

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No. 0910051338–0151–02]****RIN 0648–AY29****Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 44**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures approved under Framework Adjustment 44 (FW 44) to the Northeast (NE) Multispecies Fishery Management Plan (FMP), including specifications for the FMP for fishing years (FY) 2010–2012. FW 44 is implemented in this rule in conjunction with approved Amendment 16 measures, as well as with approved sector operations plans authorized under the FMP. Specifically, FW 44 modifies the Gulf of Maine (GOM) cod and pollock trip limits implemented in Amendment 16; provides the Administrator, Northeast Region, NMFS (Regional Administrator) authority to implement inseason trip limits and/or differential day-at-sea (DAS) counting for any groundfish stock in order to prevent catch from exceeding the Annual Catch Limit (ACL); and specifies Overfishing Levels (OFLs), Acceptable Biological Catch levels (ABCs), and ACLs for all 20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the Total Allowable Catches (TACs) for transboundary Georges Bank (GB) stocks. Pursuant to current Regional Administrator authority under the FMP, this action also allocates zero trips to the Closed Area II (CA II) Yellowtail Flounder Special Access Program (SAP); limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; delays the opening of the Eastern U.S./Canada Area for trawl vessels; and implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). Finally, this rule makes technical corrections to Amendment 16 regulations.

**DATES:** Effective May 1, 2010, except for §§ 648.82(n)(1)(ii) and 648.87(b)(1)(ii)(B), which are effective May 2, 2010.

**ADDRESSES:** Copies of FW 44, its Regulatory Impact Review (RIR), and the Environmental Assessment (EA) and

addendum are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Mill 2, Newburyport, MA 01950. Copies of FW 44 EA and addendum may be found at the following Internet address: <http://www.nero.noaa.gov/nero/regs/frdoc/10/10MultiFW44EA.pdf>.

NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This final rule implements measures and specifications in FW 44; measures to manage the NE multispecies fishery in FY 2010 implemented under authority under the FMP; and technical corrections to the regulations implementing the FMP, implemented under Secretarial authority. A proposed rule for this action was published on February 1, 2010 (75 FR 5016), with public comments accepted through March 1, 2010. The Council developed FW 44 in order to specify catch levels for FY 2010–2012, as well as to address concerns that some assumptions inherent in Amendment 16 may be invalid, and therefore Amendment 16 measures may not in themselves, be restrictive enough to prevent ACLs from being exceeded (particularly for GOM cod and pollock). The details of the development of FW 44 were contained in the preamble of the proposed rule and are not repeated here. Some of the specified catch levels in this final rule are different from those in the proposed rule, as explain below in the sections explaining the catch specifications. In addition, these catch levels may be further modified through a subsequent rulemaking after the start of FY 2010, as explained under the description of measures and specifications in this preamble. The relationship of this action to other final regulations being implemented concurrently for the FMP is as follows: Amendment 16 is a major modification to the FMP and implements a suite of management measures to continue the rebuilding of groundfish stocks; an expanded sector management program; and a process for biennial specification of OFLs, ABCs, and ACLs. The Secretary of Commerce partially approved Amendment 16 on January 21, 2010; a proposed rule for Amendment 16 was published on December 31, 2009 (74 FR 69382); and publication of a final rule for Amendment 16 is anticipated, with an effective date of May 1, 2010.

As noted in Amendment 16, in order to implement regulations efficiently, this final rule implements certain regulations under the joint authority of Amendment 16 and FW 44 because, in some cases, Amendment 16 and FW 44 revise the same regulatory text. For clarity, portions of the regulatory text in this final rule reflect proposed regulatory text changes in the Amendment 16 proposed rule, as further modified by FW 44.

FW 44 implements the following management measures and specifications:

**Management Measures***1. Regional Administrator Authority*

This final rule authorizes the Regional Administrator to modify landing limits for any NE multispecies stock and/or DAS counting rates at any time during the FY to reduce the likelihood that ACLs of allocated NE multispecies stocks would be exceeded, or to facilitate the harvesting of ACLs. For example, if, based on available information regarding catch of a particular stock, NMFS projects that an ACL will be exceeded prior to the end of the FY, the Regional Administrator may implement a more restrictive landing limit for that stock that would be effective for the remainder of the FY, unless further modified. Alternatively, for the same stock, the Regional Administrator could instead decide to implement a more restrictive DAS counting rate in the geographic area that pertains to the stock (or implement a change to both a possession limit and DAS counting rate). A modification to the DAS counting rate, under this example, would apply to one or more of the differential DAS counting areas implemented by Amendment 16 that correspond to the pertinent stock(s) (e.g., Inshore GOM Differential DAS Area; Offshore GOM Differential DAS Area; Inshore GB Differential DAS Area; Offshore GB Differential DAS Area; and Southern New England/Mid-Atlantic (SNE/MA) Differential DAS Area). This inseason adjustment could be implemented by the Regional Administrator even on the first day of the FY. Thus, the Regional Administrator could adjust the inseason DAS counting rate in addition to the adjustment to the DAS counting rate that would be triggered under Amendment 16 as an accountability measure (AM), beginning in FY 2011, in response to exceeding an ACL during the previous FY.

Although the measures in this rule do not include any implemented under this new Regional Administrator authority

for the beginning of FY 2010, NMFS is nonetheless concerned that the ACLs for certain stocks may be exceeded in FY 2010, which would trigger AMs in FY 2011. To address the concern for stocks such as GOM winter flounder and GB cod (stocks for which the proposed ACLs are substantially less than recent catch levels), NMFS will monitor catch rates closely and be prepared to implement effort restrictions under this Regional Administrator authority early in FY 2010, if necessary.

## 2. Possession Limits

This final rule modifies the Amendment 16 trip limits for GOM cod and implements a trip limit for pollock to reduce the likelihood of exceeding the ACLs for these two stocks. Specifically, for limited access DAS vessels, FW 44 replaces the Amendment 16 GOM cod limit of 2,000 lb (907.2 kg) up to 12,000 lb (5,443.2 kg)/trip, with the status quo GOM cod trip limit of 800 lb (362.9 kg)/DAS, up to 4,000 lb (1,818.4 kg)/trip. For vessels with a limited access Handgear A or open access Handgear B permit, FW 44 replaces the Amendment 16 cod limits of 750 lb (340.2 kg) and 200 lb (90.7 kg), respectively, with the status quo trip limits of 300 lb (136.1 kg) and 75 lb (34 kg) per trip. In addition, FW 44 implements a new trip limit for pollock of 1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,536.0 kg)/trip (Amendment 16 does not contain a trip limit for pollock).

## 3. Requirement for Limited Access Scallop Vessels to Land Yellowtail Flounder

In conjunction with the allocations of yellowtail flounder to the scallop fishery (described below under “specifications”), vessels with a Federal limited access scallop permit are required to land all legal-sized yellowtail flounder to reduce discarding. This provision may also provide an incentive for scallop vessels to minimize the catch of yellowtail flounder, if landing yellowtail flounder is not cost-effective.

## Specifications

Consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements regarding catch limits, and pursuant to the Amendment 16 process of

developing such limits, this final rule specifies OFLs, ABCs, and ACLs for all stocks covered by the NE Multispecies FMP, as well as incidental catch TACs for FY 2010–2012. In addition, pursuant to current FMP requirements and authority, this rule specifies annual U.S./Canada Management Area TACs for FY 2010. Lastly, under existing Regional Administrator authority to modify management measures for the U.S./Canada Management Area, as well as to modify certain SAP regulations for FY 2010, this final rule delays the opening of the Eastern U.S./Canada Area for trawl vessels for FY 2010; allocates zero trips for the CA II Yellowtail Flounder SAP; limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; and implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The specifications and management measures implemented in this final rule are described in further detail below.

This final rule implements the following specifications:

### 1. OFLs and ABCs

Table 1 contains OFLs and ABCs for FY 2010–2012, based on Groundfish Assessment Review Meeting III (GARM III) stock assessments (2008), for all stocks with the exception of GB yellowtail flounder, for which the ABC is based on the Transboundary Resource Assessment Committee (TRAC) stock assessment of 2009. It is anticipated that the FY 2011 and 2012 values of the GB yellowtail flounder ABC will be revised during 2010 and 2011, respectively, based on new transboundary stock assessments. The OFLs and ABCs for FY 2012 will likely be revised during the next biennial adjustment process (during 2011), but are being specified at this time in the event that the next biennial adjustment process does not result in the timely implementation of 2012 catch specifications.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with Fmsy, *i.e.*, the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield (MSY). The ABCs are those recommended by the Council’s Scientific and Statistical

Committee (SSC), and are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year, and for all stocks, with the exception of SNE/MA winter flounder, represents the amount of catch associated with 75 percent of Fmsy (or 75 percent of recent landings as a proxy for Fmsy), or the F rate required to rebuild the stock within the defined rebuilding time period (Frebuild), whichever is lower. For SNE/MA winter flounder, the ABC was calculated using the F expected to result from management measures designed to achieve an F as close to zero as practicable. This ABC is consistent with the SSC recommendation that, for stocks that cannot rebuild to Bmsy (the biomass associated with maximum sustainable yield) in the specified rebuilding period, even with no fishing, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (*i.e.*, the proportion of the stock caught as bycatch). The ABC values for GOM winter flounder were revised (increased slightly) after the publication of the proposed rule to reflect corrected data.

According to FW 44, for all stocks, with the exception of those with index-based stock assessments (where no information was provided), the probability that the ABC catch would result in overfishing ( $F > F_{msy}$ ) is less than 20 percent. The highest probability of overfishing is associated with GB winter flounder (0.184, 0.191, and 0.199 for 2010, 2011, and 2012, respectively). The ABC values for GB cod and GB haddock for FY 2011 and 2012 are maximum values, because no Canadian catch has been deducted from the overall ABC, and therefore will likely be specified again in conjunction with the 2011 and 2012 U.S./Canada TACs. The FY 2011 and 2012 U.S. ABCs for GB cod and GB haddock will, therefore, be lower than the values in Table 1 in order to take into account Canadian catch. For example, for FY 2010, the amount of reduction to the overall ABC for GB cod and GB haddock is 1,012 mt and 17,612 mt, respectively, which represent the Canadian portion of the shared TACs (Table 7).

TABLE 1—OFLS AND ABCS FOR FY 2010–2012

| ** Stock      | OFL    |        |        | U.S. ABC |        |        |
|---------------|--------|--------|--------|----------|--------|--------|
|               | 2010   | 2011   | 2012   | 2010     | 2011   | 2012   |
| GB cod .....  | 6,272  | 7,311  | 8,090  | 3,800    | *5,616 | *6,214 |
| GOM cod ..... | 11,089 | 11,715 | 11,742 | 8,530    | 9,012  | 9,018  |

TABLE 1—OFLS AND ABCS FOR FY 2010–2012—Continued

| ** Stock         | OFL    |        |        | U.S. ABC |          |          |
|------------------|--------|--------|--------|----------|----------|----------|
|                  | 2010   | 2011   | 2012   | 2010     | 2011     | 2012     |
| GB hadk .....    | 80,007 | 59,948 | 51,150 | 44,903   | * 46,784 | * 39,846 |
| GOM hadk .....   | 1,617  | 1,536  | 1,296  | 1,265    | 1,206    | 1,013    |
| GB ytail .....   | 5,148  | 6,083  | 7,094  | 1,200    | 1,081    | 1,226    |
| SNE ytail .....  | 1,553  | 2,174  | 3,166  | 493      | 687      | 1,003    |
| CC ytail .....   | 1,124  | 1,355  | 1,508  | 863      | 1,041    | 1,159    |
| Plaice .....     | 4,110  | 4,483  | 4,727  | 3,156    | 3,444    | 3,632    |
| Witch .....      | 1,239  | 1,792  | 2,141  | 994      | 1,369    | 1,639    |
| GB winter .....  | 2,660  | 2,886  | 3,297  | 2,052    | 2,224    | 2,543    |
| GOM winter ..... | 441    | 570    | 685    | 239      | 239      | 239      |
| SNE winter ..... | 1,568  | 2,117  | 2,830  | 644      | 897      | 1,198    |
| Redfish .....    | 9,899  | 10,903 | 12,036 | 7,586    | 8,356    | 9,224    |
| White hake ..... | 4,130  | 4,805  | 5,306  | 2,832    | 3,295    | 3,638    |
| Pollock .....    | 5,085  | 5,085  | 5,085  | 3,293    | 3,293    | 3,293    |
| N. window .....  | 225    | 225    | 225    | 169      | 169      | 169      |
| S. window .....  | 317    | 317    | 317    | 237      | 237      | 237      |
| Ocean pout ..... | 361    | 361    | 361    | 271      | 271      | 271      |
| Halibut .....    | 119    | 130    | 143    | 71       | 78       | 85       |
| Wolffish .....   | 92     | 92     | 92     | 83       | 83       | 83       |

\*\* GB = Georges Bank; GOM = Gulf of Maine; hadk = haddock; ytail = yellowtail flounder; SNE = Southern New England/Mid-Atlantic; CC = Cape Cod/GOM; plaice = American plaice; witch = witch flounder; winter = winter flounder; N = north; S = south; window = windowpane flounder.

\* Preliminary.

## 2. ACLs

Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular year, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, State-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account.

For FW 44, the ABC was subdivided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); State waters (portion of ABC expected to be caught from State waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries); scallop fishery; mid-water trawl fishery;

commercial groundfish fishery; and recreational groundfish fishery. The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors as of January 22, 2010, and the cumulative Potential Sector Contributions (PSCs) associated with those sectors.

As indicated in the proposed rule for sector operations for FY 2010 (74 FR 68015, December 22, 2009), sector rosters will not be finalized until May 1, 2010, because vessel owners that have indicated intent to join sectors have until April 30, 2010, to drop out of a sector and fish in the common pool. Therefore, it is likely that the FY 2010 sector sub-ACL, which is comprised of the cumulative PSCs of all enrolled sector members, will be reduced and the common pool sub-ACL will increase after the effective date of this final rule specifying ACLs. In such a case, NMFS will make the changes consistent with the Administrative Procedure Act (APA) and other applicable law.

Despite such changes, the groundfish sub-ACL (common pool sub-ACL, plus the sector sub-ACL, plus the recreational sub-ACL) is not likely to change. Based on the final rosters, NMFS intends to publish a rule in early May 2010 to modify the common pool and sector sub-ACLs and notify the public, if these numbers change. It is almost certain that all of the FY 2011 and 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2011 and 2012 due to annual changes to the sector rosters.

Furthermore, due to the need to re-specify the U.S. ABCs for GB cod and GB haddock as described above, all sub-components of the ABCs for GB cod and GB haddock will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available.

As noted above, the common pool sub-ACL and sector sub-ACL values in this final rule are based on the sector rosters submitted to NMFS as of January 22, 2010. In contrast, the catch levels contained in the proposed rule for this action and in the EA were based on rosters as of September 1, 2009. The sector sub-ACLs in this final rule are, on average, 3 percent larger than those specified in the proposed rule, due to the increase in the number of sector members between September 1, 2009, and January 22, 2010 (see the FY 2010 sector final rule for further details on this subject).

The concept of management uncertainty for the purpose of developing ACLs is described in the preamble to the proposed rule and is not repeated here.

Several components of the FW 44 ACLs are notable, because they are atypical. For example, yellowtail flounder is allocated to the scallop fishery in recognition of the importance of yellowtail flounder to the prosecution of the scallop fishery. For FY 2010, the scallop fishery will be allocated 100 percent of the estimated yellowtail flounder (for GB and CC/GOM stocks) that is associated with the projected scallop catch in FY 2010, although this allocation is not a "hard" TAC (there is no triggered management action when

the TAC is caught). For FY 2011 and 2012, the scallop fishery is allocated 90 percent of the yellowtail flounder the scallop fishery is projected to catch (Table 2). Reducing the yellowtail flounder allocation to 90 percent of the yellowtail flounder that the scallop fishery is expected to catch is intended to provide incentive for the scallop fishermen to reduce bycatch of yellowtail flounder.

The allocations of yellowtail flounder to the scallop fishery implemented by the final rule are greater than the amounts specified in the FW 44 proposed rule. The February 1, 2010, proposed rule for FW 44 included scallop allocations based upon the initial version of Framework Adjustment 21 (FW 21) to the Atlantic Sea Scallop FMP, which included measures that determine the amount of scallops that will be caught during FY 2010. At the time the FW 44 proposed rule was finalized, it was known that the Council would reconsider FW 21, and the preamble noted that the Council could alter the allocations to the scallop fishery. At its January 27, 2010, meeting, the Council reconsidered FW 21, which includes measures that determine the amount of scallops that can be caught during FY 2010–2012. Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the amount of projected scallop harvest, the modification to FW 21 affected the FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The Council increased the projected scallop catch under FW 21 and, therefore, the amount of GB and SNE/MA yellowtail flounder allocated to the scallop fishery for FY 2010–2012 through this final rule is increased. For example, for FY 2010, the scallop allocations for GB and SNE/MA yellowtail flounder are increased, by 36 mt and 24 mt, respectively. As a result,

the groundfish sub-ACLs are reduced by 35 mt and 22 mt for GB and SNE/MA, respectively. The amount of reduction in the yellowtail flounder groundfish sub-ACLs is less than the amount of increased allocation to the scallop fishery because modifying the allocation of yellowtail flounder to the scallop fishery alters the amount of yellowtail flounder that is deducted to account for management uncertainty, due to the order of the calculations. Further, for this same reason, the total ACLs implemented through this final rule are slightly larger than in the proposed rule. Specifically, the total ACLs were increased by 1 mt and 2 mt, for GB and SNE/MA, respectively. It should be noted that in Table 3 of the FW 44 proposed rule, the groundfish sub-ACL for SNE yellowtail flounder was incorrectly proposed as 322 mt instead of 332 mt, due to a typographical error.

The Council prepared an addendum to the EA that analyzed the impacts of the modified scallop and groundfish allocations of GB and SNE/MA yellowtail flounder. These impacts are described in the Classification section in this preamble.

No specific allocation of Cape Cod (CC)/Gulf of Maine (GOM) yellowtail flounder is made to the scallop fishery because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock are considered part of the “other sub-component” of the ACL.

The FY 2010 yellowtail flounder allocations to the scallop fishery are characterized as ACL sub-components (no short-term associated AMs), and the FY 2011 and 2012 allocations are characterized as sub-ACLs. Under the current Atlantic Sea Scallop FMP, if the scallop fishery harvests in excess of the yellowtail flounder sub-components specified for the fishery for FY 2010, no scallop management measures will be

triggered. The Council intends to develop AMs for the Atlantic Sea Scallop FMP that would be responsive to yellowtail flounder catches in excess of the sub-ACL, beginning in FY 2011. The precise mechanism and scope of future scallop AMs is unknown. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas within the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the “total TAC” for each of the stock areas. In light of the specified ACL components, “total TAC” means “total ACL”, *i.e.*, 10 percent of 1,169 mt (117 mt) and 468 mt (47 mt) for FY 2010 for GB and SNE/MA yellowtail flounder, respectively (*see* Table 3).

Under this final rule, the mid-water trawl fishery is allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 2 are slightly less than 0.2 percent, due to the 7-percent reduction of these allocations to account for management uncertainty for this stock. The calculation of the haddock allocations were described in the preamble of the proposed rule, and are not repeated here. All of the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs (associated with AMs, as explained below). A percentage of the U.S. ABC for GOM haddock and GOM cod will be allocated to the recreational fishery, based on a split of ABC among commercial and recreational components of the fishery (72.5 percent and 27.5 percent for haddock; 66.3 percent and 33.7 percent for cod, respectively) (Table 2). All the recreational allocations to the groundfish fishery are characterized as sub-ACLs.

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)

|  | FY 2010 | FY 2011 | FY 2012 |
|--|---------|---------|---------|
| <b>Scallop Fishery</b>                 |         |         |         |
| Yellowtail flounder stock              |         |         |         |
| GB .....                               | 146     | 201     | 307     |
| SNE/MA .....                           | 135     | 82      | 127     |
| <b>Mid-Water Trawl Fishery</b>         |         |         |         |
| Haddock stock                          |         |         |         |
| GB .....                               | 84      | 87      | 74      |
| GOM .....                              | 2       | 2       | 2       |
| <b>Recreational Groundfish Fishery</b> |         |         |         |
| GOM stock                              |         |         |         |

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)—Continued

|                   | FY 2010 | FY 2011 | FY 2012 |
|-------------------|---------|---------|---------|
| GOM cod .....     | 2,673   | 2,824   | 2,826   |
| GOM haddock ..... | 324     | 308     | 259     |

For most stocks, the percentage of the ABC deducted for anticipated catch from State waters is between 1 and 10 percent, with the exception of Atlantic halibut and GOM winter flounder, for which 50 percent and 35 percent, respectively, are deducted from the ABC.

Amendment 16 is implementing a system in which a sub-ACL has an AM that will be triggered if the catch exceeds the specified amount. In contrast, an ACL-subcomponent does not have an automatic short-term AM that is triggered if the catch exceeds the specified amount, although there will be accountability through the evaluation of the catch of all sub-components during the next biennial adjustment to

determine if the size of the ACL-subcomponents needs to be adjusted for subsequent FYs. However, if the total catch exceeds the total ACL, AMs will be triggered, as explained in detail in Amendment 16. Tables 3, 4, and 5 contain the total ACLs, sub-ACLs, and ACL-subcomponents for FY 2010, 2011, and 2012, respectively (with the exception of the scallop and mid-water trawl components in Table 2). The sector sub-ACLs for five stocks are zero, because no possession of these stocks is allowed for either common-pool or sector vessels. As explained above, the groundfish sub-ACLs and total ACLs for GB and SNE/MA yellowtail flounder have been revised from the proposed

rule to reflect the Council's decision to reconsider scallop management measures in FW 21. Secondly, the sector sub-ACLs and common pool sub-ACLs for all stocks are likely to decrease and increase, respectively, from the values specified in this final rule, due to vessels dropping out of sectors during April, prior to the start of FY 2010. If vessels drop out of sectors prior to May 1, 2010, a new final rule will be published, and NE multispecies permit holders will be notified. Lastly, the values for the total ACL and groundfish sub-ACL for GOM winter flounder were revised (increased slightly) after the publication of the proposed rule to reflect corrected data.

TABLE 3—TOTAL ACLS, SUB-ACLs, AND ACL-SUBCOMPONENTS FOR FY 2010 (MT) \*

| Stock            | Total ACL | Groundfish sub-ACL | Preliminary common-pool sub-ACL | Preliminary sector sub-ACL | State waters ACL-sub-component | Other ACL-subcomponents |
|------------------|-----------|--------------------|---------------------------------|----------------------------|--------------------------------|-------------------------|
| GB cod .....     | 3,620     | 3,430              | 103                             | 3,327                      | 38                             | 152                     |
| GOM cod .....    | 8,088     | 7,240              | 178                             | 4,389                      | 566                            | 283                     |
| GB hadk .....    | 42,768    | 40,440             | 202                             | 40,238                     | 449                            | 1,796                   |
| GOM hadk .....   | 1,197     | 1,149              | 13                              | 812                        | 9                              | 37                      |
| GB ytail .....   | 1,170     | 964                | 21                              | 943                        | 0                              | 60                      |
| SNE ytail .....  | 470       | 310                | 63                              | 247                        | 5                              | 20                      |
| CC ytail .....   | 822       | 779                | 31                              | 748                        | 9                              | 35                      |
| Plaice .....     | 3,006     | 2,848              | 71                              | 2,777                      | 32                             | 126                     |
| Witch .....      | 899       | 852                | 19                              | 833                        | 9                              | 38                      |
| GB winter .....  | 1,955     | 1,852              | 26                              | 1,826                      | 0                              | 103                     |
| GOM winter ..... | 231       | 159                | 20                              | 138                        | 60                             | 12                      |
| SNE winter ..... | 605       | 520                | 520                             | 0                          | 53                             | 32                      |
| Redfish .....    | 7,226     | 6,848              | 62                              | 6,786                      | 76                             | 303                     |
| White hake ..... | 2,697     | 2,566              | 44                              | 2,522                      | 28                             | 113                     |
| Pollock .....    | 3,148     | 2,748              | 47                              | 2,701                      | 200                            | 200                     |
| N. window .....  | 161       | 110                | 110                             | 0                          | 2                              | 49                      |
| S. window .....  | 225       | 154                | 154                             | 0                          | 2                              | 69                      |
| Ocean pout ..... | 253       | 239                | 239                             | 0                          | 3                              | 11                      |
| Halibut .....    | 69        | 30                 | 30                              | 0                          | 36                             | 4                       |
| Wolffish .....   | 77        | 73                 | 73                              | 0                          | 1                              | 3                       |

\* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

TABLE 4—TOTAL ACLS, SUB-ACLs, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) \*

| Stock           | Total ACL | Groundfish sub-ACL | Preliminary common-pool sub-ACL | Preliminary sector sub-ACL | State waters ACL-sub-component | Other ACL-subcomponents |
|-----------------|-----------|--------------------|---------------------------------|----------------------------|--------------------------------|-------------------------|
| GB cod .....    | 5,349     | 5,068              | 152                             | 4,916                      | 56                             | 225                     |
| GOM cod .....   | 8,545     | 7,649              | 188                             | 4,637                      | 597                            | 299                     |
| GB hadk .....   | 44,560    | 42,134             | 211                             | 41,923                     | 468                            | 1,871                   |
| GOM hadk .....  | 1,141     | 1,095              | 13                              | 774                        | 9                              | 35                      |
| GB ytail .....  | 1,050     | 795                | 17                              | 778                        | 0                              | 54                      |
| SNE ytail ..... | 641       | 524                | 107                             | 417                        | 7                              | 27                      |
| CC ytail .....  | 992       | 940                | 38                              | 902                        | 10                             | 42                      |
| Plaice .....    | 3,280     | 3,108              | 78                              | 3,030                      | 34                             | 138                     |
| Witch .....     | 1,304     | 1,236              | 27                              | 1,209                      | 14                             | 55                      |
| GB winter ..... | 2,118     | 2,007              | 28                              | 1,979                      | 0                              | 111                     |

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) \*—Continued

| Stock            | Total ACL | Groundfish sub-ACL | Preliminary common-pool sub-ACL | Preliminary sector sub-ACL | State waters ACL-sub-component | Other ACL-subcomponents |
|------------------|-----------|--------------------|---------------------------------|----------------------------|--------------------------------|-------------------------|
| GOM winter ..... | 231       | 159                | 20                              | 138                        | 60                             | 12                      |
| SNE winter ..... | 842       | 726                | 726                             | 0                          | 72                             | 45                      |
| Redfish .....    | 7,959     | 7,541              | 68                              | 7,473                      | 84                             | 334                     |
| White hake ..... | 3,138     | 2,566              | 44                              | 2,522                      | 33                             | 132                     |
| Pollock .....    | 3,148     | 2,974              | 51                              | 2,923                      | 200                            | 200                     |
| N. window .....  | 161       | 110                | 110                             | 0                          | 2                              | 49                      |
| S. window .....  | 225       | 154                | 154                             | 0                          | 2                              | 69                      |
| Ocean pout ..... | 253       | 239                | 239                             | 0                          | 3                              | 11                      |
| Halibut .....    | 76        | 33                 | 33                              | 0                          | 39                             | 4                       |
| Wolffish .....   | 77        | 73                 | 73                              | 0                          | 1                              | 3                       |

\* See Table 2 for allocations to scallop, mid-water trawl and recreational fisheries.

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) \*

| Stock            | Total ACL | Groundfish sub-ACL | Preliminary common-pool sub-ACL | Preliminary sector sub-ACL | State waters ACL-sub-component | Other ACL-subcomponents |
|------------------|-----------|--------------------|---------------------------------|----------------------------|--------------------------------|-------------------------|
| GB cod .....     | 5,919     | 5,608              | 168                             | 5,440                      | 62                             | 249                     |
| GOM cod .....    | 8,551     | 7,654              | 188                             | 4,640                      | 598                            | 299                     |
| GB hadk .....    | 37,952    | 35,885             | 179                             | 35,706                     | 398                            | 1,594                   |
| GOM hadk .....   | 959       | 920                | 11                              | 650                        | 7                              | 29                      |
| GB ytail .....   | 1,191     | 823                | 18                              | 805                        | 0                              | 61                      |
| SNE ytail .....  | 936       | 759                | 155                             | 604                        | 10                             | 40                      |
| CC ytail .....   | 1,104     | 1,046              | 42                              | 1,004                      | 12                             | 46                      |
| Plaice .....     | 3,459     | 3,278              | 82                              | 3,196                      | 36                             | 145                     |
| Witch .....      | 1,561     | 1,479              | 33                              | 1,446                      | 16                             | 66                      |
| GB winter .....  | 2,422     | 2,295              | 32                              | 2,263                      | 0                              | 127                     |
| GOM winter ..... | 231       | 159                | 20                              | 138                        | 60                             | 12                      |
| SNE winter ..... | 1,125     | 969                | 969                             | 0                          | 96                             | 60                      |
| Redfish .....    | 8,786     | 8,325              | 75                              | 8,250                      | 92                             | 369                     |
| White hake ..... | 3,465     | 3,283              | 56                              | 3,227                      | 36                             | 146                     |
| Pollock .....    | 3,148     | 2,748              | 47                              | 2,701                      | 200                            | 200                     |
| N. window .....  | 161       | 110                | 110                             | 0                          | 2                              | 49                      |
| S. window .....  | 225       | 154                | 154                             | 0                          | 2                              | 69                      |
| Ocean pout ..... | 253       | 239                | 239                             | 0                          | 3                              | 11                      |
| Halibut .....    | 83        | 36                 | 36                              | 0                          | 43                             | 4                       |
| Wolffish .....   | 77        | 73                 | 73                              | 0                          | 1                              | 3                       |

\* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

### 3. Revisions to Incidental Catch TACs and Allocations to Special Management Programs

This final rule specifies incidental catch TACs applicable to the NE multispecies Special Management Programs for FY 2010–2012, based on the ACLs, the FMP, and advice from the Council. Incidental catch TACs are specified for certain stocks of concern for common pool vessels fishing in the Special Management Programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. A stock of concern is defined as a stock that is in an overfished condition or subject to overfishing. The incidental catch TACs below are consistent with the Amendment 16 changes to the allocation of incidental catch TACs among Special Management Programs, with four exceptions, as explained below. Pursuant to Amendment 16, new incidental catch

TACs are required for GOM winter flounder and pollock, because they are now considered stocks of concern. Although American plaice is technically no longer a stock of concern, Amendment 16 retains the incidental catch TAC for this stock because the stock is far from rebuilt. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. For trips that start under a Category B DAS, the catch of stocks for which incidental catch TACs are specified and then flip to a Category A DAS does not accrue toward such TACs.

The information in Tables 6, 7, and 8 regarding incidental catch TACs differs from the proposed rule for two reasons. For FY 2010, the use of Category B DAS will be prohibited by vessels fishing in the Eastern U.S./Canada Haddock SAP, as explained in section 6 of this preamble; therefore, incidental catch

TACs will not be allocated to this SAP for FY 2010, in order to maximize opportunity to fish in the Special Management Programs. Based on historic catch rates in the Special Management Programs, the incidental catch TAC for GB cod is reallocated to the CA I Hook Gear Haddock SAP, and the incidental catch TACs for GB yellowtail flounder, GB winter flounder, and pollock are reallocated to the Regular B DAS Program. Although the proposed rule included the prohibition on the use of Category B DAS in this SAP, it did not propose reallocation of any incidental catch TACs. Subsequent to the proposed rule, NMFS and Council staff discussed optimization of available incidental catch TAC, and the Council expressed support for this reallocation in its February 4, 2010, letter to the Regional Administrator. Secondly, the FY 2010–2012 values for the incidental catch TACs for GB and SNE yellowtail

flounder were revised because the groundfish sub-ACLs and total ACLs for GB and SNE/MA yellowtail flounder were revised from the proposed rule to reflect the Council's decision to reconsider scallop management

measures in FW 21 (as explained above in section 2).

Due to the future need to re-specify the U.S. ABC for GB cod to reflect available information on Canadian catch, the incidental catch TAC for GB

cod will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available. The incidental catch TACs, by stock, based on common pool sub-ACLs are shown in Table 6.

TABLE 6—INCIDENTAL CATCH TACS BY STOCK FOR FY 2010–2010 (MT)

| Stock                        | Percentage of sub-ACL | 2010 incidental catch TAC | 2011 incidental catch TAC | 2012 incidental catch TAC |
|------------------------------|-----------------------|---------------------------|---------------------------|---------------------------|
| GB cod .....                 | 2                     | 3.5                       | 5.1                       | 5.7                       |
| GOM cod .....                | 1                     | 3.4                       | 3.6                       | 3.6                       |
| GB yellowtail .....          | 2                     | 0.4                       | 0.3                       | 0.4                       |
| CC/GOM yellowtail .....      | 1                     | 0.5                       | 0.6                       | 0.7                       |
| SNE/MA yellowtail .....      | 1                     | 0.6                       | 1.1                       | 1.6                       |
| Plaice .....                 | 5                     | 9.2                       | 10.0                      | 10.6                      |
| Witch flounder .....         | 5                     | 2.1                       | 3.1                       | 3.7                       |
| SNE/MA winter flounder ..... | 1                     | 5.2                       | 7.3                       | 9.7                       |
| GB winter .....              | 2                     | 1.1                       | 1.2                       | 1.4                       |
| White hake .....             | 2                     | 2.4                       | 2.8                       | 3.1                       |
| Pollock .....                | 2                     | 2.4                       | 2.4                       | 2.4                       |

TABLE 7—ALLOCATION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

| Stock                        | Regular B DAS program | Closed area I Hook Gear Haddock SAP | Eastern U.S./Canada Haddock SAP |
|------------------------------|-----------------------|-------------------------------------|---------------------------------|
| GB cod .....                 | 50%                   | 50%                                 | 0%                              |
| GOM cod .....                | 100                   | na                                  | Na                              |
| GB yellowtail .....          | 100                   | na                                  | 0%                              |
| CC/GOM yellowtail .....      | 100                   | na                                  | Na                              |
| SNE/MA yellowtail .....      | 100                   | na                                  | Na                              |
| Plaice .....                 | 100                   | na                                  | Na                              |
| Witch flounder .....         | 100                   | na                                  | na                              |
| SNE/MA winter flounder ..... | 100                   | na                                  | Na                              |
| GB winter .....              | 100                   | na                                  | 0%                              |
| White hake .....             | 100                   | na                                  | Na                              |
| Pollock .....                | 84                    | 16%                                 | 0%                              |

TABLE 8—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2010–2012 (MT)

| Stock                        | Regular B DAS program |      |      | Closed area I Hook Gear Haddock SAP |       |       | Eastern U.S./Canada Haddock SAP |       |       |
|------------------------------|-----------------------|------|------|-------------------------------------|-------|-------|---------------------------------|-------|-------|
|                              | 2010                  | 2011 | 2012 | 2010                                | 2011  | 2012  | 2010                            | 2011  | 2012  |
| GB cod .....                 | 1.75                  | 2.6  | 2.8  | 1.75                                | 0.8   | 0.9   | 0                               | 1.7   | 1.9   |
| GOM cod .....                | 3.4                   | 3.6  | 3.6  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| GB yellowtail .....          | 0.4                   | 0.5  | 0.5  | .....                               | ..... | ..... | 0                               | 0.5   | 0.5   |
| CC/GOM yellowtail .....      | 0.5                   | 0.6  | 0.7  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| SNE/MA yellowtail .....      | 0.9                   | 1.4  | 2.1  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| Plaice .....                 | 9.2                   | 10.0 | 10.6 | .....                               | ..... | ..... | .....                           | ..... | ..... |
| Witch flounder .....         | 2.1                   | 3.1  | 3.7  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| SNE/MA winter flounder ..... | 1.1                   | 1.2  | 1.4  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| GB winter .....              | 1.1                   | 1.4  | 1.6  | .....                               | ..... | ..... | 0                               | 1.4   | 1.6   |
| White hake .....             | 5.2                   | 7.3  | 9.7  | .....                               | ..... | ..... | .....                           | ..... | ..... |
| Pollock .....                | 2.0                   | 1.2  | 1.2  | 0.4                                 | 0.4   | 0.4   | 0                               | 0.8   | 0.8   |

#### 4. Annual Specifications for U.S./Canada Management Area

TACs for GB transboundary stocks (i.e., GB stocks shared with Canada: Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder) were specified in accordance with the FMP, and the U.S./Canada Resource Sharing Understanding (Understanding). The

FMP specifies a procedure for setting these annual hard TAC levels that apply to the U.S./Canada Management Area. The proposed rule contained a detailed description of this procedure, as well as the harvest strategy of the Understanding. In September 2009, the Transboundary Management Guidance Committee (TMGC) approved the 2009

Guidance Document for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. Although the TMGC also approved the Guidance Document for GB yellowtail flounder, it was not able to agree on a shared TAC for GB yellowtail flounder.

The recommended FY 2010 TACs were based on the most recent stock assessments (TRAC Status Reports for 2009), and the fishing mortality strategy shared by NMFS, and Canada's Department of Fisheries and Oceans, under the Understanding.

On September 23, 2009, the Council approved, consistent with the 2009 Guidance Document, the following U.S. TACs recommended by the TMGC: 338 mt of Eastern GB cod and 11,988 mt of

Eastern GB haddock. The Council recommended a U.S. TAC of 1,200 mt for GB yellowtail flounder, based upon the SSC recommendation of 1,500 mt, minus the anticipated Canadian catch, estimated at 300 mt. The 300 mt estimate is approximately the 3-yr average of Canadian catch (2008, 2007, 2006; 151 mt, 132 mt, 590 mt, respectively), based upon TMGC information. The FY 2010 TACs for the U.S./Canada Management Area

represent substantial decreases for cod (36 percent) and yellowtail flounder (43 percent), and an increase for haddock, compared to the FY 2009 TACs for those species. The final GB yellowtail flounder sub-ACL proposed for the groundfish fishery (999 mt; Table 3) is lower than the 1,200-mt U.S. TAC, as discussed above, due to the allocation to the scallop fishery and consideration of management uncertainty.

TABLE 9—2010 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

|                        | Eastern GB<br>cod | Eastern GB<br>haddock | GB yellowtail<br>flounder* |
|------------------------|-------------------|-----------------------|----------------------------|
| Total Shared TAC ..... | 1,350             | 29,600                | 1,500                      |
| U.S. TAC .....         | 338 (25%)         | 11,988 (40.5%)        | 1,200                      |
| Canada TAC .....       | 1,012 (75%)       | 17,612 (59.5%)        | na                         |

\* Developed unilaterally by the Council.

If an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2009, the pertinent components of the FY 2010 ACL would be adjusted downward in order to be consistent with the FMP and Understanding (including the scallop ACL-subcomponent for GB yellowtail flounder). If an adjustment to one of the FY 2010 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act and the fishing industry will also be notified.

##### 5. U.S./Canada Management Area Initial Measures for FY 2010

Under existing authority granted by the FMP (§ 648.85(a)(3)(iv)(D)) to the Regional Administrator, this final rule implements measures to optimize the harvest of the transboundary stocks managed under the Understanding. Pursuant to the authority cited above, the Council, in November 2009, voted to request that the Regional Administrator postpone the opening of the Eastern U.S./Canada Area for both sector and non-sector vessels fishing with trawl gear in FY 2010 from May 1, 2010, to August 1, 2010. This action implements that a delay, to prevent trawl fishing in the Eastern U.S./Canada Area during the time when cod bycatch is likely to be very high, and to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder. To further constrain fishing mortality on GB cod, NMFS, in a manner similar to FYs 2008 and 2009, is limiting common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2010, to a cod catch of 5 percent of the Eastern

GB cod TAC, or 16.9 mt of cod. This measure was successful in FYs 2008 and 2009 in slowing the annual catch rate of cod during the early part of the year.

Second, NMFS, under Regional Administrator authority, is implementing a possession limit of 2,500 lb (1,125 kg) per trip for GB yellowtail flounder for common pool vessels to prevent the common pool sub-ACL from being exceeded. NMFS is implementing this initial possession limit in order to moderate catch to ensure fishing limits are not exceeded, allow harvesting of the sub-ACL by the common pool, and decrease the likelihood that further restrictions during the FY would be needed to slow the catch. This possession limit is based on a recommendation of the Council's Groundfish Plan Development Team for a low GB yellowtail flounder trip limit, as well as a projected catch analysis for FY 2010, using current information on vessels that will fish in the common pool in FY 2010. If necessary, NMFS may modify this trip limit based upon new information regarding the vessel composition of the common pool, or revised analytical assumptions.

##### 6. Special Management Program Status for FY 2010

The Regional Administrator has existing authority to allocate trips into the CA II Yellowtail Flounder SAP and, for other Special Management Programs (Regular B DAS Program; CA I Hook Gear Haddock SAP; and Eastern U.S./Canada Haddock SAP), has authority to close the program if the program would undermine achieving the objectives of the FMP or the SAP.

Therefore, this rule allocates zero trips to the CA II Yellowtail Flounder

SAP for FY 2010, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II SAP. The Regional Administrator has the authority to determine the allocation of the total number of trips into the CA II SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by Framework Adjustment 40B (70 FR 31323, June 1, 2005), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (*i.e.*, 150 trips of 15,000 lb/trip = 2,250,000 lb (1,021 mt) needed). This calculation takes into account the projected catch from the area outside of the SAP. Based on the groundfish sub-ACL of 2,125,256 lb (964 mt), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (*i.e.*, 2,125,256 lb (964 mt) available < 2,250,000 (1,021 mt) needed).

This rule also disallows the use of Category B DAS in the Eastern U.S./Canada Haddock SAP for common pool vessels in FY 2010, based on the Regional Administrator's existing authority to close the SAP if the program would undermine the achievement of the objectives of the SAP or the FMP. All of the FY 2010 incidental catch TACs that would have been specified for the SAP are very small (GB cod: 2,646 lb (1.2 mt); GB yellowtail flounder: 44 lb (0.2 mt); pollock: 1,724 lb (0.8 mt); and GB winter flounder: 2,646 lb (1.2 mt)), and



difficult to monitor. Concurrent trips by several vessels into the SAP, or even a single trip, could result in the incidental TAC(s) being exceeded quickly. Based on historical information on the amount of GB cod caught (5,276 lb (2.4 mt)) on SAP trips that ended on a Category B DAS, the SAP would provide little opportunity to target haddock, with a high likelihood of the SAP closing upon reaching the incidental catch TAC for cod. Furthermore, past participation in this SAP was extremely low (e.g., eight trips in FY 2008). For these reasons, the use of Category B DAS in the SAP is inconsistent with the objective of the

SAP to allow access to haddock while avoiding or minimizing impacts on stocks of concern. Under Amendment 16, sector vessels are not restricted by the incidental catch TAC, and can fish in the SAP, provided they have adequate Annual Catch Entitlement (ACE) for Eastern GB haddock (and other stocks).

#### 7. Haddock TAC for CA I Hook Gear Haddock SAP

FW 44 specifies a haddock TAC for the CA I Hook Gear Haddock SAP based on the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is

based on the TAC that was specified for the SAP in 2004 (1,130 mt), and scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (27,313 mt). The size of the western component of the GB haddock stock is estimated as 35 percent of the size of the total GB haddock stock. Therefore, if the 2010 exploitable biomass of haddock is projected to be 291,682 mt, the formula and resultant TAC is as follows:  

$$(.35)(291,682)/27,313 \times 1,130 = 4,223.7$$
 mt. Table 10 contains the CA I Hook Gear Haddock SAP TACs and pertinent information for FY 2010–2012.

TABLE 10—CA I HOOK GEAR HADDOCK SAP TACS FY 2010–2012

| Year       | GB haddock exploitable biomass (mt) | Western GB haddock exploitable biomass | Biomass (yr)/ Biomass 2004 | TAC (mt, live weight) |
|------------|-------------------------------------|--|----------------------------|-----------------------|
| 2004 ..... | 78,037                              | 27,313                                 |                            |                       |
| 2010 ..... | 291,682                             | 102,089                                | 3.738                      | 4,223.7               |
| 2011 ..... | 218,054                             | 76,319                                 | 2.794                      | 3,157.5               |
| 2012 ..... | 177,978                             | 62,292                                 | 2.281                      | 2,577.2               |

#### 8. Revised Stock Areas

Section 10 of the preamble of the proposed rule for this action proposed revisions to the stock areas for GB yellowtail flounder and GB winter flounder that were proposed in Amendment 16 for trip limits and sector ACEs, to reflect updated information regarding the stock areas used in GARM III and to monitor catch of ACLs in the NE multispecies fishery beginning in FY 2010. Similarly, there were additional changes necessary for the SNE/MA Stock Area 4, GB cod stock area (Regular B DAS Program), American plaice stock area (Regular B DAS Program), SNE/MA winter flounder stock area (Regular B DAS Program), and the SNE/MA yellowtail flounder stock area (Sector ACE allocations). Although the regulatory text of the FW 44 proposed rule included changes to these areas, these changes were not specifically reflected in the preamble. Additional information made available by the Center shortly before the publication of the proposed rule indicated that the stock areas for other stocks need to be adjusted to reflect the areas used in stock assessments and monitoring ACLs.

To ensure that the areas used to attribute catch to stock areas for the purposes of monitoring ACLs corresponds to the stock areas used in assessments, this final rule modifies several areas specified in the FW 40A final rule (November 19, 2004; 69 FR 67780) and the Amendment 16

proposed rule. Specifically, SNE/MA Stock Area 4, GB cod stock area (Regular B DAS Program), and American plaice stock area (Regular B DAS Program) have been revised to include Statistical Area 640, while the SNE/MA yellowtail flounder stock area (Sector ACE allocations) has been revised to include Statistical Areas 533, 534, and 541. In addition, Statistical Areas 464, 465, and 467 have been added to the stock areas for CC/GOM yellowtail flounder and witch flounder for the purposes of implementing the Regular B DAS Program and/or trip limits and sector measures. Statistical Areas 533, 534, 541, and 640 were added to the SNE/MA winter flounder stock area for the purpose of implementing the Regular B DAS Program, trip limits, and sector measures. For pollock, redfish, and GB haddock, the stock areas were extended south until it reached 35°00' N. lat. to reflect the full range of the stock for the purposes of implementing the Regular B DAS Program and/or trip limits and sector measures.

#### Comments and Responses

Four comments were received that addressed this action.

*Comment 1:* A member of the fishing industry requested that NMFS reconsider the ACL specified for GOM winter flounder, stating that the method used to calculate the ACL is different from the other stocks, the landings data upon which the ACL is based is incorrect due to missing landings

information, and that the landings data do not reflect stock status, which the commenter believes is healthy. Further, the commenter stated that the impacts of past DAS cuts on historical landings of GOM winter flounder were not considered in the evaluation of stock status, and that the low ACL specified for this stock will have a crippling impact on the inshore fleet.

*Response:* NMFS agrees that the method utilized to calculate the ACL for GOM winter flounder is different than that used for other stocks. The SSC, in its September 23, 2009, memorandum to the Council (memorandum), listed GOM winter flounder as one of the stocks for which an interim ABC (from which the ACL is derived) would be determined according to case-by-case recommendations, instead of determined through a more generic control rule. Stocks such as GOM winter flounder, that have an unknown status with respect to overfishing and overfished, are addressed on a case-by-case basis for interim ABC recommendations from the SSC. The unknown status in the case of GOM winter flounder resulted from there being no accepted stock assessment method.

Specifically, the GOM winter flounder ABC was determined using method 4 specified in the memorandum: "Interim ABC based upon data-poor proxies." The memorandum states: "Gulf of Maine winter flounder has unknown stock status, and the ABC recommendation is

based on 75 percent of recent catches.” The PDT’s calculation of ABC (and SSC recommendation) was based upon landings from 2006, 2007, and 2008 (247, 303, 402 mt, respectively), not 2005, 2006, and 2007, as the commenter stated.

NMFS understands that the landings data that the Potential Sector Contributions (PSCs) are based upon contains some errors; however, based upon the requests for corrections to landings data submitted by vessel owners to date, most errors are due to mis-attributing landings to the wrong (or unknown) vessel, which does not affect the calculation of the ABC, and not because of errors due to missing landings, which would affect the total landings value used to calculate the ABC. Based upon pertinent corrections at the time of preparing this final rule, NMFS is correcting the estimation of GOM winter flounder catch in FY 2006 (an additional 5,580 lb; 2.53 mt), and is therefore revising the ABC, total ACL, and groundfish sub-ACL for GOM winter flounder upwards by 1 mt.

NMFS agrees with the commenter that the level of historical landings reflects the regulations in place, as well as the stock status. Nevertheless, the SSC utilized landings data as the basis of its ABC recommendation. Because the stock assessment was not accepted, the landings data represent the best scientific information available.

Further, NMFS disagrees that the stock status can be characterized as “healthy.” In the August 2008 report of GARM III (Northeast Fisheries Science Center Reference Document 08–15), the conclusions end with the following: “While the Panel was unable to determine the stock’s status relative to the BRP’s, it agreed that the current trend in the population was very troubling. The Panel generally agreed that it is highly likely that biomass is below Bmsy, and that there is substantial probability that it is below  $\frac{1}{2}$  Bmsy. The Panel noted that other stocks in the area of this mixed fishery were also at low levels.”

NMFS agrees that the specification of the GOM winter flounder ACL will impact the inshore fleet in the GOM. As indicated in the EA for this action, and the FRFA in the preamble to this final rule, it is likely that groundfish revenue will decline due to the combined impact of Amendment 16 and the specification of catch limits. The amount of total revenue reduction to the fishery is estimated between 4 and 32 percent, depending upon the proportion of available fish that are caught.

*Comment 2:* The Massachusetts Division of Marine Fisheries

(Massachusetts) commented on the combined impacts of Amendment 16 and FW 44, as well as specific aspects of the FW 44 catch specifications. They believe that NMFS’s implementation of the Magnuson-Stevens Act and the National Standard 1 guidelines is overly precautionary, and that NMFS’s utilization of the National Standard Guidelines as though they were strict requirements rather than guidance is resulting in excessively low ACLs that, in conjunction with sectors, will result in dramatic consolidation of the industry (particularly day vessels) and under-harvesting of available fishery yield. They believe that future consolidation of the industry will be the result of low ACLs, yet are concerned that such consolidation will be incorrectly blamed on sectors. Further, Massachusetts anticipates that low ACLs for some stocks will constrain the fishery’s ability to catch other stocks with larger ACLs, and result in the closure of numerous sectors in many stock areas for prolonged periods of time. Massachusetts reiterated its concerns regarding the analytical limitations of Amendment 16 and the lack of a cap on sector Annual Catch Entitlements (ACEs). Lastly, they reiterated their concern regarding the loss of yield and unrealized revenue that will result from the implementation of Amendment 16 and FW 44.

With respect to the specifics of FW 44, Massachusetts noted the small GOM cod ACL for sectors (4,230 mt) compared with the catch associated with overfishing (11,089 mt) as an example of how scientific and management uncertainty have been taken into account in a precautionary manner. They expressed concern about the ability of NMFS to monitor the small incidental catch TACs specified for special management programs, and suggested that NMFS revisit catch limits as necessary when additional data suggest the need. Massachusetts noted GB yellowtail flounder as a stock for which there is recent research pertaining to stock status that should be reflected in the relevant science.

*Response:* Many of these comments were fully discussed by the Council and taken into account in the Council’s recommendation concerning Amendment 16 and this framework. NMFS disagrees that the catch levels in FW 44 are the result of an overly precautionary interpretation of Magnuson-Stevens Act and the National Standard 1 guidelines. The Council and its Committees, including the SSC, developed the procedures under which the ACLs were developed in Amendment 16, with NMFS serving an

advisory role. The National Standard 1 guidelines provide guidance on how FMPs can incorporate the new mandatory ACL and AM elements, pursuant to the Magnuson-Stevens Act requirements to end and prevent overfishing and rebuild overfished stocks. In its review of Amendment 16 and FW 44, NMFS relied upon the Magnuson-Stevens Act and the National Standard 1 guidelines to determine whether these actions are consistent with the Magnuson-Stevens Act. For GOM cod, as well as for all other groundfish stocks, the Magnuson-Stevens Act requirements to specify ACLs and AMs are two of the principal factors that determined the FW 44 specified catch levels. The factors that determine the catch levels and amount of potential yield from the fishery are: (1) The status of the stocks in the fishery and the fishing mortality rates; (2) the multispecies nature of the fishery; and (3) the selectivity of the fishery. NMFS believes that Amendment 16 and FW 44 make substantive progress toward preventing overfishing and rebuilding stocks. With respect to Massachusetts’ comments regarding changes to the FMP and specifications, the Council may modify elements of the FMP, if necessary, to more effectively prevent overfishing, address consolidation, optimize yield, account for scientific or management uncertainty, *etc.*, based upon new scientific information and/or additional information to be gained in the future on the operation of the fishery under the amended FMP.

NMFS agrees that low ACLs for some stocks will constrain the fishery’s ability to catch other stocks with larger ACLs, and may result in the closure of some sectors in specific stock areas for prolonged periods of time. As more fully explained in responses to comments on Amendment 16 and its implementing regulations, these kinds of constraints in harvesting one stock because of more restrictive measures on other stocks in a mixed-stock fishery are inevitable and unavoidable due to Magnuson-Stevens Act mandates and national standards. The impact of these low ACLs could be mitigated through improvements in the selectivity of the fishery as well as through flexibility provided by sector management. If vessels are able to selectively fish for stocks with relatively large ACLs, and avoid those stocks with low ACLs, sector closures would be minimized or delayed, and yield would be improved. Sector management allows vessels to pool their catch to avoid, to some extent the constraints of fishing under different ACLs in a mixed-stock fishery. With

respect to the analytical or other limitations of Amendment 16, this final rule addresses only specific elements of Amendment 16 selected by the Council for modification. A full discussion of issues related to Amendment 16 are in the preambles of the proposed and final rules for Amendment 16.

NMFS agrees with the commenter that the small incidental catch TACs will be difficult to monitor and, due to this concern, this final rule, under Regional Administrator authority, prohibits the use of Category B DAS in the Eastern U.S./Canada Haddock SAP. NMFS intends to closely monitor the remainder of the incidental catch TACs using current methods, which include estimation of total discards based upon increased observer coverage.

*Comment 3:* The Northeast Seafood Coalition (NSC) did not support the FW 44 provision to authorize the Regional Administrator to make inseason adjustments to certain management measures, because they believe such unpredictable adjustments will decrease a vessel's ability to plan its annual operations, and could create an incentive for derby fishing behavior, stating that this would be inefficient and dangerous. The NSC supported the trip limit reductions, which it believes will dampen the derby effect caused by actions that may be taken under the Regional Administrator's authority. It also supported the revised allocation of yellowtail flounder to the scallop fishery, as well as the requirement for limited access scallop vessels to land yellowtail flounder. Lastly, NSC stated that, in light of the large percentage of the GOM winter flounder ABC deducted for anticipated catch from State waters (35 percent), NMFS must ensure that the underlying data and methodology for this deduction are subject to serious scrutiny under the biennial review process of the FMP, and that the amount deducted should be readily modified, if necessary.

*Response:* The strategy supported by the commenter as an alternative to inseason adjustments (*i.e.*, to instead rely on Amendment 16 AMs that, if an ACL is exceeded, would be implemented at the start of the following FY), is not consistent with the Council's stated need for FW 44: " \* \* \* to modify management measures in order to ensure that overfishing does not occur." NMFS has determined that this objective and the proposed measures to achieve the objective are consistent with the Magnuson-Stevens Act. The benefit to be gained through the Regional Administrator authority to implement inseason changes to DAS accounting rates and trip limits is the decreased

likelihood that catch levels will exceed ACLs. NMFS acknowledges that there may be potential concerns and costs associated with this management measure, such as uncertainty or derby fishing behavior, but has determined that the need to avoid exceeding ACLs, and thus triggering AMs, overrides speculative impacts due to the uncertainty of inseason adjustments. Further, as acknowledged by NSC, the trip limits implemented by FW 44 for GOM cod and pollock will dampen derby fishing behavior caused by inseason adjustments.

NMFS agrees that the FW 44 trip limit reductions, requirement for limited access scallop vessels to land yellowtail flounder, and modified yellowtail flounder allocation to the scallop fishery are justified to ensure that the common pool achieves its fishing mortality objectives, discarding is minimized in the fishery, and the scallop fishery is allocated the appropriate amount of yellowtail flounder, respectively. NMFS also agrees that, in light of the large percentage of the GOM winter flounder ABC deducted for anticipated catch from State waters (35 percent), the underlying data and methodology for this deduction should be reviewed under the biennial review process of the FMP, and the amount deducted be modified, if necessary. Amendment 16 implements a process for the specification of catch levels that is flexible in order to reflect new information and changes in the fishery, as well as to optimize catch. The biennial process implemented by Amendment 16 was designed to be responsive to pertinent information.

*Comment 4:* The Council commented that the FW 44 proposed rule included two errors in the values proposed for sub-ACLs (white hake and SNE yellowtail flounder) that did not reflect the values in the FW 44 document. The Council also expressed support for management measures proposed for the U.S./Canada Management Area and Special Management Programs under Regional Administrator authority. Although not included in the proposed rule, the Council supported the reallocation of incidental catch TACs implemented by this final rule. Lastly, Council staff indicated that it is critical that the areas used to monitor ACLs correspond to the areas used for assessments, and stated that the proposed changes to the GB yellowtail flounder stock area to include Statistical Areas 542 and 543 are not consistent with any documentation of stock area in the GARM III report, TRAC report, or the stock status pages on the Northeast Fisheries Science Center (Center) Web

site. Council staff also questioned whether there are other instances where management areas do not correspond with assessments, including for Statistical Areas 464 and 465.

*Response:* The sub-ACL values for white hake and SNE yellowtail flounder in the proposed rule were typographical errors, and NMFS has corrected these values based upon the FW 44 EA and EA Addendum. NMFS also acknowledges that the stock areas depicted in the GARM III report do not accurately reflect the stock areas that were used in individual assessments. Based on NMFS's consultation with stock assessment biologists at the Northeast Fisheries Science Center to identify statistical areas used for each stock assessment as part of GARM III, changes to stock areas are included in this final rule to reflect the stock areas actually used in GARM III. However, because the assessments for some stocks included all statistical areas within a broad stock area, the broad stock areas relied upon by Amendment 16 to monitor catch of all stocks include all statistical areas within the U.S. Exclusive Economic Zone. Finally, NMFS agrees that the management actions implemented by this final rule are allowable under Regional Administrator authority and are justified (as explained in sections 4 and 5 of this preamble).

#### Changes From the Proposed Rule

In § 648.14, paragraphs (k)(13)(ii)(A) and (B) are revised to update cross-references as a result of other revisions made in this final rule.

In § 648.85, paragraphs (b)(6)(v)(A), (B), (D), (F), (G), (H), (I), and (K) are revised to update the stock areas used in the Regular B DAS Program, for trip limits, and in sector measures for GOM cod, GB cod, American plaice, SNE/MA winter flounder, witch flounder, GB yellowtail flounder, GB winter flounder, and pollock, to reflect updated definitions of the stock areas used in assessments.

In § 648.86(m)(1), the example provided is revised to reference GB cod, instead of GOM cod, to ensure that the example includes the correct possession limit modified under FW 44 and implemented by this final rule.

In § 648.87, paragraphs (b)(1)(ii)(A), (C), (D), (E), and (F) are revised to update the stock areas used for trip limits and sector measures for CC/GOM yellowtail flounder, GOM haddock, GB haddock, redfish, and GOM winter flounder, to reflect updated definitions of the stock areas used in assessments.

In § 648.86, paragraphs (r) and (s) are renamed paragraphs (n) and (o), respectively, to update cross-references.

#### **Regulations Implemented Under Authority of Amendment 16 and FW 44**

The following paragraphs are implemented under joint authority of Amendment 16 and FW 44, where the Amendment 16 proposed rule regulatory text for some measures is modified by FW 44:

§§ 648.14(k)(13)(ii)(A), and (B); 648.60(a)(5)(ii) introductory text and (a)(5)(ii)(c)(2); 648.82 (b)(6), (e)(1)(i), (o); 648.85 (b)(6)(v)(A), (G), (H), (I), and (K); and 648.86(a)(1) and (b)(1).

#### **Classification**

NMFS has determined that this action is consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 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, and to establish an effective date less than 30 days after the date of its publication. Publication of this rule is conditional upon approval and publication of the final rule for Amendment 16. A delay in the publication of the Amendment 16 final rule, therefore, necessitates a delay in the publication of this rule. FW 44 must be effective on May 1, 2010, pursuant to the FMP and Magnuson-Stevens Act requirements for implementation of ACLs. A May 1, 2010, effective date is necessary in order to specify catch levels and implement management measures necessary to eliminate overfishing and continue stock rebuilding, as well as prevent industry confusion. If this rule were to become effective later than May 1, 2010, Sector operations would be delayed because there would be no fishery-wide specification of catch limits (total ACLs) in effect, important mortality controls such as trip limits would not be in effect, and new Regional Administrator's authority to help ensure that ACLs are not be exceeded would not be in effect. The net result is likely to be less restrictive fishing regulations, widespread uncertainty and confusion in the groundfish fishery regarding what the fishing regulations are, and possibly in increase in derby-style fishing behavior. Such conditions would cause economic disruption to the industry and undermine industry efforts to rebuild depressed stocks. Historical progress in reducing fishing mortality and stock

rebuilding has been made through reductions in fishing effort at a cost to the fishing industry, and such gains should not be lost or reduced. The time available for FW 44 rulemaking was constrained by multiple factors and therefore rulemaking could not be completed further in advance of May 1, 2010. These factors include the development of two other closely related management actions (Amendment 16 and sectors), data availability, and the scheduling of U.S. and international management bodies. Incorporation of the most recent scientific information results in timelines for the development of regulations that leave little room to expand such timelines, and pertinent information comes from disparate sources. Furthermore, the process of the development of catch levels involves multiple committees of the Council, as well as the involvement of members of the fishing industry. For example, information on the membership of sectors is necessary to specify the Sector and Common Pool sub-ACLs, and NMFS provided the maximum amount of time practicable for vessel owners to decide whether or not they wish to join sectors.

An FRFA was prepared. The FRFA incorporates the Initial Regulatory Flexibility Analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A detailed description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this final rule, and in the Executive Summary and Section 3.2 of the EA prepared for this action.

This final rule modifies the GOM cod and pollock trip limits in Amendment 16 by: (1) Reducing the GOM cod trip limit in Amendment 16 (2,000 lb (907.2 kg)/DAS up to 12,000 lb (5,443.2 kg/ trip) to the status quo level (800 lb (362.9 kg)/DAS up to 4,000 lb (1,814.4 kg/ trip); (2) reducing the GOM cod trip limit for vessels fishing under a Handgear A or Handgear B permit to 300 lb (136.1 kg)/trip and 75 (34.0 kg) lb/ trip, respectively; and (3) imposing a trip limit for pollock to of 1,000 lb (453.6 kg)/DAS up to 10,000 lb (4,536 kg/ trip) (Amendment 16 does not include a possession limit for pollock). This final rule also: (1) Grants the Regional Administrator the authority to implement inseason trip limits and/or differential DAS counting for any groundfish stock in order to prevent catch from exceeding the ACL; (2) specifies OFLs, ABCs, and ACLs for all

20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the TACs for transboundary GB stocks, and allocations of yellowtail flounder to the scallop fleet; (3) allocates zero trips to the CA II Yellowtail Flounder SAP; (4) limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; (5) delays the opening of the Eastern U.S./Canada Area for trawl vessels; and (6) implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). These measures will affect regulated entities engaged in commercial fishing for groundfish and scallops. Sub-ACLs are also set for the recreational catches of GOM cod and GOM haddock and will affect regulated entities engaged in the party/charter industry.

#### **Description of and Estimate of the Number of Small Entities to Which the Final Rule Applies**

Under the Small Business Administration, any commercial fishing vessel that generates \$4 million in sales, or any party/charter operation with \$7 million in annual sales, is considered a small business. Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis, each permitted vessel is treated as a single small entity. During FY 2008 (the most recent FY for which complete data are available), 2,732 vessels were issued a scallop and/or a NE multispecies permit. Of these vessels, 1,867 were issued only a NE multispecies permit, 500 were only issued a scallop permit, and 365 were issued both a scallop and a NE multispecies permit. The latter include vessels that have a limited access scallop and a limited access Category E (combination vessel) groundfish permit, as well as vessels that hold some combination of a party/charter permit and a limited access scallop permit or a general category permit. Among NE multispecies permit holders, 1,472 held limited access permits, and 760 held open access party/charter permits.

Based on FY 2008 activity, 1,267 of the 2,732 vessels with either a commercial scallop or NE multispecies permit participated in the scallop or NE multispecies fishery. Median gross sales for these vessels were \$186,000, and no one entity had sales exceeding \$4 million. Based on FY 2008 logbook data, 143 of the 760 permitted party/charter vessels participated in the GOM recreational groundfish fishery where either GOM haddock or GOM cod were retained. The total number of passengers carried by a single of these regulated

party/charter operators did not exceed 11,000. At an average passenger fee of approximately \$65 per passenger, none of the participating party/charter businesses would exceed \$7 million in sales. Therefore, NMFS has determined that all 1,410 of the participating commercial and recreational for-hire vessels are small entities under the Regulatory Flexibility Act, and hence there is no disproportionate impact between small and large entities.

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

One commenter expressed concern about the economic impacts of the measures and catch specifications. The commenter stated that excessively low ACLs, in conjunction with sectors, will result in dramatic consolidation of the industry (particularly day vessels) and under-harvesting of available fishery yield. No modifications to the proposed rule were made as a result of this comment. Amendment 16 to the FMP, implemented in conjunction with this final rule, contains measures to mitigate some of the negative economic impacts of the FMP.

**Economic Impacts of the Final Action**

A more detailed treatment of economic impacts may be found in Section 7.4 of the EA and in Section 3.4 of the Addendum to the EA. As noted in Section 7.4, the economic impacts of the ACLs set for the commercial groundfish fishery are uncertain for any given vessel, because the economic impacts depend on whether the vessel owner chooses to enroll in a sector or remains in the common pool. Sectors offer relief from certain regulations while being limited to a quota on catch. Sectors provide opportunities to improve economic efficiency while placing a premium on managing available quota for multiple species to maximize the value of landings. Fishing in the context of a sector will likely require changes in fishing practices, including where, when, and how fishing operations are conducted.

Groundfish revenues during both FY 2007 and 2008 were approximately \$85 million. Given the specified 2010 ACLs, at 2008 prices, the available potential revenue would be approximately \$190 million, assuming the available ACL for all stocks can be harvested and no discarding occurs. Realizing revenues of this magnitude is unlikely, however, because some level of discarding will occur, and available ACL for some

species will constrain the ability to harvest the full ACL of others. If there are no changes in recent discarding rates or gear selectivity, groundfish revenues may be expected to decline to \$63 million in FY 2010. However, improvements in selectivity, particularly while fishing for GB haddock, which comprises nearly half of the aggregate groundfish ACL, could lead to substantially higher revenues. If, for example, selectivity could be improved by 50 percent over FY 2007–2008 averages, groundfish revenues would be an estimated \$87 million in FY 2010.

Even if fishing revenues do not improve, vessel owners that enroll in sectors may still find themselves in a more favorable financial position because sectors offer the opportunity for pooling of quota across fishing platforms. For individuals that own multiple vessels, operating in a sector allows them to shed redundant capital, thereby reducing fixed costs. Operating costs may also be reduced because sector participants are granted certain regulatory exemptions that decrease overall costs, and because fishing will likely be moved to an owner's most efficient vessel.

Economic impacts on vessels that do not enroll in a sector are also uncertain. The common pool measures (trip limits for GOM cod and pollock) were designed to ensure that the catch does not exceed the sub-ACL allocated to the common pool as a whole. The economic impact of these measures was estimated by applying the common pool measures adopted under Amendment 16, as modified by this action, to FY 2007 activity. As of September 1, 2009, and at the time of the proposed rule for FW 44, 723 permits had enrolled in a sector, and 757 had not. The analysis in FW 44 reflects a lower number than are currently enrolled. As of January 22, 2010, additional vessels had enrolled in sectors, bringing the total number of sector vessels to 812.

Of those vessels in the common pool, a large number have not been active in the groundfish fishery. In fact, only 279 of the common pool vessels had any Category A DAS that would enable them to participate in the groundfish fishery. Of these 279, only 113 were found to have actually participated in the groundfish fishery. These vessels had aggregate gross sales of \$24.8 million (an average of \$219,500 per vessel), of which nearly 30 percent was derived from sales on trips where groundfish were landed. The estimated combined effect of the Amendment 16/FW 44 measures on the common pool is expected to reduce total sales by \$5.1

million, an average of \$45,100 per vessel, or 20.1 percent. This represents a \$3-million reduction in groundfish revenue from 2008 levels. These economic impacts represent an upper bound of the adverse impacts, because they do not reflect the ability of vessels to modify fishing behavior or to lease DAS to mitigate potential impacts. However, the ability to offset such impact by DAS leasing may be limited. Converting 2007 activity into 24-hr increments, as implemented by Amendment 16, the total DAS needed to fish at 2007 levels (3,769 DAS) exceeds that of the total DAS that will be allocated to the common pool (3,600) in FY 2010. Furthermore, the ability to find trading partners may also be limited by the restrictions on trading among vessels within specified baseline length and horsepower characteristics.

The allocation of yellowtail flounder to the scallop fishery in FY 2010 would have no negative economic impact on the scallop fishery, because the allocation would not constrain scallop catch. The economic impact of this action on the NE multispecies fishery in FY 2010 would be a reduction in multispecies revenue of between 1 and 15 percent. The value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from \$3,296 to \$41,176, depending on whether the estimate includes only the value of yellowtail flounder, or also includes potential revenue losses from other groundfish stocks that may result from loss of access to a yellowtail stock area. GB yellowtail flounder is more valuable than SNE/MA yellowtail flounder because of the greater groundfish fishing opportunities on GB. The estimated losses to the GB fishery range from \$481,216 to \$6 million for FY 2010, with an expected loss of \$1.8 million.

In contrast, as of FY 2011, it is anticipated that there will be short-term AMs that will impact the scallop fishery if the sub-ACL is exceeded. The economic impact of the yellowtail flounder sub-ACL for the scallop fishery for FY 2011 is uncertain. This sub-ACL for the scallop fishery would have a potential impact on both groundfish and scallop vessels. However, as was the case for the setting of NE multispecies ACLs, the impact on any given vessel is indeterminate. The AM for the scallop fleet has yet to be determined, and setting an ACL may cause changes in fishing strategies to avoid foregone revenues that may be associated with exceeding the ACL. Assuming an inseason AM is selected, and there is no change in fishing patterns by either groundfish or scallop vessels, an upper-bound estimate is a total revenue loss of

\$35 million and \$2.6 million for scallop and groundfish, respectively, during 2011, and losses of \$36 million and \$4 million during 2012. These values represent about 6 percent of the likely scallop ACLs that will be set for 2011 and 2012, and about 5 percent or less of groundfish revenue, depending on factors noted above affecting realized groundfish revenue.

This final rule increases the amount of yellowtail flounder allocation to the scallop fishery and decreases the amount of yellowtail flounder for the groundfish fishery compared to the proposed rule. Although the range of estimated impacts of the final allocations are similar to the proposed rule, the economic impacts to the groundfish fleet are increased due to the smaller allocations of GB and SNE/MA yellowtail flounder (35 mt and 12 mt, respectively) to the groundfish fishery.

For FY 2010, the estimated revenue loss for the groundfish fishery resulting from the combined impacts of the common pool measures and ACL is between \$3 million and \$27 million (from the baseline FY 2008 revenue of \$85 million), depending on the proportion of available fish that is caught. The larger revenue reductions would result from a continuation of recent TAC utilization and discard rates (which are only a small fraction of available haddock caught), whereas the lower revenue reduction estimate would require a 50-percent reduction in the amount of under-harvesting.

For FY 2011, the revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is estimated at between \$26.9 million and \$53.8 million. The FY 2011 revenue loss for the scallop fleet is estimated at \$35 million. The FY 2011 impact on groundfish revenue ranges from a loss of \$15.8 million to a gain of \$11.1 million. For FY 2012, the estimated revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is between \$27.6 million and \$54.8 million. The FY 2012 loss to the scallop fleet is estimated at \$36 million. The FY 2012 impact on groundfish revenue ranges from a loss of \$14.8 million to a gain of \$12.4 million.

This final rule does not modify the recreational measures implemented by Amendment 16. Those measures add 2 weeks to the GOM cod closed season and reduce the size limit on GOM haddock from 19 to 18 inches (47.5 to 45 cm). Thus, passenger demand may be expected to respond to these regulatory changes, and may not be expected to be

affected by the setting of any particular recreational sub-ACL. However, because exceeding a recreational sub-ACL would trigger an AM, the economic impacts on recreational party/charter vessels would be associated with the likelihood that harvest levels would trigger an AM. According to GARM III estimates of landings, GOM cod harvest by all recreation modes ranged between 1,960 mt and 953 mt from FY 2004 to 2007. The GOM cod recreational sub-ACL would be 2,673 mt, 2,824 mt, and 2,826 mt during FY 2010, 2011, and 2012, respectively. Because harvest levels of GOM cod by the recreational sector, including party/charter operators, has been below the recreational sub-ACL for GOM cod, an AM would not be expected to be triggered by these limits. For this reason, the GOM cod sub-ACL would not be expected to have an adverse economic impact on party/charter vessels.

By contrast, during FY 2004–2007, the recreational harvest of GOM haddock ranged between 430 mt and 717 mt and, under this final rule, the recreational sub-ACL for GOM haddock declines from 324 mt in FY 2010, to 259 mt in 2012. This means that the recreational GOM haddock ACL will be about 57 percent of the FY 2004–2007 average harvest. In the absence of avoidance behavior by party/charter vessels, the GOM haddock sub-ACL may be expected to be exceeded, triggering an AM. The impact of triggering a GOM haddock AM on party/charter vessels is uncertain. Available data suggest substitutability between cod and haddock on party/charter trips, so if the GOM cod recreational sub-ACL is not constraining, some switching between haddock and cod on GOM party/charter trips may be anticipated. The economic impact on party/charter operators will depend on the selected AM and the relative strength of angler preference between cod and haddock. If the AM is a seasonal closure, then the economic impact would be a loss in trips that could be taken during the closure. These trips may not be recovered, given the seasonal nature of recreational passenger demand. If the GOM haddock AM is a change in the bag or size limit, and cod may easily be substituted for haddock, then passenger demand may be expected to be largely unchanged and the economic impact on party/charter vessels would likely be relatively low.

The economic impacts to the groundfish fishery of specification of the U.S./Canada TACs are difficult to predict due to the many factors that may affect the level of catch; however, it is likely that the substantially reduced FY 2010 TACs for Eastern GB cod and GB

yellowtail flounder (compared to FY 2009), will result in reduced overall revenue from the U.S./Canada Management Area. The amount of fish landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from fishing derby behavior and potential impact on markets. The revenue from the sale of the three transboundary stocks may be up to 22 percent less than such revenue in FY 2008. It is possible that total revenue may be reduced by up to 30 percent from FY 2009 revenues. The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for trawl vessels will likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species. Similarly, the specification of a trip limit for GB yellowtail flounder will prolong the opening of the Eastern U.S./Canada Area and result in greater overall revenue.

The allocation of zero trips for the CA II Yellowtail Flounder SAP will preclude additional revenue from CA II, but will not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock. The prohibition on the use of Category B DAS in the Eastern U.S./Canada Haddock SAP will result in only a slight decrease in revenue, because participation in the SAP has been extremely low.

This final rule also provides the Regional Administrator authority to implement trip limits or differential DAS counting inseason in order to prevent ACLs from being exceeded, or to facilitate the harvesting of ACLs. Because it is unclear if this authority will result in decreased or increased fishing effort, the effect of this action may be short-term increases or decreases in revenue. The Regional Administrator authority will contribute to long-term increases in revenue by optimizing catch levels to align with catch targets and facilitate stock rebuilding.

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

The measures and catch specifications of this final rule will be implemented at the same time as the final rules for Amendment 16 and approved sector operations plans (related actions). This final rule implements measures and specifications that, in conjunction with the related actions, minimize the long-term economic impacts on small entities. Long-term impacts of this final rule, as well as the related actions of the FMP, are minimized by ensuring that management measures and catch levels result in fishing mortality rates that are sustainable and contribute to rebuilding stocks, therefore maximizing yield, as well as providing additional flexibility for fishing operations in the short term.

The specification of catch levels for components of the groundfish and non-groundfish fisheries, as well as additional management measures to ensure that such catch levels are not exceeded, increase the likelihood that the biological objectives of the FMP will be met, resulting in greater sustainable revenue over the long term. Although for some stocks the catch levels specified will result in decreased short-term landings and revenues as compared to recent catches, for other stocks the catch levels specified represent large increases from recent catches. Whether or not a particular small entity is able to land high availability stocks such as GB haddock will depend upon its ability to operate in an efficient and flexible manner, and reduce catch of stocks that will be constraining (due to reduced catch levels required). If the owner/operator of a fishing vessel is able to fish in an efficient manner that optimizes species selectivity, and respond to market conditions, it is possible that they may increase revenue for some stocks. The recreational allocation ensures that the recreational fishery will not be subject to further efforts to reduce catch if there is excessive catch by other components of the fishery.

Amendment 16 implements new sectors and sector rules designed to increase operational efficiency and reduce waste, and may lead to increased revenue for participating vessels. Amendment 16 implements modification to special management programs that will allow additional flexibility to lease or transfer DAS, and maximize opportunities in SAPs. The changes in the DAS lease and transfer programs increase the likelihood that

vessels in the common pool will be able to acquire sufficient DAS to remain economically viable, despite additional effort controls. It is difficult to predict the amount of mitigation that will occur from the combined impacts of the FW 44 measures and specifications, Amendment 16 measures, and the approved sector operations, in the context of the substantial effort reductions that will occur.

In contrast, the No Action alternative would have achieved neither the catch levels consistent with Amendment 16 fishing mortality reductions, nor the Magnuson-Setvens Act mandates for ACLs. Because the No Action alternative would not specified catch levels to end overfishing or rebuilt stocks, it would not have been consistent with applicable laws and cannot be implemented through this action. Based upon the rebuilding projections in Amendment 16, although the short-term economic benefits associated with the No Action alternative are greater than the action implemented, over the long-term, economic benefits of catch levels specified in this final rule that enable stock rebuilding will result in greater economic benefits.

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

This rule contains no new reporting or recordkeeping requirements.

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: March 26, 2010.

**Eric C. Schwaab,**

Assistant Administrator to Fisheries, National Marine Fisheries Service.

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

### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.10, revise the section heading and paragraph (k)(3)(iv) is added to read as follows:

#### § 648.10 NE multispecies broad stock areas.

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

#### SNE/MA STOCK AREA 4

| Point      | N. latitude      | W. longitude     |
|------------|------------------|------------------|
| G12 .....  | ( <sup>1</sup> ) | 70°00'           |
| IGB7 ..... | 41°20'           | 70°00'           |
| IGB6 ..... | 41°20'           | 69°50'           |
| IGB5 ..... | 41°10'           | 69°50'           |
| IGB4 ..... | 41°10'           | 69°30'           |
| IGB3 ..... | 41°00'           | 69°30'           |
| IGB2 ..... | 41°00'           | 68°50'           |
| SNE4 ..... | 39°50'           | 68°50'           |
| SNE3 ..... | 39°50'           | 69°00'           |
| SNE5 ..... | 39°00'           | 69°00'           |
| SNE6 ..... | 39°00'           | ( <sup>2</sup> ) |

<sup>1</sup> South-facing shoreline of Cape Cod, MA.

<sup>2</sup> The U.S.-Canada maritime boundary as it intersects with the EEZ.

■ 3. In § 648.14, add paragraph (i)(2)(iii)(D) and revise paragraphs (k)(13)(ii)(A) and (B) to read as follows:

#### § 648.14 Prohibitions.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

\* \* \* \* \*

(k) \* \* \*

(13) \* \* \*

(ii) \* \* \*

(A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), and (o); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits



specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o), § 648.81(n), § 648.82(b)(5) and (6), § 648.85, or § 648.88 if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

\* \* \* \* \*

■ 4. In § 648.60, revise paragraph (a)(5)(ii) introductory text and paragraph (a)(5)(ii)(C) to read as follows:

**§ 648.60 Sea scallop area access program requirements.**

(a) \* \* \*

(5) \* \* \*

(ii) *NE multispecies possession limits and yellowtail flounder TACs.* A limited access scallop vessel that is declared into a trip and fishing within the Sea Scallop Access Areas described in § 648.59(b) through (d), and issued a valid NE multispecies permit as specified in § 648.4(a)(1), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section. Such vessel is subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4).

\* \* \* \* \*

(C) *Yellowtail flounder.* Such vessel must retain all yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1).

(1) *Scallop Access Area TAC Availability.* After declaring a trip into and fishing within the Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas described in § 648.59(b), (c), and (d), respectively, a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess and land yellowtail flounder, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the respective Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas have been harvested. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portions of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any

Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing in, and declaring and initiating a trip to the Access Area(s), where the TAC applies, for the remainder of the fishing year, unless the yellowtail flounder TAC is increased, as specified in paragraph (a)(5)(ii)(C)(3) of this section.

(2) *U.S./Canada Area TAC availability.* After declaring a trip into and fishing in the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess and land yellowtail flounder, provided that the Regional Administrator has not issued a notice that the U.S./Canada yellowtail flounder TAC specified in § 648.85(a)(2) has been harvested. If the yellowtail flounder TAC established for the U.S./Canada Management Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(3), scallop vessels are prohibited from possessing or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(3) *Modification to yellowtail flounder TACs.* The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

\* \* \* \* \*

■ 5. In § 648.82, revise the introductory text to paragraph (b)(6), and add paragraphs (e)(1)(i), (n)(1)(ii), (o) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout as specified under § 648.86. The cod trip limit shall be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example, if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) *Common pool vessels.* For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for 25 hr would be charged 48 hr of Category A instead of 25 hr.

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

| Proportion of ACL caught | Differential DAS factor |
|--------------------------|-------------------------|
| 0.5 .....                | 0.5                     |
| 0.6 .....                | 0.6                     |
| 0.7 .....                | 0.7                     |
| 0.8 .....                | 0.8                     |
| 0.9 .....                | No change               |
| 1.0 .....                | No change               |
| 1.1 .....                | 1.1                     |
| 1.2 .....                | 1.2                     |
| 1.3 .....                | 1.3                     |
| 1.4 .....                | 1.4                     |
| 1.5 .....                | 1.5                     |
| 1.6 .....                | 1.6                     |
| 1.7 .....                | 1.7                     |
| 1.8 .....                | 1.8                     |
| 1.9 .....                | 1.9                     |
| 2.0 .....                | 2.0                     |

\* \* \* \* \*

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels.* (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in State waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels



fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph (n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented, the differential DAS counting factor shall be applied against

the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS, because DAS would be charged in 24-hr increments ((12 hr inside the area  $\times$  1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2  $\times$  1.3  $\times$  24-hr DAS charge.

■ 6. In § 648.85, add paragraphs (b)(6)(v)(A), (B), (D), (F), (G), (H), (I), and (K) to read as follows:

**§ 648.85 Special management programs.**

- (b) \* \* \*  
(6) \* \* \*  
(v) \* \* \*

(A) *GOM cod stock area.* The GOM cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight

lines connecting the following points in the order stated:

**GOM COD STOCK AREA**

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| GOM1 ..... | (1)         | 70°00'       |
| GOM2 ..... | 42°20'      | 70°00'       |
| GOM3 ..... | 42°20'      | 67°40'       |
| GOM4 ..... | (2)         | 67°40'       |
| GOM5 ..... | (3)         | 67°40'       |
| GOM6 ..... | 43°50'      | 67°40'       |
| GOM7 ..... | 43°50'      | (4)          |
| GOM8 ..... | (4)         | 67°00'       |
| GOM9 ..... | (5)         | 67°00'       |

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary (southern intersection with 67°40' W. long.).

<sup>3</sup> U.S./Canada maritime boundary (northern intersection with 67°40' W. long.).

<sup>4</sup> U.S./Canada maritime boundary.

<sup>5</sup> Intersection of the south-facing ME coastline and 67°00' W. long.

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

**GB COD STOCK AREA**

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| GB1 ..... | (1)         | 70°00'       |
| GB2 ..... | 42°20'      | 70°00'       |
| GB3 ..... | 42°20'      | (2)          |
| GB4 ..... | 35°00'      | (2)          |
| GB5 ..... | 35°00'      | (3)          |

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> Intersection of the east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

\* \* \* \* \*

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

**AMERICAN PLAICE STOCK AREA**

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| AMP1 ..... | (1)         | 67°00'       |
| AMP2 ..... | (2)         | 67°00'       |
| AMP3 ..... | 43°50'      | (2)          |
| AMP4 ..... | 43°50'      | 67°40'       |
| AMP5 ..... | (3)         | 67°40'       |
| AMP6 ..... | (4)         | 67°40'       |
| AMP7 ..... | 42°30'      | 67°40'       |
| AMP8 ..... | 42°30'      | (2)          |
| AMP9 ..... | 35°00'      | (2)          |

AMERICAN PLAICE STOCK AREA—  
Continued

| Point       | N. latitude | W. longitude |
|-------------|-------------|--------------|
| AMP10 ..... | 35°00'      | (5)          |

<sup>1</sup> Intersection of south-facing ME coastline and 67°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> U.S./Canada maritime boundary (northern intersection with 67°40' N. lat.).

<sup>4</sup> U.S./Canada maritime boundary (southern intersection with 67°40' N. lat.).

<sup>5</sup> Intersection of east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

\* \* \* \* \*

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program and identifying stock areas for trip limits specified in §§ 648.86 and 648.89 is the area defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER STOCK  
AREA

| Point   | N. latitude | W. longitude |
|---------|-------------|--------------|
| 1 ..... | (1)         | 70°00'       |
| 2 ..... | 42°20'      | 70°00'       |
| 3 ..... | 42°20'      | 68°50'       |
| 4 ..... | 39°50'      | 68°50'       |
| 5 ..... | 39°50'      | 69°00'       |
| 6 ..... | 39°00'      | 69°00'       |
| 7 ..... | 39°00'      | (2)          |
| 8 ..... | 35°00'      | (2)          |
| 9 ..... | 35°00'      | (3)          |

<sup>1</sup> Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> The intersection of the east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

(G) *Witch flounder stock area.* The witch flounder stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00' N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER STOCK  
AREA

| Point        | N. latitude | W. longitude |
|--------------|-------------|--------------|
| USCA1 .....  | 42°20'      | 68°50'       |
| USCA16 ..... | 42°20'      | (1)          |
| USCA5 .....  | 39°00'      | (1)          |
| USCA17 ..... | 39°00'      | 69°00'       |
| USCA18 ..... | 39°50'      | 69°00'       |
| USCA2 .....  | 39°50'      | 68°50'       |
| USCA1 .....  | 42°20'      | 68°50'       |

<sup>1</sup> U.S./Canada maritime boundary.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

## GB WINTER FLOUNDER STOCK AREA

| Point        | N. latitude | W. longitude |
|--------------|-------------|--------------|
| USCA1 .....  | 42°20'      | 68°50'       |
| USCA16 ..... | 42°20'      | (1)          |
| USCA5 .....  | 39°00'      | (1)          |
| USCA17 ..... | 39°00'      | 69°00'       |
| USCA18 ..... | 39°50'      | 69°00'       |
| USCA2 .....  | 39°50'      | 68°50'       |
| USCA1 .....  | 42°20'      | 68°50'       |

<sup>1</sup> U.S./Canada maritime boundary.

\* \* \* \* \*

(K) *Pollock stock area.* The pollock stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

## POLLOCK STOCK AREA

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| P1 .....  | (1)         | 67°00'       |
| P2 .....  | (2)         | 67°00'       |
| P3 .....  | 43°50'      | (2)          |
| P4 .....  | 43°50'      | 67°40'       |
| P5 .....  | (3)         | 67°40'       |
| P6 .....  | (4)         | 67°40'       |
| P7 .....  | 42°30'      | 67°40'       |
| P8 .....  | 42°30'      | (2)          |
| P9 .....  | 35°00'      | (2)          |
| P10 ..... | 35°00'      | (5)          |

<sup>1</sup> Intersection of south-facing ME coastline and 67°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> U.S./Canada maritime boundary (northern intersection with 67°40' N. lat.).

<sup>4</sup> U.S./Canada maritime boundary (southern intersection with 67°40' N. lat.).

<sup>5</sup> Intersection of east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

\* \* \* \* \*

■ 7. In § 648.86, revise paragraphs (a)(1), (b)(1), and add paragraphs (m)(1), (n), and (o) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

\* \* \* \* \*

(a) \* \* \*

(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

\* \* \* \* \*

(b) \* \* \*

(1) *GOM cod landing limit.* Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

\* \* \* \* \*

(m) \* \* \*

(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period. For example, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 2,000 lb (907.2 kg) of GB cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day.

(n) *Pollock.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(o) *Regional Administrator authority to implement possession limits—*(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may

implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

■ 8. In § 648.87, add paragraphs (b)(1)(ii)(A), through (F) to read as follows:

**§ 648.87 Sector allocation.**

- (b) \* \* \*  
(1) \* \* \*  
(ii) \* \* \*

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

| Point    | N. latitude | W. longitude |
|----------|-------------|--------------|
| 1 .....  | (1)         | 70°00'       |
| 2 .....  | (2)         | 70°00'       |
| 3 .....  | 41°20'      | (3)          |
| 4 .....  | 41°20'      | 69°50'       |
| 5 .....  | 41°10'      | 69°50'       |
| 6 .....  | 41°10'      | 69°30'       |
| 7 .....  | 41°00'      | 69°30'       |
| 8 .....  | 41°00'      | 68°50'       |
| 9 .....  | 42°20'      | 68°50'       |
| 10 ..... | 42°20'      | (4)          |

<sup>1</sup> Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. long.

<sup>3</sup> Intersection of east-facing coastline of Nantucket, MA, and 41°20' N. lat.

<sup>4</sup> U.S./Canada maritime boundary.

(B) *SNE/MA Yellowtail Flounder Stock Area.* The SNE/MA Yellowtail Flounder Stock Area, for the purposes of

identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

**SNE/MA YELLOWTAIL FLOUNDER STOCK AREA**

| Point       | N. latitude | W. longitude |
|-------------|-------------|--------------|
| SNE1 .....  | 35°00'      | (1)          |
| SNE2 .....  | 35°00'      | (2)          |
| SNE3 .....  | 39°00'      | (2)          |
| SNE4 .....  | 39°00'      | 69°00'       |
| SNE5 .....  | 39°50'      | 69°00'       |
| SNE7 .....  | 39°50'      | 68°50'       |
| SNE8 .....  | 41°00'      | 68°50'       |
| SNE9 .....  | 41°00'      | 69°30'       |
| SNE10 ..... | 41°10'      | 69°30'       |
| SNE11 ..... | 41°10'      | 69°50'       |
| SNE12 ..... | 41°20'      | 69°50'       |
| SNE13 ..... | 41°20'      | (3)          |
| SNE14 ..... | (4)         | 70°00'       |
| SNE15 ..... | (5)         | 70°00'       |

<sup>1</sup> Intersection of east-facing coastline of Outer Banks, NC, and 35°00' N. lat.

<sup>2</sup> U.S./Canada maritime boundary.

<sup>3</sup> Intersection of east-facing coastline of Nantucket, MA, and 41°20' N. lat.

<sup>4</sup> Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. long.

<sup>5</sup> Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. long.

(C) *GOM Haddock Stock Area.* The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

**GOM HADDOCK STOCK AREA**

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| GOM1 ..... | (1)         | 70°00'       |
| GOM2 ..... | 42°20'      | 70°00'       |
| GOM3 ..... | 42°20'      | 67°40'       |
| GOM4 ..... | (2)         | 67°40'       |
| GOM5 ..... | (3)         | 67°40'       |
| GOM6 ..... | 43°50'      | 67°40'       |
| GOM7 ..... | 43°50'      | (4)          |
| GOM8 ..... | (4)         | 67°00'       |
| GOM9 ..... | (5)         | 67°00'       |

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary (southern intersection with 67°40' W. long.).

<sup>3</sup> U.S./Canada maritime boundary (northern intersection with 67°40' W. long.).

<sup>4</sup> U.S./Canada maritime boundary.

<sup>5</sup> Intersection of the south-facing ME coastline and 67°00' W. long.

(D) *GB Haddock Stock Area.* The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

| Point   | N. latitude | W. longitude |
|---------|-------------|--------------|
| 1 ..... | (1)         | 70°00'       |
| 2 ..... | 42°20'      | 70°00'       |
| 3 ..... | 42°20'      | (2)          |

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary.

(E) *Redfish Stock Area.* The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

**GOM WINTER FLOUNDER STOCK AREA**

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| GOM1 ..... | (1)         | 70°00'       |
| GOM2 ..... | 42°20'      | 70°00'       |
| GOM3 ..... | 42°20'      | 67°40'       |
| GOM4 ..... | (2)         | 67°40'       |
| GOM5 ..... | (3)         | 67°40'       |
| GOM6 ..... | 43°50'      | 67°40'       |
| GOM7 ..... | 43°50'      | (4)          |
| GOM8 ..... | (4)         | 67°00'       |
| GOM9 ..... | (5)         | 67°00'       |

<sup>1</sup> Intersection of the north-facing coastline of Cape Cod, MA, and 70°00' W. long.

<sup>2</sup> U.S./Canada maritime boundary (southern intersection with 67°40' N. lat.).

<sup>3</sup>U.S./Canada maritime boundary (northern intersection with 67°40' N. lat.).

<sup>5</sup>Intersection of the south-facing ME coast-line and 67°00' W. long.

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<sup>4</sup>U.S./Canada maritime boundary.

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