and operational preferences of vessel owners/operators. This was the approach employed in proposing initial FY 2011 common pool trip limits in the proposed rule for this action. The proposed FY 2011 DAS counting rate was based on a formulaic rate necessary to account for projected overages of specific sub-ACLs by the common pool during FY 2010. Because NMFS has the flexibility to adjust trip limits and DAS counting rates throughout the year, NMFS can adapt to fishing behavior to either increase or decrease trip limits and, to some degree, DAS counting rates. Therefore, NMFS implements the common pool trip limits and DAS counting rates outlined in Item 13 of this preamble for FY 2011. For some stocks, these trip limits reflect the highest trip limit from the range of trip limits considered in Table 16 of the proposed rule for this action to increase the profitability of common pool trips without compromising efforts to ensure that the common pool sub-ACLs are not exceeded during FY 2011. NMFS will continue to monitor catch rates and will adjust such measures as necessary to achieve the goals of the FMP, including increasing the profitability of individual trips, if available data suggest that such an action is warranted.

Corrections and Clarifications

Comment 24: The NEHFA and one commercial fisherman expressed support for the clarification of PSC text to specifically clarify how PSCs will be calculated for handgear permits using landings histories of handgear permits during FYs 1996–2006.

Response: As outlined in the preamble of the proposed rule for this action, NMFS believes these changes are necessary to accurately reflect the intent of the Council in Amendment 16 and the manner in which PSC are actually

calculated by NMFS starting in FY 2011. Therefore, these changes have been implemented through this final rule.

Comment 25: One sector manager, commenting on the proposed rule to approve FY 2011 sector operation plans, commented in support of delaying the opening of the Eastern U.S./Canada Area only to common pool vessels until August 1, 2011, and allowing sector vessels to access this area on May 1, 2011. He noted that all sector vessels fish under a hard TAC in all areas, including the Eastern and Western U.S./Canada Areas. He suggested that access to these offshore fishing areas when the weather is better during the summer months is very important for smaller trawl vessels that are not suitable for fishing in offshore waters during the winter.

Response: As outlined in the preamble of the proposed rule for this action, NMFS proposed applying the delayed opening of the Eastern U.S./Canada Area only to common pool vessels during FY 2011 for the reasons offered by the sector manager. Therefore, NMFS implements the measures originally proposed in the proposed rule for this action through this final rule.

Comment 26: The NSC expressed support for the proposed change to the regulations at § 648.87(b)(1)(i)(C) to clarify that any sector ACE carried over into the next FY would be calculated based on 10 percent of the ACE originally allocated to the sector at the start of the previous FY. However, the NSC disagreed with the characterization of that proposed change in the preamble of the proposed rule for this action that states "a NE multispecies sector may carry-over up to 10 percent of its allocated ACE for each stock * * * into the following FY, provided the sector has not harvested more than 90 percent of its original allocation for that stock by the end of the FY." They contend that the preamble text suggests that if a sector leases in ACE from another and used more than 90 percent of its allocation, then it would not be able to carry over any ACE into the next FY. In doing so, this interpretation would destroy the utility of carry over provisions and distorts ACE trading system. They recommend that NMFS remove the contested preamble text from the final rule, as it could be used to interpret any ambiguities in the implementation of this provision in the future.

Response: NMFS recognizes that the preamble text referenced in NSC's comment could be interpreted in a way that is counter to the intent of NMFS in proposing this correction. Consistent with the proposed regulatory text, the intent of NMFS was to merely clarify that the amount of ACE that can be carried over for each stock shall be calculated based upon the amount of ACE originally allocated to that sector. To more accurately reflect the intent of NMFS and the Council in originally adopting the original ACE carry-over provision in Amendment 16, NMFS has removed the disputed preamble text and inserted an example clarifying how NMFS will calculate ACE that can be carried over into the next FY into the preamble text for this final rule.

Changes From the Proposed Rule

NMFS has made two changes to the proposed rule, including changes as a result of public comment and the disapproval of the proposed measure to delay industry responsibility for at-sea monitoring costs during FY 2012. In § 648.87(b)(5)(i)(A)(*1*), the phrase "As instructed by the Regional Administrator" was added to the trip-start hail reporting requirements to enable the Regional Administrator to augment the data elements contained in this report to more effectively administer this provision and the associated dockside/roving monitor coverage levels on a yearly basis. This change allows the Regional Administrator to require that vessel operators declare whether an observer or at-sea monitor is assigned for a particular trip to facilitate the appropriate deployment of dockside/roving monitors in FYs 2011 and 2012 and achieve the desired coverage levels based on available funding, as described in Item 10 above. In addition, the regulations at § 648.87(b)(1)(v)(B)(*2*) were revised to reflect that the fishing industry was responsible for developing and paying for any at-sea monitoring program developed starting in FY 2012.

Classification

The Administrator, Northeast Region, NMFS, determined that FW 45 is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

There is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after the date of publication for the measures implemented by this final rule. The effective date of this action affects a parallel rulemaking to approve sector operations plans for the start of FY 2011 on May 1, 2011. Therefore, these actions must be in effect at the beginning of FY 2011 to fully capture their environmental and economic benefits of FW 45 measures as well as the FY 2011 sector operations plans. The time available for FW 45 was constrained by multiple factors, preventing such actions from being completed sufficiently in advance of May 1, 2011, to facilitate the 30-day cooling off period. These factors included additional time necessary to fully analyze measures included in this action following revisions to draft measures when the Council adopted final FW 45 measures at its November 2010 meeting, and coordinate a special meeting of the TMGC to evaluate the impacts of the approval of IFACA in January 2011 on measures included in FW 45. Due to these constraints and rationale, this rulemaking could not be completed further in advance of May 1, 2011. Therefore, in order to have this action effective at the beginning of FY 2011, it is necessary to waive a portion of [retain as necessary] the 30-day delay period for this rule.

The waiver of a portion of [retain as necessary] the 30-day delayed effectiveness for this final rule is in the public interest because it is necessary to implement a number of measures by the start of FY 2011 that would benefit the NE multispecies fishery at large. Specifically, this action incorporates the best available scientific information for both pollock and GB yellowtail flounder, specifies and distributes revised ACLs for several stocks, implements a spawning closure area to protect spawning cod in the GOM, delays industry responsibility for costs associated with catch monitoring, increases access to near-shore seasonal closure areas by smaller Handgear-permitted vessels, increases LAGC vessel access to the Great South Channel Exemption Area, and approves the creation of five new sectors, among other measures. This final rule also includes measures that would control fishing effort by common pool vessels to help prevent the premature or excessive harvest of sub-ACLs allocated to the common pool during FY 2011. A May 1, 2011, effective date is necessary in order to specify catch levels and implement management measures necessary to eliminate overfishing and continue stock rebuilding, help mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks, increase the economic efficiency of vessel operations, and prevent industry confusion. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2011, and could

result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities that were neither anticipated by the Council and industry participants, nor analyzed in the FW 45 EA and the associated FY 2011 sector operations plans EA. In particular, access to available fishery resources would be unnecessarily delayed for scallop and Handgear-permitted vessels, and commercial vessels would not be able to benefit from the substantially increased FY 2011 GB yellowtail flounder ACL. This could result in additional economic impacts and reduce the economic efficiency of the fleet until such measures become effective. Without the timely implementation of measures specified in this rule, the risk of excessive catch by common pool vessels would be increased, along with potential that the common pool will once again exceed its sub-ACL for specific stocks. In addition, allowing for a full 30-day delayed effectiveness period would delay the implementation of the GOM Cod Spawning Protection Area for up to an additional 30 days during which cod will continue to spawn. Thus, this delay could potentially jeopardize existing efforts to end overfishing and rebuild overfished stocks. This would be contrary to not only the interest of the fishing communities, but to the public at large, as overfishing and overfished stocks decreases the ability of the public to enjoy that stock for commercial, recreational, aesthetic, or other reasons, and reduces the availability of seafood to the nation. Therefore, delayed implementation of these measures beyond May 1, 2011, is impracticable and contrary to the public interest, and the requirement to delay implementation of this rule for a period of 30 days is hereby waived.

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

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A FRFA was prepared for this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the FW 45 EA and any supplements thereto to support the action, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in FW 45 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS (*see* **ADDRESSES**). In the FRFA, the baseline (no-action alternative) is the set of measures that were in place during FY 2010 (i.e., the measures implemented under Amendment 16 and FW 44). Tables and sections that are referenced in this FRFA refer to those contained in the EA developed for FW 45. A copy of FW 45 is available from the Council (*see* **ADDRESSES**).

A supplemental EA was developed to analyze the impacts of the emergency action to increase the FY 2011 GB yellowtail flounder TAC for the U.S./Canada Management Area and the associated ABC and ACL for this stock. The economic impact on affected entities resulting from increasing the FY 2011 GB yellowtail flounder TAC, ABC, and ACL is expected to be positive, because it will provide additional fishing opportunity and fishing revenue for vessels participating in NE multispecies fishery and the scallop fishery during FY 2011. Based on historic information, the groundfish fishery is able to land close to the full amount of GB yellowtail flounder allowed. The estimated revenue from the sale of GB yellowtail flounder under the increased catch limits is approximately $2 million, compared with $1.4 million if the original FY 2011 TAC, ABC, and ACL adopted in FW 45 were to be implemented instead. Based on a conservative estimate using FY 2010 data, for every dollar of yellowtail flounder revenue, there is at least $10 of revenue from other species. The additional revenue due to the catch of other species could be worth approximately ten times the difference between the GB yellowtail flounder revenue under the original catch limits and the increased catch limits implemented by this action (10 × $641,272), or approximately $6.4 million (if the total GB yellowtail flounder TAC is caught, and fishing effort on GB ceases consistent with existing regulations).

With respect to the scallop fishery, the increased catch limit implemented by this action will result in a larger cap on the amount of GB yellowtail flounder than can be caught in the scallop access areas. A larger cap may indirectly enable greater scallop revenue for the scallop fishery, particularly if the GB yellowtail flounder cap becomes limiting to the scallop fishery in the Closed Area II Scallop Access Area. It is difficult to predict the amount of GB yellowtail flounder that will be caught in the Closed Area II Scallop Access Area in FY 2011 due to the variability of scallop fishing effort, as well as scallop and yellowtail flounder catch rates. However, a larger cap on the amount of GB yellowtail flounder that can be caught in the scallop access areas enhances the ability of the scallop industry to plan fishing operations, and will minimize disruption to fishing activities.

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

Comment A: As noted above in Comment 16, several commenters suggested that the proposed requirement for dockside/roving monitors to inspect fish holds will expose vessel owners to a risk of a lawsuit stemming from any potential injury to such monitors when boarding the vessel or inspecting fish holds even if the dockside/roving monitoring service providers had sufficient insurance coverage. These commenters asserted that this potential risk will force vessel owners to buy more insurance to ensure that they are adequately covered for any potential liability lawsuits that might result from this provision. In doing so, they contest that this would contradict the FW 45 economic analysis that indicates that this measure should not impact either vessel owners or service providers.

Response: The existing regulations require dockside/roving monitor service providers to have adequate insurance to cover injury, liability, or accidental death that might befall dockside/roving monitors in the conduct of their duties. However, NMFS recognizes that despite such coverage, individual dockside/roving monitors still have the capacity to file a lawsuit against vessel owners for any injuries incurred while inspecting fish holds. As noted in the response to Comment 16 above, NMFS encourages sectors and dockside/roving monitor service providers to seek agreement on how to best address the issues and problems raised by the comment. NMFS does not have sufficient information to evaluate the potential increase in costs associated with any additional insurance coverage that vessel owners may be inclined to purchase to protect them from any liability associated with dockside/roving monitors inspecting fish holds. The risks associated with the liability for injuries to dockside/roving monitors inspecting fish holds appear to be

somewhat similar to those associated with having to accommodate an observer and, therefore, may be instructive on how to consider insurance costs for dockside monitoring. NMFS is committed to reviewing the requirement to inspect fish holds and the costs associated with it over time as more information becomes available.

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

The measures implemented by this action affect recreational anglers and any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit (Handgear B permit) or charter/party permit, or a LAGC scallop permit. In addition, because this action affects the dockside/roving and at-sea or electronic monitoring program requirements and require dockside monitors to inspect fish holds, this action also affects any entity intending to provide dockside/roving or at-sea or electronic monitoring services. As of December 20, 2010, the maximum number of small fishing entities (as defined by the Small Business Administration (SBA)) that may be affected by this action is 3,935 entities. These affected entities include 1,144 limited access NE multispecies DAS permit holders; 133 limited access NE multispecies Handgear A (Handgear A) permit holders; 11 limited access NE multispecies Small Vessel Exemption (Category C) permit holders; 1,156 open access NE multispecies Hangear B (Handgear B) permit holders; 824 open access NE multispecies charter/party permits; and 667 Atlantic sea scallop LAGC permits. It is likely that the actual number of small fishing entities affected by this action would be much smaller. For instance, information contained in Section 10.11.2 of the FW 45 EA indicates that only 397 vessels had reported any sales of regulated species and ocean pout as of December 2010, including 18 Handgear A vessels, 50 Handgear B vessels, and 329 other vessels issued limited access NE multispecies DAS permits. Further, according to that analysis, only 18 entities conducted party/charter operations in the GOM Cod Spawning Protection Area implemented by this action. It is difficult to estimate the number of private recreational anglers that may be affected by this action, as the GOM Cod Spawning Protection Area implemented by this action is too small to accurately determine the number of anglers that fish in this area based on available data. Finally, it is expected that the five entities currently providing dockside/roving monitoring and at-sea or electronic monitoring services would continue to do so in FYs 2011 and 2012, and would be affected by this action. As of March 28, 2011, four of these entities have submitted an application to provide dockside/roving monitoring services for FY 2011.

It is important to note that past fishing activity and enrollment in sectors may not be an accurate predictor of future fishing activity. In particular, it is possible that revisions to measures affecting both the Handgear A and Handgear B fisheries may increase participation by vessels issued such permits. As of December 1, 2010, 836 permits had elected to join a sector during FY 2011, as determined through the submission of sector rosters to NMFS, indicating that 452 permits would be enrolled in the common pool during FY 2011. However, vessels may withdraw from sectors through April 30, 2011. Therefore, because participation in sectors is voluntary, the number of vessels that will actually participate in sectors during FY 2011 and future years is likely to fluctuate based upon whether joining a sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The SBA considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than $4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is $7 million in sales. Based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million. For regulated charter/party operators, the median value of gross receipts from passengers was just over $9,000, and did not exceed $500,000 in any year during 2001 to 2007. The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to the dealer's data for FYs 1994 to 2009, consistent with analyses under the RFA for recent scallop actions. Although multiple vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this final rule.

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

The only reporting and recordkeeping requirements affected by this final rule are the request for a LOA to fish south of the GOM RMA by Handgear A and Handgear B vessels, or a similar declaration via VMS prior to each trip by Handgear A vessels required to use VMS under the existing regulations, and the trip-end hail report already approved as part of Amendment 16. This action does not impose any new reporting or recordkeeping requirements that have not already been in existence. However, it requires additional vessels (handgear-permitted vessels) to comply with the LOA requirements and mandates that common pool vessels submit trip-end hail reports earlier than expected when originally implemented under Amendment 16. Existing reporting and recordkeeping requirements for the dockside/roving and at-sea or electronic monitoring programs approved under Amendment 16 have been included below for reference.

The costs associated with the reporting and recordkeeping requirements supporting measures implemented by this action are detailed in the Paperwork Reduction Act (PRA) analysis associated with Amendment 16 and the permit family of forms for the Northeast Region of NMFS. The time burden associated with a telephone call to request for a LOA to fish south of the GOM RMA is estimated at 5 minutes, with no costs to vessels requesting such a LOA. The cost associated with a similar declaration via VMS is estimated to be $0.50 per submission. For the trip-end hail reports, the yearly cost to each vessel is estimated to be approximately $17, assuming that such reports were made via VMS. Costs would likely be lower if such reports were submitted via another medium. Costs to vessels receiving dockside/roving monitoring services implemented under Amendment 16 include $10 per year for confirming pre-trip hail reports and $13 per year to confirm trip-end hail reports and specify whether a particular trip would be observed by a dockside monitor. Requirements to maintain and enter data into a dockside monitoring database are estimated to cost approximately $4,225 per service provider annually, while submitting dockside monitoring data to NMFS is likely to cost each service provider approximately $36,000 per year. Similar costs to service providers are expected to notify sector vessels of selection for at-sea/electronic monitoring coverage

($3,125 per year) and to submit at-sea or electronic monitoring data to NMFS ($36,000 per year).

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

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

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

During the development of Framework 45, NMFS and the Council

considered ways to reduce the regulatory burden on and provide flexibility to the regulated community. The approach taken is consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). The measures implemented by this final rule, in conjunction with the final rule to approve FY 2011 sector operations plans, minimize the long-term economic impacts on small entities to the extent practicable. Overall, long-term impacts of this final rule, as well as the related actions of the FMP, are minimized by ensuring that management measures and catch levels result in fishing mortality rates are sustainable and contribute to rebuilding stocks and, therefore, maximizing yield, as well as providing additional flexibility for fishing operations in the short term. In particular, this final rule implements several measures that directly or indirectly provide small entities with some ability to offset at least some portion of the estimated economic impacts associated with proposed measures. The major mitigating measures include formal recognizing the rebuilt status of pollock; extending the rebuilding period for GB yellowtail flounder; increasing the FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC; maintaining existing yellowtail flounder allocations to the scallop fishery; allowing LAGC scallop vessels greater access to the Great South Channel Exemption area; increasing access to the seasonal closure areas for Handgear A and Handgear B permits and exempting vessels issued these permits and limited access Small Vessel Exemption permits from existing dockside/roving monitoring requirements; delaying requiring sectors and common pool vessels to pay for dockside/roving and at-sea or electronic monitoring; redistributing PSC from cancelled permits to all remaining valid limited access NE multispecies permits; and approving new sectors, including state permit banks and a lease-only sector. A complete description of why each measure was selected can be found in the Section 4.0 of the FW 45 EA (*see* **ADDRESSES**).

The specification of ACLs for components of the groundfish and non-groundfish fisheries, as well as additional management measures to ensure that such catch levels are not exceeded, increase the likelihood that the biological objectives of the FMP will be met, resulting greater sustainable revenue over the long term. Specifically, this action formally recognizes that pollock is rebuilt, incorporates updated biological reference points, and specifies higher ACLs for this stock based upon updated stock assessment data first implemented on a temporary basis through a July 20, 2010, emergency action (75 FR 41996). This action also extends the rebuilding program for GB yellowtail flounder and indirectly reduces economic impacts on NE multispecies vessels by allowing higher ACLs to be specified for the remainder of the rebuilding program compared to the existing rebuilding program adopted for this stock. Further, this action substantially increases the FY 2011 GB yellowtail flounder U.S./Canada Management Area TAC and the associated ABC and ACL available to commercial vessels based on the flexibility provided by IFACA. Such increases in available ACL and associated vessel revenue would not be realized if this action was not implemented, as the increased pollock ACL implemented by the July 20, 2010, emergency rule would expire on July 17, 2011, and the GB yellowtail flounder U.S./Canada Management Area TAC and the associated ABC and ACL would expire on April 30, 2011, because this TAC is approved on a yearly basis following annual recommendations by the TMGC. Finally, this action maintains the actual yellowtail flounder allocations to the scallop fishery that were implemented by the FW 44 final rule for FY 2010, instead of updating those allocations to reflect revised estimates of the amount of yellowtail flounder bycatch expected in the scallop fishery during FY 2011. Updated estimates would have lowered the yellowtail allocations to the scallop fishery for FY 2011 and potentially resulted in reduced fishing revenue for the scallop fishery. Together, these provisions increase the amount of these stocks available to commercial vessels without compromising the conservation of objectives of the FMP to prevent overfishing and rebuild overfished stocks, thereby likely increasing vessel revenues from landing these and other stocks by reducing the likelihood that low ACLs for these stocks will unnecessarily restrict vessel operations in FY 2011 and mitigating adverse economic impacts of recent effort controls in the fishery.

This final rule mitigates economic impacts to LAGC scallop vessels by eliminating the yellowtail flounder peak spawning closure areas in the Great South Channel Exemption Area and enabling LAGC scallop vessels greater access to this area. If this measure reduces operational costs by allowing vessels to operate in a more efficient manner, it could increase the economic efficiency of vessel operations and increase the value of the IFQ permits. Not implementing this measure would likely cause fishing operations by LAGC scallop vessels to be less efficient, increasing operational costs by requiring such vessels to steam farther to open fishing grounds. This action does not compromise efforts to protect overfished stocks of yellowtail flounder, as the yellowtail flounder spawning closure areas were first implemented at a time when LAGC scallop vessels were not as restricted in the amount scallop trips that they could take as they are now. Therefore, these closures were necessary to prevent the excessive harvest of yellowtail flounder as bycatch by LAGC scallop vessels, but are now no longer required following the implementation of more restrictive measures to control scallop catch by these vessels in the form of an individual fishing quota system as part of Amendment 11 to the Atlantic Sea Scallop FMP (April 14, 2008; 72 FR 20090).

This action implements several measures that reduce operational costs to vessels, on both a temporary and indefinite basis. Specifically, this action indefinitely exempts NE multispecies Handgear A, Handgear B, and Small Vessel Exemption Category permits from dockside/roving monitoring requirements, delays industry responsibility for paying for dockside/roving monitoring coverage until FY 2013, and delays industry responsibility for paying for a sector at-sea monitoring program until FY 2013. Delaying the fishing industry's responsibility to pay for dockside/roving monitors and exempting handgear and Small Vessel category permits from the dockside/roving monitoring requirements would save approximately $281,000 per year (assuming 20 percent of trips would be covered), while delaying the responsibility for paying for at-sea monitoring would save industry about $5 million per year (assuming 30 percent of trips would be covered). Such cost savings would not be realized if such measures are not implemented. Therefore, this action attempts to minimize operational costs to affected vessels as the fishery continues to adapt to substantial changes to management measures, including ACLs, AMs, and an expansion of sector measures, and overfished stocks continue to rebuild.

Allowing vessels with handgear permits access to at least some of the seasonal closure areas is likely to increase the chance that such permits could increase their catch of regulated species, particularly during the early months of the fishing season before trip

limits may be reduced to prevent the overall ACLs from being exceeded. In addition to increasing the operational efficiency of such vessels by increasing catch rates and reducing operational costs (fuel, primarily), because these vessels are small and use relatively inefficient gear to catch fish, these measures allow vessels to fish closer to shore during periods of better weather instead of forcing them to fish farther offshore in areas that are not subject to seasonal closures. Such benefits would not be realized if this action is not implemented.

This action recalculates the PSC for each stock on a yearly basis to reflect the elimination of landings histories from cancelled permits, and redistributes such landings histories to all valid limited access NE multispecies permits. This replaces the previous practice of using the landing histories of cancelled permits to contribute to the sub-ACL specified for the common pool based on the interpretation that if a permit has not signed up to join a sector it is, by default, in the common pool. The magnitude of the impact from this provision is likely to be small, as few permits have been cancelled since the PSCs were calculated using permits valid as of May 1, 2008. Cancelled permits represent only about 72,000 lb (32,659 kg) of all species combined that is divided among the 1,288 valid limited access NE multispecies permits based on each permit's individual fishing history. Thus, this measure, in itself, is unlikely to make an unprofitable fishing operation marginally profitable. Nevertheless, this action provides some positive benefit and increased economic opportunity to all remaining permit holders, and may increase the amount of ACE available on the market to lease.

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 18, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

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

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

* * * * *

(k) * * *

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

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

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

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

* * * * *

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

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(7) * * *

(i) * * *

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

(f)(2)(vi), (i), (o)(2)(i), or as authorized under § 648.85.

* * * * *

(9) * * *

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

* * * * *

(15) * * *

(ii) * * *

(A) * * *

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

* * * * *

(18) * * *

(i) * * *

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

* * * * *

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

The revision reads as follows:

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

* * * * *

(a) * * *

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

* * * * *

■ 5. In § 648.81:

■ a. Revise the introductory text of paragraph (f)(2)(vi);

■ b. Add paragraph (g)(2)(vi);

■ c. Revise paragraph (i); and

■ d. Add paragraph (o).

The revisions and additions read as follows:

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

* * * * *

(f) * * *

(2) * * *

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

* * * * *

(g) * * *

(2) * * *

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

* * * * *

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

* * * * *

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

GOM COD SPAWNING PROTECTION AREA

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

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

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

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

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

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

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

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

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

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

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

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

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

■ 6. In § 648.82:

■ a. Revise paragraphs (a)(2) and the introductory text of paragraph (b)(6);

■ b. Add paragraph (b)(6)(iv); and

■ c. Revise paragraph (n)(2)(iv).

The revisions and addition read as follows:

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

(a) * * *

(2) Notwithstanding any other provision of this part, any vessel issued

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

(b) * * *

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

* * * * *

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

* * * * *

(n) * * *

(2) * * *

(iv) *Monitoring requirements.* Except as specified in paragraph (n)(2)(iv)(C), starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean pout by common pool vessels shall be monitored at the point of offload by independent, third-party service providers approved to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. Unless otherwise instructed by NMFS, these service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. For fishing year 2012 only, common pool vessels must comply with any dockside/roving monitoring program specified by NMFS pursuant to § 648.87(b)(1)(v)(B)(*1*). None of the costs associated with dockside/roving monitors during fishing year 2012 shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2013 and thereafter, the costs associated with monitoring vessel offloads shall be the responsibility of individual vessels, unless otherwise instructed by NMFS. An individual vessel owner or operator may only use one dockside/roving monitoring service provider per fishing year beginning in fishing year 2013, and must contract for such services with a service provider approved by NMFS pursuant to § 648.87(b)(4), as instructed by the Regional Administrator. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

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

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

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

* * * * *

■ 7. In § 648.87:

■ a. Revise paragraphs (b)(1)(i)(A), (b)(1)(i)(C), (b)(1)(i)(E) introductory text, (b)(1)(i)(E)(*1*), (b)(1)(i)(E)(*2*)(*i*) and (*ii*), (b)(1)(iii)(C), (b)(1)(v)(B) introductory text, (b)(1)(v)(B)(*1*), (b)(1)(v)(B)(*3*) introductory text, (b)(1)(v)(B)(*3*)(*i*), (b)(1)(v)(B)(*4*) and (*5*), (b)(1)(viii) introductory text, and (b)(1)(viii)(C);

■ b. Revise paragraph (b)(2) introductory text;

■ c. Revise paragraphs (b)(5) introductory text and (b)(5)(i)(A)(*1*);

■ d. Add paragraph (b)(5)(ii)(E);

■ e. Revise paragraph (c)(2)(i); and

■ f. Add paragraphs (d)(20) through (24).

The revisions and additions read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) *Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock, with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels/permits participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

* * * * *

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over an amount of ACE equal to up to 10 percent of its original ACE allocation for each stock that is unused at the end of one fishing year into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

* * * * *

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

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, landings recorded in the NMFS dealer database of each stock of NE multispecies determined by NMFS to be the landings history associated with that permit while subject to the NE multispecies regulations based on whether the vessel fishing under that permit was issued a limited access NE multispecies permit or subsequently qualified for a limited access NE multispecies permit pursuant to § 648.4(a)(1)(i), including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, but excluding, for example, landings by scallop vessels operating under a scallop DAS, shall be summed for fishing years 1996 through 2006. This sum shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. The resulting figure shall then be multiplied by a factor of 1/PSC of remaining permits as of June 1 of each year, unless another date is specified by the Regional Administrator, to calculate the PSC for each individual valid limited access NE multispecies permit for each regulated species or ocean pout stock allocated to sectors in the NE multispecies fishery for the following fishing year pursuant to this paragraph (b)(1)(i)(E)(*1*).

(*2*) * * *

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

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

* * * * *

(iii) * * *

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e., through June 30), unless otherwise specified by NMFS, to allow time to process any ACE transfers submitted at

the end of the fishing year pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

* * * * *

(v) * * *

(B) *Independent third-party monitoring program.* A sector must comply with any dockside/roving monitoring program specified by NMFS for fishing years 2011 and 2012, pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, including the dockside/roving monitoring operational standards specified in paragraph (b)(5) of this section, and develop and implement an independent third-party dockside/roving monitoring program by fishing year 2013. A sector must also develop, implement, and pay for, to the extent not funded by NMFS, an at-sea or electronic monitoring program by fishing year 2012 (May 1, 2012) consistent with paragraph (b)(1)(v)(B)(*2*) of this section. Both the dockside/roving and at-sea or electronic monitoring program developed by sectors must be approved by NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service provider providing dockside/roving and at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea or electronic monitoring program proposed by sectors must meet the operational standards specified in paragraphs (b)(5) and (b)(6) of this section, respectively, and be approved by NMFS in a manner consistent with the Administrative Procedure Act. None of the costs associated with any dockside/roving monitor monitoring requirements shall be paid by the owner or operator of a vessel subject to these requirements during fishing years 2011 and 2012. Starting in fishing year 2013, sectors shall be responsible for paying the costs associated with dockside/roving monitoring coverage, unless otherwise instructed by NMFS.

(*1*) *Dockside/roving monitoring program.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout at every offload for which a trip has been selected to be observed by a dockside/roving monitor, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. Unless otherwise specified in this part, the level of coverage for landings is specified in paragraph (b)(1)(v)(B)(*3*) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored, and a vessel may not offload any of its catch until the dockside/roving monitor arrives. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor must have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/roving monitoring services pursuant to this paragraph (b)(1)(v)(B)(*1*) must meet the service provider standards specified in paragraph (b)(4) of this section. The details of the dockside/roving monitoring program used by each sector starting in fishing year 2013 pursuant to paragraph (b)(1)(v)(B) of this section must be specified in the sector's operations plan, and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act. Common pool vessels operating under the provisions of the either a limited access Northeast multispecies Small Vessel Category permit or Handgear A permit, as specified at §§ 648.82(b)(5) and (6), respectively, or an open access Northeast multispecies Handgear B permit, as specified at § 648.88(a), are exempt from the dockside/roving monitoring requirements specified in this paragraph (b)(1)(v)(B)(*1*). Except as provided in this paragraph (b)(1)(v)(B)(*1*), all common pool and sector vessels, along with service providers providing dockside monitoring services, will be subject to the dockside monitoring operational requirements specified at § 648.87(b)(5).

* * * * *

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

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

* * * * *

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

(*5*) *Notification of service provider change.* If for any reason a sector decides to change approved service providers used to provide dockside/roving or at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in

approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

(i) * * *

(A) * * *

(*1*) *Trip-start hail report.* As instructed by the Regional Administrator, the vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hours or within 6 hours of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor service provider within 10 minutes of sending the original trip-start hail report, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

* * * * *

(ii) * * *

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

* * * * *

(c) * * *

(2) * * *

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

* * * * *

(d) * * *

(20) *State of Maine Permit Banking Sector.*

(21) *State of Rhode Island Permit Bank Sector.*

(22) *State of New Hampshire Permit Bank Sector.*

(23) *State of Massachusetts Permit Bank Sector.*

(24) *Sustainable Harvest Sector III.*

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

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3

kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) * * *

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

* * * * *

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

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) * * *

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

* * * * *

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

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

(a) * * *

(4) * * *

(iii) * * *

(E) * * *

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

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110201085–1212–02]

RIN 0648–XY55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2011 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule partially approves and implements 19 sector operations plans and contracts for fishing year (FY) 2011. NMFS received sector operations plans and contracts from the following 22 sectors: The Georges Bank (GB) Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Massachusetts Permit Bank Sector; the New Hampshire Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; the Rhode Island Permit Bank Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. This interim final rule partially approves the operations plans and contracts, and allocates an annual catch entitlement (ACE) of certain NE multispecies stocks to the following 19 sectors: The GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were not approved to operate in FY 2011. Certain exemptions proposed in the operations plans have not been approved, as explained in detail below. Additionally, NMFS is modifying, for the purposes of this rule, the definition for "unmarketable" fish (see Exemption 11) and will accept further comment on this definition. NMFS is also accepting further comment on final sector membership. NMFS will publish a subsequent final rule, if necessary, making any further changes to this definition or in light of additional comments on changes to membership of sectors since the publication of this rule.

DATES: Effective May 1, 2011, through April 30, 2012. Written comments must be received on or before May 10, 2011.

ADDRESSES: You may submit comments on the new definition of "unmarketable" fish and changes to sector membership, identified by 0648–XY55, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison Murphy.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or