

port-to-port by the vessel that harvested such *Dissostichus* species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

\* \* \* \* \*

■ 7. In § 300.116 the heading is revised to read as follows:

**§ 300.116 Requirements for a vessel monitoring system for U.S. vessels.**

\* \* \* \* \*

■ 8. In § 300.117 paragraph (bb)(9) is revised and paragraphs (gg) and (hh) are added to read as follows:

**§ 300.117 Prohibitions.**

\* \* \* \* \*

(bb)\* \* \*

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

\* \* \* \* \*

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0912081429-0114-02]

RIN 0648-XS55

#### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2010 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:** Final rule.

**SUMMARY:** This final rule implements 17 sector operations plans and contracts for fishing year (FY) 2010. In order to be considered for approval on a parallel

track with Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), representatives from 17 sectors submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010. NMFS received sector operations plans and contracts from the Northeast Fishery Sectors (NFS) II through XIII, the Sustainable Harvest Sector (SHS), the Tri-State Sector (TSS), the Northeast Coastal Communities Sector (NCCS), the Georges Bank Cod Fixed Gear Sector (FGS), and the Port Clyde Community Groundfish Sector (PCCGS).

Following approval of the Amendment 16 sector measures and provisions, the Administrator, NE Region, NMFS (Regional Administrator) has partially approved the operations plans and contracts, and allocated an annual catch entitlement (ACE) of certain NE multispecies stocks to the NFS II–XIII, the FGS, the SHS, the TSS, the PCCGS, and the NCCS.

**DATES:** Effective May 1, 2010 through April 30, 2011.

**ADDRESSES:** Copies of each sector's final operations plan, contract, and environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Sector Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** A proposed rule soliciting public comment on 17 sector operations plans and contracts was published in the **Federal Register** on December 22, 2009 (74 FR 68015), with public comments accepted through January 21, 2010. After review of the public comments, NMFS has partially approved the 17 sector operations plans and contracts, determining the operations plans to be consistent with the goals of the FMP, as described in Amendment 16 and other applicable laws, and in compliance with the proposed measures that govern the development and operation of a sector as specified in Section 4.2.3 of Amendment 16.

#### Background

While the Amendment 13 final rule (69 FR 22906, April 27, 2004) implemented the Georges Bank (GB) Cod Hook Sector in 2004, and the

Framework Adjustment (FW) 42 final rule (71 FR 62156, October 23, 2006) implemented the FGS in 2006, Amendment 16 revises and expands the rules for these two existing sectors and authorizes an additional 17 new sectors, including the NFS I through XIII, the SHS, the TSS, the NCCS, and the PCCGS. Managers of two (2) of the 19 sectors authorized under Amendment 16 did not submit an operations plan for FY 2010.

Three separate actions associated with Amendment 16 are applicable to NE multispecies permit holders for FY 2010: A proposed rule that contains implementing regulations for the partially approved Amendment 16 (74 FR 69382, December 31, 2009) includes rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; revisions to existing management measures necessary to end overfishing, rebuild overfished stocks, and mitigate adverse economic impacts of increased effort controls; and significant revisions to existing sector management measures. In accordance with Amendment 16, a proposed rule specific to sectors published on December 22, 2009, (74 FR 68015) and discussed authorization of 17 sector operations plans and contracts for FY 2010. This final rule implements the approved operations plans. Also in accordance with Amendment 16, a third proposed rule for FW 44 published on February 1, 2010 (75 FR 5016), which proposed specifications of catch levels for FY 2010–2012, in accordance with the process specified in Amendment 16, and detailed additional management measures to augment Amendment 16.

Thus, the final rules for Amendment 16, sector operations, and FW 44 are closely related, and each rule relies on the other two. It is necessary to employ all three rules to implement Amendment 16 as intended by the New England Fishery Management Council (Council). While Amendment 16 implements management measures and processes for the FMP, FW 44 specifies catch levels according to the policies and procedures in Amendment 16, and this sector operations rule authorizes the operation of sectors. For example, Amendment 16 must be implemented for the 17 new sectors to be authorized. FW 44 specifies overfishing levels, acceptable biological catches, annual catch limits (ACLs) and allocates catch among components of the fishery, including the division of the catch between sector and common pool vessels according to the Amendment 16 ACL specification process. Final rules for the three actions, if all are approved,

are intended to be published nearly simultaneously in order to become effective concurrently on May 1, 2010. Therefore, NMFS suggests that interested readers review all three rules in order to fully understand the measures being implemented pursuant to Amendment 16 and its related rulemakings.

Permit owners that have indicated their intent to participate in one of the 17 approved sectors account for 812 of the 1,477 eligible NE multispecies permit holders, representing approximately 98 percent of the historical commercial NE multispecies catch from the qualifying period. Table 1 (below) includes permit owners who joined a sector as of January 22, 2010. These permit owners have until April 30, 2010, to withdraw from a sector and fish in the common pool for FY 2010. This final rule responds to public comments on the proposed rule and implements the approved additional regulation exemptions that were requested by the individual sectors.

Amendment 16 defines a sector as “[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.” A sector’s total allowable catch (TAC) is referred to as an ACE. Regional Administrator approval is required in order for the sectors to be authorized to fish and to be allocated an ACE for most stocks of regulated NE multispecies during each FY. Each individual sector’s ACE for a particular stock represents a share of that stock’s ACL available to commercial NE multispecies vessels, based upon the potential sector contributions (PSC) of permits participating in that sector for that FY. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire. Table 2 shows the ACE percentages each sector will receive according to the permits enrolled as of January 22, 2010, while Tables 3a and 3b provide the corresponding ACE amounts each sector will be allocated.

Amendment 16 will allow sectors to trade ACE for use during that FY. Although some of the assigned ACEs to one sector are as high as 50 percent, and technically, a sector could acquire an unlimited amount of ACE from another

sector by transferring ACE, analysis by the Groundfish Plan Development Team (PDT) during the development of Amendment 16 suggested that it is unlikely that any one sector could accumulate a sufficient share of a stock to exercise market power over the rest of the fishery. Moreover, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector will be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Allowing sectors to trade ACE will minimize the influence of the initial sector allocation, including any cap on initial allocations.

If a sector intends to fish in a given FY, it must submit an operations plan, sector contract, and EA to NMFS by September 1 of the year prior to the FY in question. On September 1, 2009, 17 sectors submitted to NMFS operations plans and contracts (as single documents) for FY 2010. The operations plans contain the rules under which each sector will fish and the legal contract that binds members to a sector and its operations plan. Sectors will be allocated all regulated multispecies stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and Southern New England/Mid-Atlantic (SNE/MA) winter flounder. In addition, sectors will not be allocated ocean pout. Sector vessels must retain all legal-sized allocated groundfish while fishing on a sector trip. Catch of all allocated groundfish stocks by any of a sector’s vessels will count against the sector’s ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish catch in an exempted fishery, or catch of yellowtail flounder in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, American lobster (with non-trap gear) and spiny dogfish will have their groundfish catch (including discards) on those trips debited against the sector’s ACE, unless the vessel is fishing for such species under the provisions of a NE multispecies exempted fishery. Discard rates applied to sectors will be determined by NMFS as developed from at-sea monitoring observations.

As provided in Amendment 16, ACE can be transferred between sectors, although ACE transfers to or from common pool vessels are prohibited. Both the SHS and the TSS operations plans describe how landings history from permits within the sector will be attributed to sector members. Under Amendment 16, however, catch history

is frozen; therefore, the statements in the contracts for the SHS and TSS have no legal standing unless a subsequent Council action adopts them. Each sector must ensure that its ACE is not exceeded during the FY. Sectors are required to monitor their landings, track their available ACE, and submit weekly catch reports to NMFS. Once a sector’s ACE for a particular stock is caught, a sector is required to cease all fishing operations in that stock area until it acquires additional ACE for that stock. Each sector must also submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing all of the sector’s catch (landings and discards of all stocks by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector.

All sector operations plans and contracts detail procedures to enforce the sector operations plan, explain sector monitoring and reporting requirements, present a schedule of penalties, and provide authority to sector managers to issue stop fishing orders to sector members. Amendment 16 specifies that sector members may be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector contract approved for FY 2010 states that the sector will withhold an initial reserve from each member’s individual allocation to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2010, each sector will allow its members to harvest an amount of fish equal to the PSC that each individual member’s permit contributed to the sector’s ACE.

Amendment 16 contains several “universal” exemptions that are applicable to all sectors. These universal exemptions include exemptions from trip limits on allocated stocks, the GB Seasonal Closed Area, NE multispecies days-at-sea (DAS) restrictions, the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB, and portions of the Gulf of Maine (GOM) Rolling Closure Areas. Sectors may request additional exemptions from applicable regulations in their sector operations plan. However, Amendment 16 states that sector vessels may not request exemptions from certain NE multispecies management measures, including year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements).

All vessels that fish in an approved sector, with the exception noted below, will receive a letter of authorization (LOA) for FY 2010 to fish under regulations that apply to the sector in which they are enrolled for the FY. Permits and vessels that committed to NFS IV, which is a lease-only sector,

will not receive an LOA to fish, as no vessels in that sector are authorized to actively fish.

In order to comply with the National Environmental Policy Act (NEPA), an EA was prepared for each operations plan. All sector EAs are tiered from the Environmental Impact Statement (EIS) for Amendment 16. The summary

findings of each EA conclude that each sector will likely produce similar effects that result in non-significant impacts.

An analysis of aggregate sector impacts was also conducted and Findings of No Significant Impact for all sector EAs were issued by the Regional Administrator on February, 26, 2010.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, ACTIVE VESSELS, AND ACTIVE PERMITS FOR THE FY 2010 SECTORS

Sector name	Number of individual permits*	Percentage (%) of individual permits	Number of active vessels**	Percentage (%) of active vessels within the fleet***	Percentage (%) of permits that are active within the sector
FGS .....	95	6.43	50	6.77	52.63
NCCS .....	19	1.29	19	2.57	100.00
NFS II .....	81	5.48	43	5.82	53.09
NFS III .....	81	5.48	50	6.77	61.73
NFS IV .....	48	3.25	0	0.00	0.00
NFS V .....	41	2.78	37	5.01	90.24
NFS VI .....	18	1.22	8	1.08	44.44
NFS VII .....	27	1.83	21	2.84	77.78
NFS VIII .....	22	1.49	16	2.17	72.73
NFS IX .....	51	3.45	22	2.98	43.14
NFS X .....	44	2.98	34	4.60	77.27
NFS XI .....	48	3.25	38	5.14	79.17
NFS XII .....	8	0.54	4	0.54	50.00
NFS XIII .....	35	2.37	29	3.92	82.86
PCGGS .....	43	2.91	28	3.79	65.12
SHS .....	129	8.73	44	5.95	34.11
TSS .....	22	1.49	10	1.35	45.45
All Sectors .....	812	54.98	453	61.30	55.79
Common Pool .....	665	45.02	286	38.70	

\*The data are based on signed sector contracts as of January 22, 2010.

\*\* The data are based on each sector's final EA as of February 18, 2010.

\*\*\* In 2007, 601 limited access multispecies vessels and 138 open-access vessels landed groundfish.

TABLE 2—PERCENTAGE (%) OF ACE EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 \*\*†

Sector name	GB cod**	GOM cod	GB haddock**	GOM haddock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB Win- ter floun- der	GOM Winter flounder	Redfish	White hake	Pollock
FGS .....	28.03	1.90	6.41	1.29	0.01	0.18	1.83	0.55	0.80	0.03	2.24	2.89	5.92	7.81
NCCS .....	0.16	0.47	0.12	0.23	0.84	0.53	0.46	0.14	0.21	0.07	0.45	0.44	0.87	0.44
NFS I .....	5.48	19.19	11.63	17.87	1.70	1.68	19.31	8.37	13.24	1.69	19.85	16.54	6.17	12.34
NFS II .....	1.19	16.43	0.17	11.65	0.05	0.40	9.01	4.41	3.03	0.03	10.91	1.47	5.12	7.70
NFS III .....	4.71	8.66	5.42	6.72	2.16	2.68	7.20	9.24	9.28	0.71	7.63	6.46	7.97	5.65
NFS IV .....	2.95	0.23	5.40	0.68	9.62	26.67	1.69	2.24	2.62	2.60	0.71	0.42	0.39	0.43
NFS V .....	1.87	1.90	2.67	3.46	1.34	4.85	2.08	3.58	4.19	0.84	3.33	5.48	3.77	3.30
NFS VI .....	6.01	0.61	5.25	0.70	16.14	4.15	4.86	4.02	4.06	17.02	3.22	0.56	0.78	0.78
NFS VII .....	7.36	0.47	6.61	0.20	15.93	5.96	7.29	2.44	3.13	20.63	3.36	0.44	0.51	0.64
NFS VIII .....	12.49	1.67	10.32	4.77	18.95	7.14	9.63	7.55	7.63	33.65	2.58	5.79	4.10	3.82
NFS IX .....	0.97	5.04	0.26	2.70	0.02	0.47	11.48	1.73	2.89	0.01	16.22	0.57	0.93	1.45
NFS X .....	0.40	13.69	0.04	3.23	0.00	0.01	2.22	1.87	1.86	0.00	2.13	1.88	4.85	9.28
NFS XI .....	0.04	1.30	0.00	0.28	0.00	0.00	0.51	0.38	0.28	0.00	0.35	0.07	0.04	0.06
NFS XII .....	7.54	0.76	14.09	0.61	15.48	11.45	3.36	3.43	4.55	10.83	1.69	4.54	1.81	2.23
NFS XIII .....	0.05	4.76	0.05	2.32	0.00	0.70	0.98	6.42	4.45	0.01	2.15	2.56	4.62	4.30
PCGGS .....	16.71	17.93	29.60	40.93	8.34	11.50	10.91	39.74	34.19	8.50	7.20	48.99	50.28	37.99
SHS .....	0.86	1.10	1.46	0.74	7.24	1.22	3.20	1.41	1.39	1.94	3.54	0.01	0.14	0.06
TSS .....	96.98	96.09	99.51	98.42	97.82	79.60	96.01	97.52	97.80	98.56	87.57	99.10	98.27	98.29
All Sectors .....	3.02	3.91	0.49	1.58	2.18	20.40	3.99	2.48	2.20	1.44	12.43	0.90	1.74	1.72
Common Pool .....														

\*The data in this table are based on signed sector contracts as of January 22, 2010.

\*\* Eastern U.S./Canada cod and haddock percentages equal the PSC % of GB cod and GB haddock, respectively.

† Percentages have been rounded to the nearest hundredth of a percent in this table, but PSC data are calculated to seven decimal places. Therefore, in some cases, this table shows a sector allocated 0% of an ACE, when in fact that sector is allocated a small amount of that stock.

TABLE 3A—ACE (IN METRIC TONS) EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 \*

Sector name	GB cod east	GB cod west	GOM cod	GB had- dock east	GB had- dock west	GOM had- dock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB winter flounder	GOM winter flounder	Redfish	White hake	Pollock
FGS .....	95	867	87	768	1822	11	0	1	14	16	7	0	4	198	151	215
NCCS .....	1	5	22	14	34	2	8	2	4	4	2	1	1	30	22	12
NFS I .....	19	169	876	1394	3309	147	16	5	150	238	113	31	31	1132	158	339
NFS II .....	4	37	750	21	49	96	0	1	70	126	26	1	17	100	131	211
NFS III .....	16	146	395	650	1543	55	21	8	56	263	79	13	12	442	204	155
NFS IV .....	10	91	11	648	1537	6	93	83	13	64	22	48	1	29	10	12
NFS V .....	6	58	87	321	761	29	13	15	16	102	36	16	5	375	96	91
NFS VI .....	20	186	28	630	1495	6	156	13	38	115	35	315	5	38	20	21
NFS VII .....	25	228	21	792	1881	2	154	18	57	69	27	382	5	30	13	18
NFS VIII .....	42	386	76	1237	2936	39	183	22	75	215	65	623	4	396	105	105
NFS IX .....	3	30	230	31	74	22	0	1	89	49	25	0	26	39	24	255
NFS X .....	1	12	625	4	11	27	0	0	17	53	16	0	3	129	124	255
NFS XI .....	0	1	59	1	1	2	0	0	4	11	2	0	1	5	1	2
NFS XII .....	25	233	35	1689	4009	5	149	36	26	98	39	201	3	311	46	61
PCGGS .....	1	6	217	6	14	19	0	2	8	183	38	0	3	175	118	118
SHS .....	56	517	819	3549	8422	338	80	36	85	1132	291	157	11	3354	1285	1044
TSS .....	3	27	50	175	416	6	70	4	25	40	12	36	6	4	4	2
All Sectors **	328	2999	4389†	11928†	28310†	812	943	247	748	2777	833	1826†	138	6786†	2522†	2701
Common Pool **	10	93	178	60	142	13	13	63	31	71	19	26	20	62	44	47
Total **	338	3092	4567	11988	28452	825	964	310	779	2848	852	1852	158	6848	2566	2748

\*The data in this table are based on signed sector contracts as of January 22, 2010. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.

\*\* These totals are based off of the groundfish sub-ACLs provided in FW 44.

† These totals are based off of the groundfish sub-ACLs provided in FW 44 and do not equal the totals of all sector ACEs when summed due to rounding differences.

TABLE 3B—ACE (IN 1,000 LBS.) EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 \*

Sector name	GB cod east	GB cod west	GOM cod	GB had-dock east	GB had-dock west	GOM had-dock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB winter flounder	GOM winter flounder	Redfish	White hake	Pollock
FGS .....	209	1911	191	1693	4018	24	0	1	31	35	15	1	8	437	334	473
NCCS .....	1	11	48	32	76	4	18	4	8	9	4	3	2	67	49	27
NFS I .....	41	374	1932	3073	7294	325	36	11	332	526	249	69	69	2496	348	747
NFS II .....	9	81	1654	46	109	212	1	3	155	277	57	1	38	221	289	466
NFS III .....	35	321	871	1433	3401	122	46	18	124	580	174	29	27	975	449	343
NFS IV .....	22	201	23	1428	3388	12	204	182	29	140	49	106	2	63	22	26
NFS V .....	14	128	191	707	1678	63	28	33	36	225	79	34	12	827	212	200
NFS VI .....	45	410	61	1389	3296	13	343	28	83	253	76	695	11	85	44	47
NFS VII .....	55	502	47	1747	4146	4	339	41	125	153	59	842	12	66	29	39
NFS VIII .....	93	851	168	2727	6472	87	403	49	165	474	143	1374	9	873	231	232
NFS IX .....	7	66	507	68	162	49	0	3	197	108	54	0	56	86	52	88
NFS X .....	3	27	1378	10	23	59	0	0	38	117	35	0	7	283	273	562
NFS XI .....	0	3	131	1	3	5	0	0	9	24	5	0	1	11	2	4
NFS XII .....	56	514	77	3724	8838	11	329	78	58	215	85	442	6	685	102	135
NFS XIII .....	2	14	479	13	30	42	0	5	17	403	84	0	8	386	260	260
PCGS .....	124	1139	1805	7823	18567	744	177	79	187	2495	642	347	25	7394	2833	2302
SHS .....	6	59	110	387	918	14	154	8	55	89	26	79	12	2	8	4
TSS .....	723	6611	9676†	26297†	62413†	1790	2079	544	1649	6123	1837	4026†	305	14961†	5560†	5955
All Sectors ** .....	23	206	392	132	313	29	46	139	69	156	41	57	43	137	98	104
Common Pool ** .....																
Total ** .....	746	6817	10068	26429	62726	1819	2125	683	1718	6279	1878	4083	348	15098	5658	6059

\*The data in this table are based on signed sector contracts as of January 22, 2010. Numbers are rounded to the nearest thousand lb. Sectors that appear to be allocated 0 are in fact allocated less than 1,000 lb of that stock.

\*\* These totals are based off of the groundfish sub-ACLs provided in FW 44.

† These totals are based off of the groundfish sub-ACLs provided in FW 44 and do not equal the totals of all sector ACEs when summed due to rounding differences.

## Approved Sector Exemption Requests

In addition to the universal exemptions in Amendment 16, sectors requested several additional exemptions from the NE multispecies regulations in their sector operations plans. After thorough review and consideration of public comments on the exemption requests, NMFS authorizes exemptions from the following regulations for the individual sectors that requested them: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limitation on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. Details of these exemptions are discussed below.

### *1. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels*

This measure was implemented in 1997 under FW 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types (the proposed rule for this action erroneously stated that this action had been implemented in 1996 under Amendment 7). Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. Because sector vessels are prohibited from discarding all legal-sized allocated fish when on a sector trip, and are restricted by their ACE, vessels will likely fish more selectively, which in turn, can increase each vessel's catch per unit of effort (CPUE) and reduce the number of days that fixed gear is in the water. Similarly, protected species (such as harbor porpoise and humpback whales) may benefit from less fishing effort and fewer gear days. Therefore, exemptions from the Day gillnet vessel 120-day block requirement are granted for FY 2010 to the following sectors that

requested this exemption: NFS III, NFS XI, FGS, SHS, TSS, and PCCGS.

### *2. 20-Day Spawning Block*

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning of cod is most prevalent in the GOM. While this measure was designed to reduce fishing effort on spawning fish stocks, sector vessels will utilize an ACE to restrict their fishing mortality. Undersized fish caught by sector vessels cannot be kept and, additionally, the catch will count against the sector's ACE. This creates a strong incentive for sectors to avoid catching undersized fish. In addition, there are minimal temporal and spatial restrictions associated with this regulation, and allowing fishermen to select any 20-day period out of the fishery does not necessarily prevent them from harvesting spawning fish. Based on this information, an exemption from the 20-day spawning block out of the fishery is granted for FY 2010 to the following sectors that requested this exemption: The NCCS, the SHS, and the TSS.

### *3. Limitation on the Number of Gillnets for Day Gillnet Vessels*

One sector, the SHS, requested that their vessels be allowed to fish up to 150 gillnets (any combination of flatfish or roundfish nets) in each of the groundfish regulated mesh areas (RMAs). Current gear restrictions in the RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)(B)(2)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)(B)(2)); and 75 gillnets in the SNE and MA RMAs (§ 648.80(b)(2)(iv)(B)(1), and § 648.80(c)(2)(v)(B)(1), respectively). Regulations require nets to be marked with either one or two tags per gillnet depending on the type of net and RMA fished, for the purpose of enforcing gillnet limits. These restrictions were implemented in 1996 under Amendment 7 and revised in Amendment 13 to prevent an uncontrolled increase in the number of nets being fished, thus undermining the applicable DAS effort controls. Because this measure was designed to control fishing effort, NMFS believes that a net restriction is no longer necessary, since the sector is confined to an ACE for each stock, which caps overall fishing effort. Although this exemption could allow fishing effort from gillnet vessels in the SHS to increase if the SHS receives additional ACE through a transfer from

another sector, sectors that trade ACE to SHS would have a reduction in effort and gear use; any additional effort resulting from this exemption would likely be offset between trading sectors. In addition ACLs cap the entire fleet's total catch. Therefore, SHS vessels are granted this exemption and are authorized to use up to 150 roundfish or flatfish nets in each area (up to 150 nets total). SHS vessels are also exempt from the current tagging requirements and, instead, will be required to mark their gear with one tag per net. The LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

### *4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear*

Both NFS III and XI requested an exemption from current regulations that prohibit one vessel from hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84). These sectors argued that the regulations pertaining to gear-marking controls, setting, and hauling responsibilities are no longer necessary, because the sector would be confined to an ACE for each stock, and that "community" fixed gear would allow fishermen greater flexibility. In addition, the sectors argued that shared fixed-gear fishing effort could potentially reduce the amount of gillnet gear in the water and minimize the use of gear to "hold" additional bottom ground. Pursuant to a request by NMFS, both sectors that requested this exemption have specified in their operations plans that all vessels participating in community fixed gear will be held jointly liable for any violations associated with that gear. Given this, NMFS endorses the efforts by these two sectors to reduce the amount of gillnet gear in the water and approves this exemption request. The LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

### *5. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS*

The FGS requested an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv)(B), which prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB, were implemented as a groundfish

mortality control under Amendment 13. The FGS proposed that this exemption would increase efficiency of its gillnet vessels by allowing them to haul additional nets per trip—nets which are already permitted in the water under the Monkfish FMP. NMFS agrees with the FGS that this exemption will allow fishermen additional opportunities to tend gear, and can reduce gear soak time. NMFS supports the attempt by the FGS to increase its CPUE and authorizes this exemption request. This exemption does not permit the use of additional nets; it only allows nets deployed under existing net limits in the NE Multispecies and Monkfish FMPs, to be hauled more efficiently by vessels dually permitted under both FMPs.

#### *6. Limitation on the Number of Hooks That May Be Fished*

The FGS requested an exemption from the number of hooks that a vessel may fish on a given fishing trip, claiming that this measure, which was initially implemented through an interim action (67 FR 50292, August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort and, therefore, is no longer necessary because the sector is confined to an ACE for each stock, which restricts fishing mortality. Current regulations (§ 648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA. This exemption has been granted to the GB Cod Hook Sector every year since 2004. The potential for gear interactions between protected resources and longline/hook gear is much lower than the interaction potential from bottom trawl or gillnet gear. In addition, the use of longline/hook gear minimizes fishing impacts on benthic habitat. Based on this analysis, NMFS grants this exemption to the FGS for FY 2010.

#### *7. Length and Horsepower Restrictions of the DAS Leasing Program*

While Amendment 16 exempts sector vessels from the requirement to use NE multispecies DAS to harvest groundfish, some sector vessels will still need to use NE multispecies DAS under specific circumstances; for example, when fishing for monkfish. Both the SHS and TSS requested an exemption from the DAS Leasing Program length and horsepower restrictions, arguing that sector ACEs eliminate the need to use vessel characteristics to control fishing effort and that removal of this restriction would allow sector vessels more

flexibility. NMFS concurs and approves this exemption request. As this exemption was only requested by the SHS and TSS, only these two sectors will be exempt from the DAS Leasing Program length and horsepower restrictions, and thus leasing under this exemption can only occur within and between the SHS and the TSS.

#### **Disapproved Exemption Requests**

After completing an initial review of the 17 sector operations plans and contracts submitted September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the requested exemption. Some of the sectors chose to remove these exemption requests from their operations plans, while other sectors did not. After reconsidering, NMFS included all of these exemption requests of serious concern in the proposed rule and solicited public comment on these requests. Public comment that was received pertaining to these exemptions did not provide any new data or sufficient additional rationale to convince NMFS to change its previous stance on these requests. Therefore, requests for exemption from the GOM Rolling Closure Areas beyond the universal exemption in Amendment 16, the 72-hour observer notification requirement for NMFS-funded at-sea monitoring coverage, the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery, the vessel monitoring system (VMS) reporting requirements, the use of electronic vessel trip reports (eVTRs) in replace of paper vessel trip reports (VTRs), the minimum 6-inch (16.51-cm) spacing requirement for de-hookers, and the minimum fish size requirements, are not approved by NMFS for any sectors for FY 2010. These requests and NMFS decision on them are discussed below.

#### *1. GOM Rolling Closure Areas*

NFSs II, III, VI, X, XI, XII, and the SHS requested additional exemptions from the GOM Rolling Closure Areas beyond those granted as universal exemptions under Amendment 16. Specifically, sectors requested exemptions from the 30-minute blocks 124, 125, 132, and 133 in April; and block 138 in May. The Council exempted sectors from certain GOM Rolling Closure Areas in Amendment 16, with the exception of areas that the Council believed should remain closed to protect spawning aggregations. The Council tasked the PDT with periodically reviewing and

analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans. Subsequently, at its November 2009 meeting, the Council voted to endorse the SHS's request for an exemption to the rolling closure for block 138 in May.

The sectors requesting this exemption argued that, because they are restricted to an ACE for each groundfish stock that caps overall fishing mortality, exemptions to the Rolling Closure Areas should be granted because they are mortality closures. The Rolling Closure Areas were initially implemented in 1998 under FW 25 to the FMP to reduce fishing effort in the "areas of highest cod landings." However, FW 26 referred to the Rolling Closure Areas implemented under FW 25 as "inshore 'cod spawning' closures." The stated purpose and need under FW 26 (section 3.0) states that the Council wanted to "take additional action to protect cod during the 1999 spawning season \* \* \* and immediate action is necessary to reduce catches and protect the spawning stock." As a result, FW 26 expanded the time period of these "cod spawning" closures, which include several of the 30-minute blocks that sectors have now requested exemption from. The final rule implementing FW 26 (64 FR 2601, January 15, 1999) specified that the Council undertook the action because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure."

These exemption requests fail to consider that, despite ACE limits, direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock as opposed to post-spawning mortality. Northeast Fisheries Science Center's (NEFSC) spring survey data for 2006–2008 indicate that very high concentrations of cod (highest quartile of tows by weight) continue to be present in the April GOM Rolling Closure Area, especially west of 69°30' W. long., while moderate concentrations of cod are found in block 138. Justification that demonstrates that spawning fish could be avoided was not provided by the individual sectors (*see* comments and response). In addition to protecting spawning fish, the GOM Rolling Closure Areas afford some protection to harbor porpoise and other marine mammals. As a result of these concerns, this exemption request has not been approved.

## 2. 72-Hour Observer Notification Requirement

Vessels are currently required to call into the Northeast Fisheries Observer Program (NEFOP) 72-hour prior to leaving for a trip into a special management program (§ 648.85). Under Amendment 16, this requirement is expanded to require all groundfish trips to be called into NEFOP in order for NMFS to accurately assign coverage to all vessels; however, NMFS is reducing the observer notification requirement from 72-hour to 48-hour in the final rule implementing Amendment 16. Eight of the 12 NFSs and the FGS requested an exemption from this requirement, claiming that sector vessels should be permitted to hire an at-sea monitor through a private contract arrangement with a NMFS-approved observer company if that company can respond in less time. This request is problematic for several reasons. First, data gathered by NMFS observers is more comprehensive and detailed than data gathered by at-sea monitors, even though those monitors would be acquired through a NMFS-approved observer company. NEFOP observer data is necessary to generate accurate discard estimations for sector vessels. Second, the NEFOP selection protocol for sectors is a robust and consistent sampling scheme which requires all trips to be included in the sampling pool from which trips are selected for observer coverage. Allowing a sector to self-select certain trips for separate sampling undermines the ability for a truly representative sample to be selected. This exemption request would reduce observer data available to NEFOP and potentially introduce bias into the NEFOP monitoring sampling system. Moreover, because of the additional logistical demands imposed on the NEFOP resulting from the increased NMFS-funded at-sea monitoring program for all groundfish vessels, it is necessary that NMFS require a minimum 48-hour notification for all trips. Therefore, this exemption request has not been approved.

## 3. Halibut One-Fish Trip Limit

The NCCS requested an exemption from the one-fish per trip Atlantic halibut possession limit in order to allow member vessels to participate in the State of Maine's halibut fishery, which has a 50-fish seasonal limit. While the sector argued that the exemption may actually reduce mortality on halibut stocks because the State seasonal limit will be extremely low in FY 2010, possibly only 25 or 30 fish per permitted vessel, the FMP

includes a rebuilding program for Atlantic halibut that permits a one-fish per trip possession limit to prevent a targeted fishery while minimizing discards. Federally permitted vessels fishing in the State fishery are currently required to abide by the most restrictive regulations, which in this case is one halibut per trip. Allowing an exemption from the one-fish halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP. Therefore, this exemption request has not been approved.

## 4. VMS Requirements

All 12 of the NFSs requested a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. The sectors anticipate that, in order to facilitate electronic data transmission from its vessels to a sector-operated data collection and distribution Web portal, an administrative exemption would be necessary to allow the server to relay catch reports and logbook data on behalf of sector member vessels. Under this exemption, catch data would go from the vessel to a central server maintained by the sector, and the sector's server would then relay the data to NMFS.

NMFS' Office of Law Enforcement has raised serious concerns about this exemption request, given that the chain of custody of catch information would be interrupted and, therefore, open to tampering. Until such time that NMFS can ensure that the flow of information under such an exemption is tamper-proof, this type of reporting exemption is not approvable.

Sector vessels may send their data electronically to the sector to facilitate monitoring, but must transmit required reports directly to NMFS.

## 5. eVTRs

All of the NFSs, as well as the SHS and TSS, requested to use eVTRs in place of paper VTRs for transmitting catch data to NMFS. A pilot study is currently underway that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Until the pilot study determines that eVTRs can fulfill all NMFS requirements, this exemption request cannot be granted.

## 6. Fairlead Roller Spacing on De-hookers

The FGS requested an exemption from the prohibition on the use of de-hookers (crucifiers) with less than 6-inch (15.24-cm) spacing between the

fairlead rollers. De-hookers with a spacing of less than 6 inches (15.24 cm) were originally prohibited in a 2002 Secretarial interim rule, and then implemented year-round in 2004 under Amendment 13, to discourage de-hooking strategies that may reduce survival rates of discarded fish. The sector argued that a prohibition on de-hookers requires a modification to longline gear haulers that is inefficient and unnecessary. NMFS believes that reducing the fairlead roller spacing on de-hookers will increase the mortality rates of discarded fish and, therefore, is not consistent with National Standard 9. Based on these concerns, this exemption request has not been approved.

## 7. Minimum Fish Size Requirements

The FGS and the TSS requested an exemption from the minimum groundfish fish size requirements. The FGS claimed that allowing full retention of all catch would eliminate discards and increase profitability without additional mortality. Further, the sector contended that it should be permitted to land fish less than the current minimum fish size because 100-percent discard mortality is presently assumed by NMFS, and because the sector's ACE would be debited for all discards. The TSS, which requested an exemption from the Federal minimum fish size requirements for American plaice and witch flounder, stated that many of these fish caught by their member vessels are less than 1-inch (2.54 cm) smaller than the current minimum fish size requirements and are already dead when discarded, thus making the requirement of discarding sub-legal fish wasteful.

Granting an exemption from minimum fish sizes would present NMFS with significant enforcement issues by allowing two different fish sizes in the marketplace. Also, NMFS is concerned that this exemption could potentially increase the targeting of juvenile fish. As a result of these concerns, these exemption requests from the minimum fish size requirements have not been approved.

## Comments

Thirty-seven comments were submitted on behalf of 12 individuals, the SHS, FGS, NCCS, all 12 NFSs, four fishing industry organizations, two professional organizations, two environmental organizations, the Council, and the Massachusetts Division of Marine Fisheries (DMF). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are responded to in this rule.

Many comments from individuals, the SHS, NSC, NFS, NCCS, the Associated Fisheries of Maine (AFM), the United National Fishermen's Association (UNFA), and the Association of Professional Observers (APO),

questioned various measures in Amendment 16 that apply to sectors. While NMFS understands why these comments were submitted under the proposed rule for sector operations plans, contracts, and allocations, the

comments are more applicable to regulations implementing Amendment 16; therefore, comments on the following sector management topics were addressed in the Amendment 16 final rule rather than this rule (Table 4).

TABLE 4—COMMENTS SUBMITTED ON THIS RULE THAT ARE ADDRESSED IN THE AMENDMENT 16 FINAL RULE

Comment topic/issue	Comment number(s) in amendment 16 final rule
Allocation of NE multispecies to sectors .....	2, 45
eVTRs .....	25
Sector management measures (generally) .....	44, 45, 47, 48, 49
Transfer of management authority from NMFS to sector managers .....	45
Sector operation costs .....	46
Sector managers computing daily discard rates .....	53
Sector annual report requirements .....	55
"Freezing" of catch history .....	60
Levels of observer coverage .....	61
Differing roles of at-sea monitors and fishery observers, eligibility standards .....	63, 64, 65, 66, 67
ACE overages .....	75
Trading of ACE between sectors .....	80
Permit banks .....	87

### Sectors and Sector Operations Plans

*Comment 1:* One individual questioned how sector ACEs would prevent discards. The UNFA inquired whether, if a sector had little allocation of a relatively abundant species, such as redfish, it could reduce that sector's ability to catch other species.

*Response 1:* A sector is limited to the ACEs it is allocated, as well as any ACE it may acquire through an ACE transfer; and each sector vessel must retain all legal-sized groundfish caught when fishing as a sector vessel. In addition, a discard rate, calculated by NMFS, will be applied to all sector landings and, therefore, sector ACEs. If a sector catches its entire ACE for any stock, it cannot fish in that stock area for the remainder of the FY, unless additional ACE is acquired. For example, if a sector harvests its ACE for GOM cod, it must cease all fishing in the GOM cod stock area, except if using exempted gear or in an exempted fishery. Alternatively, if a sector reaches its ACE for a stock that is found in all stock areas, such as redfish, the sector cannot fish in any area unless and until it acquires additional redfish ACE. These stock areas are detailed in the Amendment 16 final rule. Sectors may acquire additional ACE via an ACE transfer from another sector to resume fishing. Furthermore, sector members can be held jointly and severally liable for illegal discarding or misreporting catch.

*Comment 2:* The SHS, the NSC, and all 12 NFS disagreed with the

requirement that sector managers must increase the frequency for submitting sector reports from weekly to daily once 80 percent of any sector ACE is reached, or when 20 percent or more of the sector's ACE of any stock is harvested for 2 consecutive weeks. The sectors claimed this requirement will unnecessarily increase the administrative burden on sector managers.

*Response 2:* NMFS is requiring increased reporting when specific thresholds are reached for several reasons. Close monitoring will help prevent a sector from exceeding its ACE, especially after a sector reaches an ACE reporting threshold. Due to the small amount of ACE that some sectors may have for particular stocks, it is possible for a sector to quickly, and unintentionally, reach and exceed an ACE. While it is the sector manager's responsibility to ensure that his or her sector does not exceed its ACE for any stock, it is ultimately NMFS' responsibility to monitor sector catches and prevent overfishing from occurring. Therefore, increased reporting by sectors that meet or exceed these threshold requirements is necessary. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed to by a sector and NMFS.

*Comment 3:* The SHS suggested rephrasing a statement in the proposed rule which states that "[s]ector vessels would be required to retain all legal-sized allocated groundfish," to "[s]ector

vessels fishing with gear capable of catching ground fish would be required to retain all legal-sized allocated groundfish."

*Response 3:* The Amendment 16 regulations define a sector trip, with respect to the NE multispecies fishery, as any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, in which the vessel declared its intent to fish in the NE multispecies fishery. There is evidence that suggests that some gears considered not capable of catching groundfish (*i.e.*, exempted gear) can, in fact, catch groundfish. While this rule does not contain any regulations, revising Amendment 16 regulations from an inaccurate list of gear-types that are considered incapable of catching groundfish may result in an inaccurate account of groundfish catch. Therefore, all sector trips are required to retain all legal-sized groundfish.

*Comment 4:* Oceana, referencing section 4.2.3.5.3 of the Amendment 16 Final Environmental Impact Statement (FEIS), which says "Sector operations plans will specify how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation," questioned why the majority of sector operations plans then make reference to following NMFS' instructions in calculating discards. For example, the SHS's operation plan states that, "[m]embers of the Sector agree that discards will be calculated as directed by NMFS, based on 30-percent

at-sea-monitoring conducted by the NMFS.”

*Response 4:* Section 4.2.3.5.3 of Amendment 16 clarifies that “[a]ssumed discard rates will be applied to sectors unless an at-sea monitoring system (such as a sector’s independent monitoring program, a Federal monitoring program, or other program that NMFS determines is adequate) provides accurate information for use of actual discard rates.” No sector has elected to develop its own at-sea monitoring program; therefore, all sectors will utilize the monitoring program implemented by NMFS. However, two sectors have stated that they may pay monitoring providers for increased at-sea monitoring coverage levels above those required and implemented by NMFS and NEFOP. While all sectors will begin FY 2010 with an assumed discard rate calculated by NMFS, NMFS has developed a monitoring program that will enable it to provide each sector with sector-specific, gear specific, discard rates that will provide more accuracy than an assumed discard rate. Accordingly, NMFS required that each sector operations plan state that the sector will utilize discard rates “as directed by NMFS.” Amendment 16 does not require sectors to independently develop their own at-sea catch monitoring system that accounts for discards until FY 2012. This implementation is phased-in so that sectors have time to develop these systems, locate qualified vendors, and have their programs approved by NMFS.

*Comment 5:* The UNFA questioned how permit holders were expected to make an informed decision on sectors when Amendment 16 measures were not fully approved.

*Response 5:* Although Amendment 16 measures were not approved until January 21, 2010, NMFS believes ample information and time were provided for eligible NE multispecies permit holders to enroll in a sector for FY 2010. In anticipation that Amendment 16 would be approved, NMFS mailed all limited access NE multispecies permit holders letters dated February 17, 2009, and March 25, 2009, which explained the Council’s recommended process for determining a permit’s PSC for FY 2010, and notified fishermen of the release of landings data. A letter dated May 1, 2009, was sent to permit holders detailing each permit’s PSC for the five different PSC options being considered by the Council for Amendment 16, including the two different allocation baselines the Council was considering. Permit holders also received a letter dated May 14, 2009, that notified them

of the timeline for implementation of sectors for FY 2010, explained more about PSCs, and provided them with additional vessel and permit data to help them make an informed decision about whether or not to join a sector for FY 2010.

Amendment 16, which includes new sector regulations and authorization for up to 19 sectors, was approved by the Council on June 25, 2009. Following the Council’s approval of FW 44 on November 18, 2009, in which it established NE multispecies ACLs for FY 2010–2012, a second round of permit holder letters, which provided each limited access NE multispecies permit holder with information about their groundfish PSCs, was mailed on December 23, 2009. A proposed rule summarizing sector operations plans, contracts, and allocations was published in the **Federal Register** on December 22, 2009, and the proposed rule for Amendment 16 was published on December 31, 2009. NE multispecies permit holders who could have enrolled in a sector had until January 22, 2010, to commit to a particular sector, and have until April 30, 2010, to opt out of a sector, unless the contract for the sector to which they committed states otherwise. Therefore, NMFS believes that sector participants had ample information and time to make an informed decision on sectors even though the final rule for Amendment 16 had not been published in the **Federal Register**.

*Comment 6:* The Council expressed concern with the process NMFS used while reviewing exemption requests within sector operations plans and the accompanying EAs. The Council asserted that the review process by NMFS “unilaterally expanded the list of measures from which an exemption cannot be granted” and was inconsistent with the FMP. The Council reiterated that Amendment 16 allows sectors to request additional exemptions to supplement the universal exemptions approved in Amendment 16.

*Response 6:* As the proposed rule explained, after an initial review of the sector operations plans and EAs, “NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption.” NMFS initially contacted the sector managers regarding these “exemptions of serious concern” to clarify its apprehension with those particular exemption requests. This initial dialogue provided sector managers an opportunity to either

remove the exemption request(s) from their operations plans and EAs, thus reducing their administrative burden, or provide early notice and additional time to gather additional supporting evidence for why the exemption request should be approved by NMFS. Some sectors removed these exemption requests from their operations plans and others did not.

While this early notification was an attempt by NMFS to maintain transparency in its review process, NMFS later recognized that requesting sector managers to alter their operations plans and EAs prior to public review was not necessarily most beneficial to the public. Therefore, NMFS decided to include all legally permissible exemption requests in the proposed rule, except those measures that were also under consideration in Amendment 16 (i.e., the GOM Sink Gillnet Pilot Program). NMFS explained that, if public comment on these exemptions of serious concern provided additional support that convinced NMFS to change its earlier stance on these exemption requests, the sector operations plans and EAs would be revised accordingly. Thus, sectors were provided an opportunity to request additional regulatory exemptions beyond the universal exemptions specified in Amendment 16 and NMFS’ decision on these requests are documented in the preamble.

*Comment 7:* The Council commented that some exemption requests contained no analysis supporting approval or disapproval of the sector exemptions. The Council expressed concern that the public could not provide informed comment on an exemption request that lacks analysis.

*Response 7:* As explained in the proposed rule, after completing an initial review of 17 sector operations plans and contracts submitted on September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption. At the request of NMFS, some of the sectors removed these exemption requests from their operations plans, while other sectors did not. After reconsideration, NMFS included all of the exemption requests of serious concern in the proposed rule, and solicited public comment on these requests. While most of the exemption requests that were removed by the sectors lacked any supporting analysis in the EAs, sectors were given until January 27, 2010, to further justify their

exemption requests prior to publication of the final rule.

This deadline was necessary because NMFS needed time to review the final EAs to meet a May 1, 2010 implementation deadline. However, no new analyses were provided during this time or during the public comment period on the proposed rule.

NMFS is aware that the public did not have an opportunity to provide comment for those exemption requests that lacked an accompanying analysis. Had additional analyses been provided by the sector, or if new information had been brought forward from the public in support of such exemption requests during the public comment period, NMFS would have conducted additional analyses and sought further public comment on these exemption requests, consistent with the Administrative Procedure Act (APA).

*Comment 8:* Prior to publishing the proposed rule, NMFS requested that sectors remove exemption requests that repeated measures already proposed under Amendment 16. One of the requests removed by several sectors pertained to the GOM Sink Gillnet Pilot Program. The GOM Sink Gillnet Pilot Program was subsequently disapproved in Amendment 16. The SHS, the AFM, the NSC, all 12 NFSs, and the Council asked what actions NMFS is considering for exemption requests that were removed from sector operations plans due to consideration in Amendment 16, but which were then disapproved. These sectors argued that, although the measure was disapproved in Amendment 16, sectors should still be able to request an exemption from the regulation.

*Response 8:* NMFS initially requested that sectors remove exemptions from regulations that were being considered in Amendment 16, to reduce effort duplication. NMFS will work with sector managers regarding reconsideration of this particular exemption request and may approve or disapprove these requests in a future rulemaking. NMFS may solicit additional public comment on granting approved sectors exemption requests to all sectors if additional rulemaking is initiated.

*Comment 9:* The APO, the UNFA, and one individual, commented that two of the 19 sectors authorized under Amendment 16 neglected to provide the necessary operations plans and EAs, which prevented the public from reviewing these sectors' environmental impacts.

*Response 9:* While 19 sectors were authorized under Amendment 16, only 17 sectors submitted operations plans to

NMFS for FY 2010. The two sectors that did not submit an operations plan or EA to NMFS, the GB Cod Hook Sector and the NFS I, are, therefore, not approved in this final rule.

*Comment 10:* The Council commented that the operations plan submitted by NFS IV, which proposes to operate as a lease-only sector for FY 2010, is inconsistent with the NFS IV proposal as reviewed and approved for Amendment 16. In addition, the DMF commented that a lease-only sector does not meet the Council's intent for sectors.

*Response 10:* NMFS contends that all sector proposals submitted to and reviewed by the Council for inclusion in Amendment 16 constituted an initial submission that was offered by the sector as a best estimate of what its membership would resemble. Section 4.3.6 of Amendment 16 says, "[w]hen submitted, most applications were based on the existing sector regulations that were adopted by Amendment 13. Since several Council policies may revise those regulations, some of the applications may be modified." It was understood by the Council that exact membership numbers and details for each sector were subject to change, and that these changes would be made available for public review and comment within the proposed rule for sector operations plans, contracts, and allocations was published. Following the extension of the January 22, 2010, enrollment deadline, many sectors have transformed dramatically from what each sector presented to the Council for consideration in Amendment 16. For instance, in Amendment 16, the SHS predicted its membership to be comprised of "more than 70" permit holders; as of January 22, 2010, there were 129 permits associated with the SHS. Section 4.2.3.2 of Amendment 16 details requirements for a sector, such as providing a list of all vessels that would be part of the sector, including an indication for each vessel of whether it would continue to fish, and a detailed plan for consolidation of ACE, if any is desired, as well as an explanation of the quantity and duration of any redistribution of ACE or DAS within the sector. NFS IV has met these and all other requirements in section 4.2.3.2. Moreover, Amendment 16 does not require a sector to actively engage in fishing operations. In fact, section 4.2.3.7 of Amendment 16 states that "all or a portion of a sector's ACE of any stock can be transferred to another sector." There are currently no regulations that prevent a sector from forming and transferring its entire ACE to another sector.

Lastly, NMFS endorses the transparent approach taken by the NFS IV. For instance, if the NFS IV was not permitted to operate as a lease-only sector, it is likely that the permits within this sector would have simply been scattered among all 12 NFS, making it more difficult to determine the environmental impacts of these permits and to follow the resulting consolidation and potential redirection of effort associated with the permits.

*Comment 11:* One individual and the UNFA commented that the proposed rule did not address recreational sectors.

*Response 11:* Under Amendment 16, only limited access NE multispecies permit holders can join a sector. It should be noted, though, that no one from the recreational industry requested that a recreational sector be included as an option in Amendment 16; therefore, the Council did not approve any recreational sectors in Amendment 16.

*Comment 12:* The UNFA commented that the proposed sector rule is in violation of the Paperwork Reduction Act (PRA) because the sector reporting requirements duplicate existing requirements.

*Response 12:* This rule does not implement reporting requirements. The sector reporting requirements are established in Amendment 16 and were addressed in the Amendment 16 proposed and final rules consistent with the PRA.

#### Sector EAs

*Comment 13:* Oceana commented that fundamental information about the sectors, including sector participants, expected fishing activity, and sector administration by NMFS is vague or non-existent.

*Response 13:* Each sector EA contains a description of the sector, including numbers of permit holders, active vessels, gear types, geographic areas in which sector members will fish, and a description of the primary ports for the sector's landings. While the EAs were being prepared, NMFS surveyed each sector manager or representative regarding their sector's expected fishing patterns and potential redirection of effort; in all cases the sector managers/representatives responded that current fishing behavior and patterns would not change as a result of operating under sector management in FY 2010. Since sector allocation will be managed closely through mandatory reporting and monitoring requirements, the operations plan for each sector includes a detailed monitoring plan developed in concert with NMFS to which members must adhere.

*Comment 14:* For FY 2010, 17 sector operations plans, each accompanied by an EA, were included in the proposed rule. Oceana commented that, due to the significant changes that will occur under Amendment 16 and the wide range of sector operations plans, all sector environmental impacts must be incorporated into one single NEPA document that explains, analyzes, and considers alternatives for the management of the groundfish fishery overall.

*Response 14:* NMFS is not required to prepare one NEPA document for all the sector management alternatives considered for the groundfish fishery. As mentioned in the introductory section of the EAs for each of the 17 sectors, the analysis in each EA tiers off the information and analysis contained in the Amendment 16 FEIS. The Amendment 16 FEIS analyzes measures that achieve the necessary mortality targets, provide opportunities to target healthy stocks, mitigate the economic impacts of the measures, and improve administration of the fishery. In the FEIS, 17 new sectors are authorized and new criteria are set for these sectors, as well as the existing 2 sectors, regarding development of their operations plans. The impacts associated with the specific actions, including regulatory exemptions, of each sector are captured in the individual sector EAs, while the impacts associated with Amendment 16 (the action authorizing the formation of sectors and their general rules and regulations) are more broadly analyzed in the Amendment 16 FEIS. As stated in the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1502.20), "tiering" is encouraged to eliminate repetitive discussions of the same issues and focuses on the actual issues ripe for decision at each level of environmental review. The cumulative impacts of all sectors operating under their allocations or ACE have been considered, and this assessment is found in every sector EA.

*Comment 15:* Oceana commented that, without a firm binding statement of a sector's enrollment, quota allocation, and its intended plan of operations for FY 2010, the public is left to review an incomplete EA that could change significantly between the end of the current comment period and the beginning of FY 2010. Additionally, Oceana stated that NMFS must require meaningful information as the basis of these important documents and provide for resubmission of NEPA documentation if changes are made to sectors, as currently proposed.

*Response 15:* The September 1, 2009, rosters represented approximately 95 percent of the groundfish ACLs, which was discussed and analyzed in the cumulative effects assessment of each individual sector EA. Because harvest of 95 percent of the ACLs by sectors was already analyzed in the EAs, any additional individual that decides to join a sector after the September 1, 2009, date would not substantially alter the impacts from what had been analyzed in the draft EAs, unless, as discussed in Section 1 of each EA, additional members triggered specific criteria that may necessitate a supplemental EA (*i.e.*, different fishing behaviors, gears, geographic areas). Furthermore, each of the EAs considered unlimited trading of ACE between sectors, as permitted in Amendment 16, which could increase or decrease an individual sector's ACE. Therefore, impacts associated with any increases or decreases in sector ACEs due to the addition of permits after September 1, 2009, are within the range analyzed in the EAs. As of January 22, 2010, 812 of 1,477 NE multispecies permits, which account for more than 98 percent of groundfish historically landed, had enrolled in a sector.

*Comment 16:* Oceana commented that, although the sectors have provided preliminary non-binding information about vessels that will operate in each sector, information about gear usage is crude and that accurate and precise information about each sector's fishing plans must be included in each of the sector EA documents before they can be approved.

*Response 16:* The EAs that were available to the public at the time of the proposed rule were prepared based on the rosters and gear types represented by the member vessels as of September 1, 2009. The EAs have since been revised to analyze the sector rosters and gear types as of January 22, 2010. Although NMFS provided an additional opportunity for sectors to re-open their rosters to allow for new members to enroll or transfer from one sector to another, dramatic change in the composition of each sector's fleet did not occur. As of January 22, 2010, 13 of the 17 sectors will predominantly fish with trawl gear; two will predominantly fish with fixed gear; and one is comprised equally of gillnetters and trawlers. Further, the overall character of the fleet that currently operates under common pool management measures will not change due to the implementation of the FY 2010 sectors. As explained in response 10, sectors stated in their operations plans that fishing behavior and patterns for sector member vessels would not change as a

result of operating under sector management. Because sector members have until April 30, 2010, the day prior to the start of FY 2010, to withdraw from their sector and fish in the common pool, the potential make-up of the sectors (*i.e.*, gear usage ratio, number of members) remains subject to change.

*Comment 17:* Oceana commented that the use of particular gears (for example, bottom trawls) and the effects of fishing on EFH by sector vessels are tersely discussed in many of the EA documents that support each sector. Oceana further asserted that, despite boilerplate findings in these EAs that demonstrate significant impacts of bottom-tending mobile gears on EFH, there is no discussion or exploration of alternatives to these gears. Finally, Oceana claimed that failing to complete a robust analysis of gear usage and fully explore alternatives, including requiring other gears to be used to prosecute the fishery, violates NEPA.

*Response 17:* The purpose and need of these EAs, as required by Amendment 16, was to assess impacts of each sector's operations plan. Significant impacts to EFH by fishing gears for sector vessels were discussed in the Amendment 16 FEIS and are not repeated in these EAs. Use of bottom-tending mobile gear by fishermen would have the same impact to habitat, whether vessels were operating under the Amendment 16 common pool rules or under the harvest rules specified in the sector operations plan, because the overall mortality limits constraining effort are the same for the management options.

*Comment 18:* Oceana commented that section 4.1.4 of the sector EAs, which consists of documents prepared by Entrix, Inc. ["Gear Types and Interaction with Habitat"] seem to be virtually identical, and the discussion of a specific sector's effects on EFH is inadequate.

*Response 18:* According to CEQ regulations (40 CFR 1502.15), the Affected Environment section of an EA must describe the environment of the area(s) to be affected by the alternatives under consideration, and the description should be no longer than is necessary to understand the effects of the alternatives. In compliance with CEQ regulations, the Affected Environment section in the sector EAs (section 4) is a description of the valued ecosystem components (VECs); physical environment (including EFH); the allocated target species; the non-allocated target and bycatch species; protected resources; and the human communities, including the social and economic environment. Section 5 of

each sector EA, "Impacts of the Proposed Action and Alternatives" discusses sector-specific impacts on EFH and other VECs ecosystem components. Since the composition of gear used by the fleet is not changing as a result of the formation of sectors, overall impacts to habitat and EFH are expected to be no different than under current management measures.

#### Exemption Requests

##### *120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels*

*Comment 19:* The AFM, NSC, FGS, SHS, each NFS, Council, DMF, Environmental Defense Fund (EDF), Cape Cod Commercial Hook Fishermen's Association (CCCHFA), and four individuals commented in support of the exemption request from the 120-day block requirement out of the fishery for Day gillnet vessels. They stated that this regulation is an effort control that is no longer necessary in a fishery managed under an ACE, and that FY 2010 allocations make this effort control unnecessary. The AFM, SHS, and one individual pointed out that this exemption would reduce the administrative burden on sectors. Addressing NMFS' concern about possible untended and/or ghost gear that could result from granting this exemption request, the Council and three individuals commented that efforts by fishermen to prevent gear loss and maintain product quality would prevent gear from being tended less often.

*Response 19:* NMFS agrees with these comments and has approved this exemption request for FY 2010.

*Comment 20:* The Council commented that the 120-day block requirement out of the fishery for Day gillnet vessels was not approved in Amendment 7, as stated in the sector proposed rule, but rather was adopted in FW 20 (62 FR 15382; April 1, 1997) to make the effort control program more effective for Day gillnet vessels.

*Response 20:* NMFS agrees and has acknowledged this error in the preamble to this final rule.

*Comment 21:* The Council disagrees that exemption from the 120-day block requirement out of the fishery for Day gillnet vessels could lead to an increase in gear days, and the DMF commented that the concerns expressed by NMFS in the proposed rule are inconsistent with the "philosophy that sectors will fish in a way to characterize themselves as stewards of the resource."

*Response 21:* In the proposed rule, NMFS stated, "if some vessels are not selective and/or if they catch less fish,

CPUE could decrease and more fixed gear could be deployed." Although it is unclear what affect sector vessels may have on CPUE, NMFS agrees with the commenters that CPUE will most likely increase, and has approved the exemption requests from the 120-day block requirement out of the fishery for Day gillnet vessels.

##### *Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear*

*Comment 22:* The NSC, and the 12 NFS it supports, commented that NFS III and XI requested an exemption from the prohibition on a vessel hauling another vessel's gillnet gear to offset NMFS' concerns regarding potential increases in CPUE from exempting the 120-day block requirement out of the fishery for Day gillnet vessels. DMF, EDF, and the FGS commented in support of these sectors' request for the purpose of increasing harvest flexibility through the use of community fixed gear.

*Response 22:* NMFS endorses the efforts by the NFSs III and XI to improve CPUE and reduce gear days and has approved their request for an exemption from the prohibition on a vessel hauling another vessel's gillnet gear.

##### *20-Day Spawning Block Requirement Out of the Fishery*

*Comment 23:* The AFM, SHS, and six individuals supporting those sectors' exemption requests from the 20-day spawning block requirement out of the fishery, said that this regulation is an effort control no longer necessary in a fishery managed under an ACE, that reduced allocations for FY 2010 make this effort control unnecessary, and that this exemption would reduce the administrative burden on sectors. The AFM, SHS, EDF, the Council, and five individuals commented that the 20-day spawning block does not cover all peak spawning times, that the benefits of this regulation are unclear, and that this measure is therefore ineffective. The Council further commented that the 20-day spawning block was developed without any analysis on spawning stocks, and DMF supported the exemption request provided that each sector included a detailed strategy for avoiding pre-spawning and spawning stocks. One individual suggested fishermen are less likely to target spawning stocks since market prices are lower for spawning fish. The NCCS opposed this exemption request, claiming this measure set a precedent for the protection of spawning fish.

*Response 23:* NMFS agrees with these comments and has approved this exemption request from the 20-day

spawning block for FY 2010. While NMFS supports the protection of spawning stocks, prohibiting vessels from fishing 20 days within a 3-month spawning period will likely provide minimal benefit to the stocks.

##### *Limitation on the Number of Gillnets Imposed on Day Gillnet Vessels*

*Comment 24:* The AFM, SHS, EDF, and four individuals supported easing the limitation on the number of gillnets for Day gillnet vessels to 150 nets in each of the RMAs. These commenters stated that this regulation is an effort control no longer necessary in a fishery managed under an ACE, and that reduced allocations for FY 2010 make this effort control unnecessary. The FGS supported this exemption because it would provide increased flexibility for fishermen while minimizing environmental impacts.

*Response 24:* NMFS agrees with these comments and has approved the SHS's request for exemption from the limitation on the number of gillnets for Day gillnet vessels in the SHS sector (not to exceed 150 gillnets).

*Comment 25:* Comments by the AFM and four individuals argued that NMFS' Protected Resources Division extrapolates takes of marine mammals based on the amount of fish caught in gillnets, not by the number of gillnets in the water.

*Response 25:* Estimating the number of takes of marine mammals is not equivalent to predicting potential fixed gear interactions with protected resources. The proposed rule explained that protected resources could be "negatively impacted by an increase in gear days and more fishing effort," as well as "spatial and temporal changes in fixed gear location and how these changes interact with protected species." NMFS believes that, while an increase in the number of gillnets could increase gear interactions with protected species, simply changing where and when the gear is used could also have a negative (or positive) impact on protected resources. Nonetheless, granting this exemption will likely increase CPUE and reduce gear interaction with protected resources, and therefore, it has been approved.

*Comment 26:* Comments by the AFM and four individuals contended that NMFS incorrectly stated that nets in the water will increase in the GB and SNE RMAs, as gillnet vessels can already fish 150 monkfish nets in those areas.

*Response 26:* Gillnet restrictions for vessels with Category C, D, F, G, and H monkfish permits that also possess a limited access NE multispecies permit (§ 648.92(b)(8)(i)(B)), do in fact allow

vessels fishing under a monkfish DAS to fish with, haul, or possess, any combination of monkfish, roundfish, and flatfish nets, up to 150 total gillnets. However, current groundfish gear restrictions in the groundfish RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the SNE and MA RMAs (§§ 648.80(b)(2)(iv) and 648.80(c)(2)(v), respectively). Thus, not all NE multispecies vessels (vessels without a Category C, D, F, G, or H monkfish permit) are able to fish 150 nets in those areas.

*Comment 27:* The AFM commented that gillnet vessel owners should be allowed to change their annual designation as Day or Trip gillnet vessel for FY 2010 once NMFS has decided on the fate of this exemption request.

*Response 27:* Consistent with current policy, gillnet vessels may change their designation as either a Day or Trip gillnet vessel within 45 days of permit issuance, provided the vessel has not yet fished in the FY. This final rule, therefore, provides opportunity for sector vessels to change their gillnet designation prior to the start of FY 2010.

*Comment 28:* The DMF opposed granting an exemption from regulations limiting the number of gillnets for Day gillnet vessels due to a lack of "meaningful" at-sea sampling coverage for sectors until FY 2012. DMF expressed concern that gillnets generate a large amount of bycatch, which could result in unrecorded discards as SHS vessels attempt to prevent ACEs from being exceeded.

*Response 28:* When the Council adopted Amendment 16, the Council neither selected the option to require 100-percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in FY 2010. However, NMFS agrees with the basic concept advocated by DMF that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16. NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, in addition to fully funding 50-percent dockside monitoring coverage for FY 2010. This is a significant increase in current at-sea monitoring levels, and dockside monitoring is entirely new. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the Standard Bycatch Reporting Methodology (SBRM), while providing

additional coverage to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goal of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated.

*Comment 29:* One individual stated that permitting the SHS to fish up to 150 gillnets in any of the Rolling Closure Areas was an inequitable advantage for the sector over common pool vessels, and that it would have a detrimental effect on other fisheries.

*Response 29:* All limited access NE multispecies permit holders have been provided the opportunity to enroll in a sector. Sector vessels have been granted exemptions from several regulations that common pool vessels are still required to follow because each sector voluntarily accepted increased responsibilities in exchange for an ACE to limit its catch. NMFS believes that requiring sectors to retain all legal-sized groundfish and to deduct all non-exempted catch (both landings and discards) from its ACE will increase the accountability of sector vessels and will reduce the impact from groundfish vessels on other fisheries.

#### **Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS**

*Comment 30:* The DMF, EDF, CCHFA, and FGS, commented in support of exempting FGS vessels from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS.

*Response 30:* NMFS believes this exemption will enhance fishing vessel flexibility and improve CPUE while reducing the environmental impact of fishing and, therefore, has approved this exemption request.

#### **Limitation on the Number of Hooks That May Be Fished**

*Comment 31:* The CCHFA and FGS both supported the FGS' exemption request from the limit on the number of hooks that may be fished. DMF also endorsed this request, provided the sector offers rationale for why the exemption is necessary, includes details on what their maximum hook limit would be, and provides a strategy for avoiding pre-spawning and spawning stocks.

*Response 31:* NMFS encourages the use of fishing gear that results in minimal environmental impact and believes that the FGS provided adequate rationale for their hook gear exemption request in their operations plan and EA.

NMFS does not believe it is necessary for the FGS to detail how many hooks will be used, but encourages the FGS to develop a strategy for avoiding spawning stocks.

#### **Length and Horsepower Restrictions on DAS Leasing**

*Comment 32:* EDF, AFM, and five individuals commented in support of exemption requests made by the SHS and TSS from the length and horsepower restrictions on DAS leasing. EDF and one individual stated that there was no need for such an effort control while the sectors are restricted to an ACE. Three other individuals and AFM claimed that monkfish bycatch would be better accounted for as a result of this exemption. An additional individual commented that DAS and quotas would remain intertwined until a comprehensive plan is completed, and this exemption will ease the transition.

*Response 32:* NMFS agrees that restricting a sector to its ACE reduces the need for DAS leasing restrictions and concurs that granting this exemption will ease the transition for limited access monkfish and NE multispecies limited access permitted vessels into sectors and catch share management. Additional horsepower could allow a vessel to catch more fish in less time with less of an impact on the environment. Because vessel replacements will continue to be restricted by length overall and horsepower limits, this exemption is not expected to change the character of the fleet. Although an exemption from HP restrictions could allow a vessel to catch fish more quickly, NMFS disagrees that this exemption would result in improved accounting of bycatch. This exemption would enable SHS and TSS permitted vessels to better match their groundfish DAS with monkfish DAS and fish groundfish DAS and monkfish DAS simultaneously. This would allow for sector vessels to retain more monkfish and groundfish, increase vessel profits, and reduce regulatory discards.

*Comment 33:* Three individuals commented in opposition to the exemption from DAS and horsepower leasing restrictions. Two of these individuals were concerned about a redirection of effort toward the monkfish and skate fisheries, and the third individual commented that, because DAS is the primary mortality control for monkfish, these regulations should remain.

*Response 33:* NMFS surveyed the sectors' expected fishing patterns and potential redirection of effort for FY 2010, and, in all cases, the sectors

responded that current fishing behavior and patterns would not change as a result of operating under sector management. Further, monkfish mortality controls in the Monkfish FMP are not based on groundfish DAS. Sector vessels are still required to use a monkfish DAS when targeting monkfish.

*Comment 34:* DMF questioned whether DAS that otherwise would have been used by sector vessels for groundfish fishing could now be leased to sector vessels targeting monkfish.

*Response 34:* Since sector vessels are no longer subject to groundfish DAS, sector vessels that do not plan to harvest more than the incidental catch limit of monkfish could lease their groundfish DAS to another sector vessel that intends to target monkfish. Sector vessels fishing on a sector trip for monkfish, or any other non-groundfish fishery that is not exempted (e.g., skates), are required to use a groundfish DAS. However, the monkfish FMP mortality controls are not based on groundfish DAS, so this provision would not compromise the ability of the monkfish FMP to meet its mortality targets.

#### Exemption Requests That Were Not Approved

##### GOM Rolling Closure Areas

*Comment 35:* NSC, AFM and one individual asserted that the GOM Rolling Closure Areas were not designed to protect spawning fish. NSC argued that it was therefore inappropriate to reject such a request based on ancillary benefits that Rolling Closure Areas may provide to spawning fish and marine mammals. AFM, SHS, and one individual specified that the Rolling Closure Areas were no longer necessary for mortality control since sectors would be limited to their ACEs. Conversely, EDF commented that ancillary benefits may be sufficient justification for denying exemption requests. DMF, CCCHFA, and NCCS commented that protection of spawning fish was a part of the Rolling Closure Areas, while CCCHFA and FGS specifically commented that spawning fish require additional protections.

The SHS argued in their EA that fishing methods and areas fished would not result in additional interactions between gear and protected resources. The six NFSs that requested exemption from 30-minute blocks 124, 125, 132, and 133 in April contended in their operations plans and contracts that their members' knowledge would enable them to avoid spawning aggregations of fish and that not granting their request

could prematurely end commercial access to haddock in those areas. The NFSs provided a strategy to minimize the impacts to spawning fish while promoting benefits to sector members.

*Response 35:* NMFS agrees that the Rolling Closure Areas were implemented to protect spawning fish. Although FW 25 to the FMP initially implemented the closures to protect groundfish stocks in 1998, FW 26 identified and enhanced these areas, which were referred to as "cod spawning" closures. The final rule implementing FW 26 specified that the Council undertook the action because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure." Based on this information, NMFS is reluctant at this time to grant further exemptions to the GOM Rolling Closure Areas beyond the universal exemptions approved in Amendment 16, and has, therefore, not approved the sectors' additional GOM Rolling Closure Area exemption requests.

*Comment 36:* The Council, AFM, SHS and two individuals commented that the "Council endorses requests made by sectors that they be exempt from the rolling closure block 138 in May." SHS, AFM and one individual stated that block 138 is the only block closed east of 70° W. long. and is particularly important to Maine and New Hampshire vessels that fish close to shore. One individual commented that exemption from block 138 would reduce an administrative burden placed on vessels and another individual supports this exemption in order to give vessels additional flexibility.

*Response 36:* NMFS acknowledges the Council's endorsement of sectors' right to request additional exemptions from Rolling Closure Areas and, therefore, solicited comment on these requested exemptions. However, NMFS has disapproved the request for an exemption from block 138 for the reasons set forth in the preamble: These exemption requests fail to consider that direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock as opposed to post-spawning mortality; NEFSC spring survey data for 2006–2008 indicate that very high concentrations of cod (highest quartile of tows by weight) continue to be present in the April GOM Rolling Closure Area, especially west of 69°30' W. long., while moderate concentrations of cod are found in block 138; justification that demonstrates that spawning fish could be avoided was not

provided by the individual sectors (see comments and response); and the GOM Rolling Closure Areas also afford some protection to harbor porpoise and other marine mammals. As a result of these concerns, this exemption request was not approved.

*Comment 37:* The NSC commented that in an attempt to offset potential effort on spawning stocks that could result from an exemption from blocks 124, 125, 132, and 133 in April, NFSs did not request exemption from the 20-day spawning block that is required by all vessels. These NFS sectors also offered to limit the percentage of their cod allocations that could be taken during April to further address any common pool inequities.

*Response 37:* NMFS acknowledges that the NFSs' operations plans included strategies to mitigate potential adverse impacts of additional exemptions from the Rolling Closure Areas. However, NMFS has disapproved the request for an exemption from 30-minute blocks 124, 125, 132, and 133 in April because the rationale provided was insufficient for the reasons explained earlier in the preamble and above under Response 37.

*Comment 38:* NSC requested that NMFS not defer approval of additional Rolling Closure Area exemptions until analyzed by the Council's PDT, since there has been a lack of data since the areas closed in 1998 under FW 25.

*Response 38:* NMFS disagrees that there is a lack of data and has used data from the NEFSC's annual spring bottom trawl surveys in evaluating these exemptions. Data from 2006 through 2008 demonstrate that many of the highest catches of Atlantic cod occur in most of the 30-minute blocks from which sectors have requested exemptions. NEFSC reviewed the exemptions requests and have raised concerns that granting exemptions from blocks 124, 125, 132, and 133 in April would have severe negative impacts on spawning fish, while granting an exemption from block 138 in May would have a moderate negative impact on spawning fish.

*Comment 39:* DMF commented that NMFS should not approve any additional exemptions from GOM Rolling Closure Areas until sectors have operated for at least 1 year.

*Response 39:* NMFS acknowledges this comment and points out that additional exemption requests from the GOM Rolling Closure Areas have not been granted for FY 2010.

## 72-Hour Observer Notification Requirement

*Comment 40:* The NSC and all 12 NFSs support an exemption from the 72-hour observer notification requirement. EDF argued that, while the full suite of data collected by NEFOP is valuable, the primary monitoring goal of catch shares is tracking catch. EDF opined that, if a sector can hire an approved third-party at-sea monitor, they should be freed from the constraints of the NEFOP program. However, EDF also proposed setting a cap on how many trips could be exempted from NEFOP, to ensure NEFOP goals are not undermined. The FGS commented that the NEFOP notice requirement of 72 hour disproportionately impacts day boats, which cannot accurately forecast trips 3 days in advance and, therefore, are generally excluded from fisheries requiring such notice. DMF opposes the exemption, concurring with NMFS' rationale in the proposed rule.

*Response 40:* NMFS disagrees with EDF's assertion. A catch-share based fishery increases the importance of timely and accurate discard monitoring as well as landings. NMFS' intent in implementing additional at-sea monitoring (30-percent of trips, in addition to existing NEFOP coverage for sector vessels) is to track catch (landings and discards). In order to properly select trips for observer coverage and at-sea monitoring coverage, NEFOP must be notified of all trips.

NMFS also disagrees with FGS' assertion that day boats are prevented from participating because of the NEFOP notice requirement. Day vessels are currently allowed to notify NEFOP of all possible trips for a week at a time with no penalty for canceling trips. This allows day vessels to make decisions on a daily basis without undermining trip selection by NEFOP. This provision remains unchanged for sector dayboat vessels for FY 2010. Further, NMFS has reduced the requirement from 72- to 48-hour for all groundfish vessels in the final rule implementing Amendment 16 to ease the burden on vessels.

## Halibut One-Fish Trip Limit

*Comment 41:* NCCS, the only sector to request exemption from the halibut one-fish trip limit, commented that halibut is showing a recovery in eastern Maine and that Maine's State fishery for Atlantic halibut provides valuable stock information. The NCCS also stated that allowing vessels to participate in the Maine State fishery would keep mortality of Atlantic halibut consistent with current fishing practices. EDF

commented in support of the exemption request, asserting that Canadian data shows a more robust Atlantic halibut population in Canadian waters than assessments focused on U.S. waters suggest. Conversely, the Council disagreed with allowing an exemption from the one-fish halibut provision, noting that Amendment 16 requires a 27-percent reduction in Atlantic halibut mortality and that this exemption request is inconsistent with the rebuilding plan in Amendment 16.

*Response 41:* NMFS agrees with the Council's comment that Atlantic halibut still requires a substantial mortality reduction. NMFS agrees with the Council that maintaining current mortality rules for Atlantic halibut would be inconsistent with the rebuilding program, and has therefore disapproved this exemption request. Furthermore, NMFS disagrees with NCCS that this exemption would maintain current Atlantic halibut mortality levels because the NCCS vessels are currently prohibited from participating in the Maine State fishery.

*Comment 42:* NCCS argued that adopting the State fishery's restrictive annual limit could result in lower total halibut landings. The Council commented that it is unclear how fishing under State limits would affect Atlantic halibut mortality.

*Response 42:* NMFS disagrees with this comment by the NCCS. All Federally permitted vessels are currently prohibited from targeting Atlantic halibut. Maine, however, allows a fishery for State-only permitted vessels to target Atlantic halibut, with the result that participating vessels change their operations with the express goal of increasing their catch of Atlantic halibut. The one-fish trip limit for Atlantic halibut in the Federal rebuilding program prevents a targeted fishery while reducing discard of bycatch.

## VMS Requirements

*Comment 43:* NSC and 12 NFSs argued for the ability to utilize a central sector server to relay member vessel catch reports and logbook data to NMFS, commenting that they began development of a NFS sector data system prior to NMFS hosting workshops on sector monitoring, that the NFS is dependent on their integrated systems, and that NMFS should immediately adopt electronic signature technology, currently in use by financial and high-technology industries, which the NFS sectors are prepared to deploy. DMF opposed this exemption, based on NMFS' rationale

that these data would not be tamper-proof.

*Response 43:* NMFS acknowledges that NSC initiated software development prior to the first workshop NMFS held in June 2009, but disagrees that this is sufficient sole rationale for NMFS to approve the NFSs exemption request from NMFS' VMS requirements. The NSC has not yet responded to NMFS' request for an electronic signature proposal to review. Electronic signatures are one aspect of the NMFS-sponsored eVTR pilot study (discussed in more detail below) currently underway as a means to evaluate exemptions that would facilitate electronic exchange of data between sector vessels, sector managers, and NMFS.

*Comment 44:* The Council commented that a VMS exemption request appears inconsistent with the Amendment 16 measures prohibiting sectors from requesting exemptions from reporting requirements.

*Response 44:* NMFS disagrees, as this exemption request is not from the reporting requirement, but from the specified method for meeting the reporting requirement. Still, the exemption request from VMS reporting requirements was not approved.

*Comment 45:* EDF commented that real-time reporting is critical and this exemption would facilitate timely reporting.

*Response 45:* NMFS agrees that real-time reporting is critical and believes that this exemption and others like it could be granted once the pilot study that is currently under way determines a method that fulfills all necessary requirements mandated by NMFS.

## eVTRs

*Comment 46:* DMF asserted that an exemption from paper VTRs should not be granted until the viability of eVTRs as a replacement for paper VTRs is tested.

*Response 46:* NMFS agrees and has initiated a pilot study to test the feasibility of using eVTRs to fulfill all paper VTR requirements.

*Comment 47:* CCCHFA and FGS referred to previous eVTR pilot studies in the Northeast and urged NMFS to use these as a basis to approve this exemption for FY 2010. EDF asserted that eVTR tests in other regions appear to document eVTRs as successful.

*Response 47:* NMFS acknowledges that some eVTR testing has previously occurred in the Northeast region, but disagrees this is sufficient basis for approving eVTRs at this time. Previous studies did not comprehensively study the use of multiple systems or the use

of eVTRs to meet all requirements of paper VTRs. Remaining unresolved issues with approving eVTRs will be tested in the pilot study mentioned above.

*Comment 48:* FGS asserted that paper-based reporting results in delayed analysis and promotes “failing” management policies. EDF further asserted that the paper system has inherent flaws, including time lags and the opportunity for human error. NSC, the 12 NFSSs, and CCCFHA urged NMFS to approve eVTRs as quickly as possible.

*Response 48:* NMFS disagrees that paper-based reporting systems promote failing management policies. However, NMFS does agree that eVTRs should be approved as quickly as possible if they are shown to fulfill all paper VTR requirements.

*Comment 49:* NSC and all 12 NFSSs commented that the proposed use of paper VTRs by sector managers for ACE monitoring is an unachievable requirement that will drain the limited time and resources of fishermen and sectors. NSC also pointed out that disapproval of an exemption from paper VTRs fails to recognize that NMFS must wait for paper VTRs to accomplish catch monitoring while the private sector is expected to accomplish the task in 36 hours.

*Response 49:* NMFS disagrees that the use of paper VTRs establishes an unachievable requirement for sectors. Sector members are required to provide copies of their VTRs to the sector manager within 24 hours of the end of each trip. Each reporting week ends on Saturday and sector weekly reports are due to NMFS by 23:59 of the following Thursday. Therefore, sector managers will have a minimum of 96 hours to incorporate data from paper VTRs in their weekly report to NMFS. This information will provide NMFS with more real-time monitoring information.

*Comment 50:* NSC and all 12 NFSSs stated that it is inconsistent for NMFS to deny an exemption to use eVTRs until tested while implementing a requirement for trip end hails that will use the same VMS technology.

*Response 50:* NMFS is not implementing a requirement for either trip start or trip end hails to be sent via VMS. The Dockside Monitoring Standards require that the transmission of all vessel hails be either as an e-mail via VMS, or some other electronic method, as determined by the sector. This standard was specifically set to allow sectors to choose and develop any electronic means for transmitting hails. At the request of multiple sectors, NMFS has added trip start hail and trip end hail forms to VMS for use by any

sector that elects to use them. Further, to mitigate the risk of any electronic hail system failure, the Dockside Monitoring Standards also stipulate that “if the vessel does not receive confirmation within 10 minutes, the captain must contact the vendor to confirm the trip start hail via an independent backup system (e.g., a phone number) that must be set up by the DSM vendor.” The 10-minute window applies to trip start hails to minimize the time a vessel must delay departing on a trip due to a failure of the primary hail transmission method selected by the sector. The 10-minute window does not apply to trip end hails in acknowledgement that vessels may have limited communication capabilities at sea and that vessels should not be forced to delay their return to port due to a failure of the primary hail transmission method selected by the sector. However, no vessel may unload its catch until it is either met by a dockside monitor or issued a waiver from dockside monitoring.

#### **Fairlead Roller Spacing on De-Hookers**

*Comment 51:* DMF submitted a comment supporting NMFS’ stated rationale for denying this exemption.

*Response 51:* NMFS agrees and has denied this exemption request.

#### **Minimum Fish Size Requirements**

*Comment 52:* DMF opposed an exemption from the minimum fish size requirements based on NMFS’ concerns pertaining to enforceability and the potential to target juvenile fish. EDF also commented, stating that this exemption may result in increased targeting of juveniles with a negative impact on spawning. The Council commented that this exemption could lead to a change in size selectivity that could lead to an increase in mortality for a given weight or age-class of fish which could invalidate the projections used to determine ABCs and ACLs.

*Response 52:* NMFS agrees and has denied this exemption request.

*Comment 53:* EDF commented that granting this exemption may reduce discards of dead and dying fish.

*Response 53:* NMFS agrees, but has denied this exemption based on the enforcement issues and risks to juvenile fish stated above.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the NE Multispecies

FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Because this final rule contains no implementing regulations, it is exempt from review under Executive Order (E.O.) 12866.

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. Publication of this rule is conditional upon approval and publication of the final rule for Amendment 16. These rules also must be in effect at the beginning of FY 2010 on May 1, 2010, to fully capture their environmental and economic benefits. However, the time available for this rulemaking and for Amendment 16 was constrained by multiple factors, including the development of Amendment 16 and Framework 44, data availability, and the scheduling of U.S. and international management bodies, which delayed this rulemaking. Due to these constraints, the rulemaking could not be completed further in advance of May 1, 2010, and in order to have this action effective at the beginning of FY 2010, it is necessary to waive the 30-day delay period for this rule.

This waiver is necessary and in the public interest. This rule relieves several restrictions for the NE multispecies fishery in order to help mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks in Amendment 16, and increases the economic efficiency of vessel operations through the authorization of 17 new sector operations plans for FY 2010. Failure to waive the 30-day delay in effectiveness could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities, as well as to the fish stocks subject to this rule. Without this rule, vessels that have signed up to join a sector in FY 2010 (812 vessels, 55% of the groundfish fleet) would not be able to take advantage of the flexibility in vessel operations this rule implements. For example, sector vessels would receive exemptions from trip limits, DAS, and seasonal closure areas that this rule allows. Moreover, because vessels committed to a sector may not fish in both the common pool and a sector in the same FY, vessels currently signed into a sector would be forced to cease fishing operations entirely during the delay in effectiveness, or forego sector membership for the entire FY, thereby losing the mitigating economic efficiencies of the restrictions relieved for sector vessels. This would also

reduce the economic efficiency of the majority of the fleet until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels. Moreover, this rule, along with Amendment 16 and FW 44, is intended to end overfishing of various stocks in the Northeast and to assist in the rebuilding of overfished stocks. Without these rules, several stocks are likely to continue to experience overfishing, and rebuilding of stocks, as required by the Magnuson-Stevens Act, would likely be compromised. 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 recreational, aesthetic, or other reasons, and reduces the availability of seafood. Therefore, delayed implementation of these measures beyond May 1, 2010, is contrary to the public interest, and the requirement to delay implementation of this rule for a period of 30 days is hereby waived.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for both this rule and the Amendment 16 final rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA is comprised of the economic impacts identified in the Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the preamble of the proposed rule, the corresponding analyses in the EAs prepared for this action, and the discussions, including responses to public comments included in this rule. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EAs prepared for this action and, thus, are not repeated here.

#### **Summary of the Issues Raised by Public Comments in Response to the IRFA**

DMF commented that the IRFA did not include specific information detailing Federal subsidies for administrative costs, such as those for sector formation or potential costs to sectors for dockside and at-sea monitoring. DMF suggested that providing additional information on Federal funds that have been devoted to sector implementation could help the public understand why many fishermen would prefer to enroll in a sector opposed to fishing in the common pool.

#### **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**

This FRFA details funds set towards sector implementation. NMFS spent \$490,000 on an environmental services contractor to assist in drafting the sector EAs and to conduct NEPA analysis for each sector. In past years, this cost has been borne by each sector. NMFS has funded the estimated full cost of the first year of dockside monitoring, via a \$1.2 million grant awarded to the GOM Research Institute (GMRI). NMFS has distributed the \$490,000 of funds among the sectors to cover start-up and management costs. A portion of this amount was awarded to GMRI, which administered sub-awards to each of the sectors. In addition, NMFS awarded a grant worth \$230,000 to the State of Maine, which is making sub-awards to Maine-based sectors to cover start-up and operating costs. Lastly, NMFS, at considerable cost, is providing a four-fold increase in the level of at-sea monitoring for sector vessels.

#### **Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply**

This action will affect regulated entities engaged in commercial fishing for groundfish that have elected to join one of the 17 sectors that have submitted operations plans and been approved for FY 2010. Any limited access Federal permit under the FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is \$4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million annually. Since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of January 22, 2010, a total of 812 of 1,477 eligible NE multispecies permits indicated their intent to join a sector. Table 1 presents a summary of the number and percent of individual and active permits enrolled in a sector for FY 2010 as of January 22, 2010. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2010, the number of permits participating in sectors on May 1, 2010,

and the resulting sector ACE allocations, may be reduced.

#### **Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action**

This rule contains no collection-of-information requirement subject to the PRA.

#### **Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes**

Joining a sector is voluntary. This means that a permit holder's decision of whether to join a sector will be based on the option that is expected to offer the greater economic advantage—*i.e.*, joining a sector or fishing under effort controls in the common pool. Since sectors are granted certain universal exemptions, and all sectors may request and be granted additional exemptions from regulatory measures that apply to common pool vessels, sector vessels are afforded greater flexibility than common pool vessels. Sector members no longer have groundfish catch limited by DAS allocations and are, instead, limited by their available ACE. In this manner the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors collectively bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, dockside monitoring, and at-sea monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from \$60,000 to \$150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from \$13,500 to \$17,800 per vessel. These estimates illustrate the fact that the potential administrative costs associated with joining a sector could have influenced a permit holder's decision on committing to a sector. The majority of these administrative costs are subsidized by NMFS for FY 2010. Whether these subsidies, which include providing financial support for preparation of sector EAs, dockside monitoring, and at-sea monitoring, will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2010.

The substantial changes affecting vessels that choose to join a sector make

it difficult to assess the economic impact on these fishing businesses. The only sector that has been operating since a sector allocation was first authorized in 2004 is the GB Cod Hook Sector. The average revenue per sector member increased from \$61,000 in FY 2004 to \$112,000 in FY 2008. Comparative analysis of vessels using similar gear that did not join a sector suggests that vessels that joined the GB Cod Hook Sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions, or due to a self-selection effect is unknown. Nevertheless, available information suggests that economic performance among sector vessels may be expected to improve relative to common pool vessels that remain under effort controls.

Small entity impacts may differ depending on sector-specific operations plans. The number of permits that have enrolled in each sector, as well as the operating characteristics of the sector, may have an economic affect on sector members (Table 1). The number of permits enrolled in a sector ranges from 8 to 129. The allocation to any given sector is based on the combined sum of the PSC for each stock associated with all permits enrolled in that sector. All sector operations plans convert the total ACE into an individual share proportional to the PSC that each member brings to the sector. This share is then allocated to the member to be fished by that member or traded to another sector member.

Sector operations plans include a number of harvesting rules designed to track catches, as required, but also contain provisions that require advance notification of when the sector or sector member may be approaching a harvest share limit or the sector's ACE for a given stock. This system may provide the information needed to allow sector members to more fully utilize their harvest share.

The EIS for Amendment 16 compared economic impacts of sector measures with common pool measures, and analyzed costs and benefits of the universal exemptions. In addition to the universal exemptions proposed for sectors in Amendment 16, several exemptions requested by various sectors could provide economic incentives to enroll in a sector. All exemptions requested by the sectors were intended to provide positive social and economic effects to sector members and ports. The following exemptions have been granted to the requesting sectors because each sector's ACE reduces the need for effort controls, and there are perceived

economic benefits from such exemptions: The Day gillnet vessel 120-day block requirement out of the fishery; the prohibition on a vessel hauling gear that was set by another vessel; the 20-day spawning block out of the fishery; the limit on the number of hooks that may be fished; the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels; and the length and horsepower restrictions of the DAS Leasing Program.

Exemption from the Day gillnet vessel 120-day block requirement out of the fishery was requested by NFSs III and XI, the FGS, the SHS, the TSS, and the Port Clyde Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block could allow sector members to realize the cost savings associated with retiring the redundant vessel.

NFSs III and XI requested an exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed gear exemption will allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. Along with a possible reduction in total gear fished, this provision could reduce the total amount of gear that has to be purchased and maintained by participating sector members, resulting in some uncertain level of cost savings.

The FGS requested an exemption from the number of hooks that may be fished, and an exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. These exemptions could provide vessel owners with the flexibility to adapt the number of hooks fished to existing fishing and market conditions and to haul monkfish gillnets set under the monkfish regulations more efficiently. This exemption could also provide an opportunity to improve vessel profitability.

The NCCS, SHS, and TSS requested an exemption from the required 20-day spawning block out of the fishery.

Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Granting this exemption could provide vessel owners with greater opportunity to make more efficient use of their vessel.

The SHS requested an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This will provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The SHS and TSS requested exemptions from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions will allow greater flexibility to lease DAS between vessels of different sizes. However, the efficiency gains of doing so are uncertain and may be limited because the exemption would only apply to TSS and SHS members. Since DAS will not be required to harvest groundfish, the economic importance of this exemption will be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

Several comments that addressed requested exemptions about which NMFS had serious concerns were received; however, these comments did not provide any new or additional data to convince NMFS to approve these exemptions of serious concern. The exemption requests that are not approved for FY 2010 are from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas; the 72-hour observer notification requirements for NMFS-funded at-sea monitoring; the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery; the VMS reporting requirements; the paper VTR requirement; the prohibition on de-hookers; and the minimum fish size requirements. The economic impacts of not approving these exemptions are provided below.

In addition to the universal rolling closure exemptions described in section 4.2.3.9 of Amendment 16, six of the NFSs and the SHS requested additional exemptions from GOM Rolling Closure Areas. These include 30-minute blocks 124, 125, 132, and 133 in April, and block 138 in May. The Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions that the Council believes should remain closed to protect cod spawning aggregations. Exempting sector vessels from additional rolling closures beyond the universal exemptions proposed by the Council in Amendment 16 could have improved profitability, since higher catch rates would mean that the same amount of groundfish could be caught at a lower cost. However, as previously explained, these exemptions were not granted because of impacts to spawning fish.

Eight of the NFSs and the FGS requested an exemption from the 72-hour observer notification requirements for NMFS-funded at-sea monitoring. The economic impacts of providing an exemption to the 72-hour observer notification requirement are uncertain, but this exemption could have provided vessel owners with additional flexibility when planning and preparing for fishing trips. Nonetheless, logistical constraints on the NEFOP prevent the authorization of this exemption. In addition, NMFS has already reduced this requirement from 72-hour to 48-hour in the final rule implementing Amendment 16.

The NCCS requested an exemption that would allow members to fish under Maine State regulations for halibut while fishing in State waters. The exemption could have provided additional fishing opportunities to improve sector member profitability. However, the potential to realize any improved profitability would have been limited by Maine State regulations that restrict the number of halibut that may be landed during a prescribed season to 50 fish per person. This exemption was not granted because the halibut stock remains overfished; thus, allowing an exemption from the halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

All of the NFSs requested an exemption from the requirement that vessels transmit reports directly to NMFS via VMS. The economic impacts of providing an exemption from this requirement are uncertain. The exemption would have likely provided

the sector as a whole with some flexibility to more efficiently handle the flow of information between the sector and NMFS in meeting the reporting requirements. Nonetheless, allowing vessels to submit required reports and declarations to a third party, rather than to NMFS directly, would have created insurmountable enforcement problems with the chain of custody of information. Denial of this exemption does not preclude sector member vessels from also sending reports to their sector manager or transmitting hails through the sector server for the purpose of dockside monitoring program requirements.

All of the NFSs, as well as the Sustainable Harvest and TSSs, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. While this exemption would have likely reduced the administrative burden on sectors, this exemption was not granted, as an eVTR system that would address all of the needs of NMFS has not yet been developed. A pilot study is underway that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. This option can be considered at a later date if NMFS' assessment of the pilot study concludes that eVTRs can fulfill all necessary requirements.

The FGS requested an exemption from the prohibition on the use of de-hookers with less than 6-inch (15.24-cm) spacing between the fairlead rollers. Exemption from this requirement would have provided affected vessel owners with greater flexibility to rig their vessels to maximize operational efficiency. However, the interim final rule implemented in 2002, and Amendment 13 in 2004, prohibited de-hookers with spacing less than 6 inches (15.24 cm) to discourage de-hooking strategies that may reduce survival of discarded fish. Additionally, National Standard 9 requires that NMFS minimize the mortality of bycatch that cannot be avoided.

The FGS and the TSS requested exemption from existing regulations that provide for minimum fish sizes for several different species. Any fish caught that measures below the minimum size must be discarded. To the extent that some portion of these fish would otherwise be marketable, exemption from minimum fish sizes would have improved the economic efficiency of member vessel owners. Since all discarded fish are assumed dead and would count against the

sector's ACE, opportunities to maximize retention of any marketable fish would have increased the total value of the ACE. However, the magnitude of this potential benefit is uncertain, since the marketability of smaller size fish is unknown. Moreover, an exemption from the minimum fish size requirement presents significant enforcement issues by allowing two different fish sizes in the marketplace. Granting this exemption could also increase targeting of juvenile fish or increase mortality of a given weight, or year class(es), of fish.

Under the No Action alternative, none of the FY 2010 sector operations plans would be approved, and no sector would be approved to operate in FY 2010. While the sectors could remain implemented under proposed Amendment 16, under the No Action alternative for this rule, no sector would receive an authorization to fish, an allocation to fish, or any exemptions from the regulations. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations in the FMP. Because of effort control changes proposed in both Amendment 16 and FW 44, it is likely that vessels enrolled in a sector for FY 2010 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

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 sector members that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: March 26, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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