

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

[Docket No. 050520136-5317-02; I.D. 040705A]

RIN 0648-AS80

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 13 and Framework Adjustment 40-A**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

SUMMARY: This rule corrects inadvertent errors and omissions found in the April 27, 2004, final rule implementing Amendment 13 and the November 19, 2004, interim final rule implementing Framework Adjustment (Framework) 40-A to the Northeast (NE) Multispecies Fishery Management Plan (FMP). This rule also clarifies specific regulations to maintain consistency with, and to accurately reflect, the intent of Amendment 13 and Framework 40-A to the FMP. Finally, this rule revises the process for selecting total allowable catch (TAC) allocations for the U.S./Canada Management Areas pursuant to a court order. This action is being taken by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 26, 2006.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Street, Gloucester, MA 01930-2298. NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the RIR and the Final Supplemental Environmental Impact Statement (FSEIS) prepared for Amendment 13 and the environmental assessment (EA) prepared for Framework 40-A may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FSEIS/RIR for Amendment 13 and the EA/RIR for Framework 40-A are also accessible via the Internet at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background**

Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies stocks managed consistent with the provisions of the Magnuson-Stevens Act. NMFS published final regulations to implement the approved measures in Amendment 13 in the **Federal Register** on April 27, 2004 (69 FR 22906). The majority of the measures in the final rule became effective on May 1, 2004.

Framework 40-A was developed by the Council to provide additional opportunities for NE multispecies vessels to target healthy stocks in an effort to help achieve optimum yield from the fishery and to mitigate some of the economic impacts resulting from effort reductions implemented under Amendment 13. NMFS published an interim final rule implementing measures approved under Framework 40-A on November 19, 2004 (69 FR 67780), which became effective on November 19, 2004.

Both the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A contained several inadvertent errors and omissions that were inconsistent with the intent of these actions. In addition, there were some measures that required further clarification to ensure proper implementation of these measures and consistency with Amendment 13 and Framework 40-A, specifically the gear requirements for the Eastern U.S./Canada Area. To solicit further public input regarding these corrections and clarifications, a proposed rule for this action was published on August 8, 2005 (70 FR 45628), with public comments accepted through September 7, 2005. Specific input was solicited regarding the gear requirements for the Eastern U.S./Canada Area.

After reviewing the one public comment received for this action, this action implements all of the revised measures outlined in the proposed rule for this action with the exception of the changes to the haddock separator trawl, as detailed below.

Comments and Responses*Eastern U.S./Canada Area Gear Requirements*

Comment 1: One industry group supported changes to the flounder net

that would replace 12-inch (30.5-cm) square mesh with 12-inch (30.5-cm) diamond mesh in at least 10 ft (3.05-m) of the top panel of the net and remove reference to the square of the net. This group also opposed any changes to the existing definition of the haddock separator trawl, citing enforcement concerns. This group believes that outreach and education would be the only practical way to ensure the proper construction and deployment of the haddock separator trawl.

Response: NMFS agrees that it is appropriate to modify the flounder net for the reasons specified in the preamble to the proposed rule for this action and implements these changes through this final rule. Given the lack of support for the proposed modifications to the definition of the haddock separator trawl, NMFS has decided not to implement the proposed revisions to this net at this time. A full explanation for the reasons for this decision is provided in the preamble of this rule under "Changes from the Proposed Rule." NMFS agrees that outreach and education will help increase compliance with the gear definitions specified for the U.S./Canada Area.

Changes from the Proposed Rule*Haddock Separator Trawl*

The proposed modifications to the haddock separator trawl were intended to address industry concerns that a net could be designed such that the separator panel is wide enough to block off the lower opened codend of the net, thereby compromising the ability of the net to minimize bycatch of cod. However, based upon public comment and input from the U.S. Coast Guard, the proposed modifications are complicated and may not be able to be effectively enforced at sea. Currently, there are a number of research projects investigating possible modifications to the existing haddock separator trawl that may address some of the industry concerns about complexity and enforcement while increasing the effectiveness of minimizing the bycatch of cod. Therefore, given the lack of support for the proposed modifications to the haddock separator trawl definition and the ongoing experimental work to increase the effectiveness of this gear, NMFS has determined that it would be more appropriate to not implement revisions to this gear in this

action until additional scientific information on its performance becomes available.

Revisions Implemented by This Action

NMFS has decided to implement the remainder of the proposed revisions to the Amendment 13 and Framework 40—A final and interim final rules, respectively. The details of the rationale behind the need for the corrections/clarifications to the measures revised by this action were included in the preamble to the proposed rule for this action and are not repeated here. A description of these revisions follows.

1. Monkfish Permit Category Descriptions

This action clarifies that limited access monkfish Category A and B permits may be issued only to vessels without a NE multispecies DAS category permit or a limited access scallop DAS permit and that limited access monkfish Category C and D permits may be issued only to those vessels that have been issued a limited access monkfish permit and a limited access NE multispecies DAS category permit or a limited access scallop DAS category permit by revising the regulations at §§ 648.4 and 648.92(b)(1)(i). This action is necessary to make the monkfish permit category definitions consistent with Council intent following the implementation of the limited access NE multispecies Handgear A permit (a non-DAS permit) under Amendment 13 to the FMP. This enables a vessel issued a limited access monkfish Category A permit to obtain a limited access NE multispecies Handgear A permit without affecting its monkfish permit category.

2. Vessel Monitoring System (VMS) Power-down Exemption

This action changes the participation period for the VMS power-down exemption specified at § 648.9(c)(2)(i)(B) from 1 calendar month to 30 calendar days, to clarify the intent of this measure under Amendment 13 and to minimize impacts to vessels.

3. Prohibitions for Georges Bank (GB) Cod Hook Sector (Sector) Participants

This action modifies the prohibition at § 648.14(a)(55) to allow dealers to receive species from Sector participants in accordance with an approved Sector Operations Plan as specified in § 648.87. This action also modifies the prohibition at § 648.14(a)(156) to allow vessels participating in the GB Cod Hook Sector to fish under the NE multispecies DAS program as authorized by their Sector Operations Plan originally approved by NMFS on

May 4, 2005 (70 FR 23096). These revisions allow Sector participants to operate in accordance with the provisions specified in the approved Sector Operations Plan.

4. Rolling Closure Areas II and III

This action replaces point GM9 with point GM10 for the GOM Rolling Closure Area II at § 648.81(f)(1)(ii) and replaces point GM10 with point GM18 for the GOM Rolling Closure Area III at § 648.81(f)(1)(iii) to correct these inaccurate coordinate points.

5. GB Seasonal Closure Area

This action revises § 648.81(g)(2) to include a provision to exempt vessels fishing under the Eastern U.S./Canada Haddock SAP Pilot Program provisions at § 648.85(b)(8) from the GB Seasonal Closure Area, consistent with the intent of Framework 40—A.

6. CA II Habitat Closure Area

This action replaces the inaccurate coordinates at § 648.81(h)(1)(v) for Habitat Alternative 10A with the correct coordinates for Habitat Alternative 10B from the FSEIS prepared for Amendment 13 to ensure that the correct habitat closure area is implemented, pursuant to the approval of Amendment 13.

7. Eastern U.S./Canada Area Gear Requirements

This action removes the regulations restricting the vertical dimension of the forward wing end to 3.0 ft (0.91 m) from § 648.85(a)(3)(iii)(B)(1) and (2), and the prohibition of floats in the center 50 percent of the headrope for the flounder trawl net specified at § 648.85(a)(3)(iii)(B)(1). In addition, this action changes the definition of the flounder net at § 648.85(a)(3)(iii)(B)(2) to allow for the use of diamond mesh in the top panel of the net, removes references to the square of the net, and inserts language requiring that the top panel of the net contain a section of mesh at least 10-ft (3.05-m) long, stretching from selvedge to selvedge, composed of at least 12-in (30.5-cm) mesh, inserted no farther than 4.5 meshes behind the headrope. These revisions are intended to improve the strength and performance of the flounder net and provide a standard definition of how to incorporate the large 12-inch (30.5-cm) diamond mesh into the top panel of a flounder net, to help minimize confusion caused by different interpretations of the square of the net in the original flounder net definition implemented by the final rule for Amendment 13.

8. U.S./Canada Management Area In-season Adjustment

This action clarifies the regulations at § 648.85(a)(3)(iv)(D) to specify that adjustments to the U.S./Canada Management Area provisions may be made when 30 percent and/or 60 percent of the total allowable catch (TAC) allocations are projected to be, or have been, harvested. This change is intended to make these provisions consistent with the intent of Amendment 13, which is to allow flexibility to the Regional Administrator in implementing such adjustments to ensure that the TAC allocations are not over-harvested or under-harvested for a particular fishing year.

9. Process for Implementing the U.S./Canada Area TACs

This final rule removes, per the court order in *Oceana, et al., v. Evans, et al.* (Civil Action No. 04–811 CESH) (D.D.C., March 9, 2005), the third sentence in § 648.85(a)(2)(i)(D), which allowed the Regional Administrator to select the TAC allocation recommendations of the Transboundary Management Guidance Committee (TMGC) instead of the Council's recommended TACs if the Council's recommendation is not consistent with the TMGC recommendations.

10. CA II Yellowtail Flounder SAP Observer Declaration

This provision provides notification to the NMFS Observer Program of planned trips, prior to the departure of the trips, so that the Observer Program has sufficient time to contact and deploy observers. This action changes the Observer Program notification requirement for limited access NE multispecies DAS vessels participating in the CA II Yellowtail Flounder SAP from 5 working days to 72 hours. The change is determined to be necessary based on numerous industry comments that indicate that a shorter notification requirement would provide vessels greater flexibility to react to contingencies such as weather developments.

11. Small-mesh Multispecies Possession Restrictions

This action corrects § 648.86(d) to accurately reflect the intent of the regulations implemented under Framework 32, as well as any revisions made to these regulations under Amendment 13. Consistent with Council intent, this correction removes the requirement that a letter of authorization (LOA) is necessary to fish for, and/or possess, silver hake and offshore hake caught with small mesh

where such a requirement should not exist as a result of measures previously implemented by Framework 32. This paragraph is further clarified to maintain consistency with existing regulations, while decreasing the complexity of the current regulations pertaining to the net size requirements and possession limits.

12. Yellowtail Flounder Possession Limit Restrictions

This action modifies the yellowtail flounder possession limit restrictions by allowing vessels possessing a LOA to fish for Cape Cod/Gulf of Maine or Southern New England/Mid-Atlantic yellowtail flounder to abide by the less restrictive yellowtail flounder possession limits of the U.S./Canada Management Area and the CA II Yellowtail Flounder SAP when operating within these areas as specified in § 648.85(a)(3) and (b)(3). This modification removes unnecessary and unintended restrictions on vessel activities, increases flexibility in planning fishing trips, and eliminates some of the administrative burden on NMFS.

13. Offloading Requirement

This action implements an explicit provision in the regulations at § 648.86 requiring a vessel that has ended its trip (i.e., by crossing the VMS demarcation line or calling out of the DAS program) to offload species regulated by a daily landing limit (i.e., pounds per DAS) prior to leaving port and beginning a subsequent fishing trip. This action also implements an associated prohibition at § 648.14 that makes it illegal to fail to offload species, as required by § 648.86. Offloading species for which there is a daily landing limit is necessary to effectively enforce these limits. A vessel that has ended its trip could retain on board other species regulated by an overall trip limit (i.e., pounds per trip) for a subsequent trip, provided the vessel abides by the overall trip limit for those species during that subsequent trip. This measure is necessary to clarify the intent of the possession limit restrictions.

14. GB Cod Hook Sector Liability Regulations

This action clarifies the regulations at § 648.87(b)(2)(x) to indicate that it is unlawful for Sector participants to violate the conditions of an approved Sector Operations Plan, unless such conditions and restrictions are identified as administrative only in the Operations Plan. This measure is necessary to clarify that non-payment of Sector dues, or other such conditions

specific to the administration of the Sector, and were neither intended to be, nor would constitute, a violation of Federal law. This makes the Sector regulations consistent with the intent of Amendment 13 to the FMP.

15. GB Cod Hook Sector Area Coordinates

This action corrects inaccurate coordinates defining the GB Cod Hook Sector Area at § 648.87(d)(1)(i). This is necessary because the Amendment 13 proposed and final rules inadvertently reversed the latitude and longitude for each coordinate point defining this area. In addition, it was observed that there were two coordinate points named "HS3." To correct this additional inadvertent error, the final three coordinate points should be renamed "HS4," "HS5," and "HS6" instead of "HS3," "HS4," and "HS5." These corrections properly define the GB Cod Hook Sector Area, as specified in Amendment 13 to the FMP.

16. Additional Corrections

In addition to the changes specified above, the following changes to the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A are implemented to correct inaccurate references and to further clarify the intent of Amendment 13 and Framework 40-A. The changes listed below are in the order in which they appear in the regulations.

In § 648.2, the reference to the specifications of pelagic gillnet gear at "§ 648.81(g)(2)(ii)" in the definition for "Gillnet gear capable of catching multispecies" is corrected to read "§ 648.81(f)(2)(ii)."

In § 648.14, paragraph (a)(134) is revised to include a cross reference to the authority of the Regional Administrator to close the Eastern U.S./Canada Area as described under § 648.85(a)(3)(iv)(D) and a reference to the Eastern U.S./Canada Haddock SAP Pilot Program in § 648.85(b)(8).

In § 648.81(b)(2)(ii), the reference to paragraph "(h)(v)" is changed to read "(h)(1)(v)."

In § 648.81(b)(2)(iii), the reference to the coordinates for the CA II Yellowtail Flounder SAP in § 648.85(b)(3)(ii) and the Eastern U.S./Canada Haddock SAP Pilot Program in § 648.85(b)(8)(ii) are inserted to further clarify where vessels may fish within CA II.

In § 648.82, in paragraph (b)(4), the reference to "paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section" is revised to read "paragraphs §§ 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii)." Further, in § 648.82(f),

the reference to "§ 648.53(f)" is changed to read "§ 648.53(g)."

In § 648.85, the word "calendar" is inserted in front of the word "month" in paragraph (b)(3)(vi) to clarify that vessels may only take a maximum of one trip into the CA II Yellowtail Flounder SAP per calendar month as proposed in Amendment 13 and modified by Framework 40-B to the FMP (June 1, 2005, 70 FR 31323). In addition, paragraph (b)(3)(x) is revised to clarify regulatory references and to add language that allows gear other than a haddock separator trawl or a flounder net to be carried on board, provided this gear is stowed in accordance with § 648.23(b).

In § 648.87(b)(2)(ix), the reference to paragraph "(b)(2)(v)" is corrected to read "(b)(1)(v)."

In § 648.90(a)(2)(iv), the reference to paragraph "(a)(1)(vii)" is corrected to read "(a)(2)(vii)."

Classification

The Regional Administrator has determined that the management measures implemented by this rule are necessary for the conservation and management of the NE multispecies fishery and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

Final Regulatory Flexibility Analysis

NMFS has prepared a FRFA in support of the measures implemented for this action. The FRFA describes the economic impact that this final rule will have on small entities. The FRFA incorporates the economic impacts summarized in the IRFA for the proposed rule to implement the revisions included in this action and the corresponding economic analysis prepared for this action (e.g., the RIR). The RIR for this action is based upon the economic analysis prepared for Amendment 13 (e.g., the FSEIS and corresponding RIR for that action) and Framework 40-A (e.g., the EA and corresponding RIR for that action) to the FMP. Copies of the relevant economic analyses associated with this action are available from NMFS and the Council (see ADDRESSES). A summary of the reasons why this action is being considered, the objectives of, and legal basis for, this final rule is found in the preamble to this rule. A complete description of the reasons why revisions implemented by this action were considered is found in the preamble to the proposed rule for this action.

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

No comments related to the IRFA or the economic impacts of this rule were received during the public comment period of the proposed rule. One comment related to the proposed revisions was received and is addressed in the preamble of this final rule.

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

This final rule revises measures that affect those vessels that have currently been issued an active limited access NE multispecies permit or a limited access monkfish permit. Data from the NE permit application database show that, as of September 29, 2005, there were 1,525 vessels issued a limited access NE multispecies permit, including a total of 169 vessels issued a limited access Handgear A permit. There were a total of 726 vessels issued a limited access monkfish permit. All of these vessels are considered to be small entities according to the definition provided by the Small Business Administration and described in the Regulatory Flexibility Act.

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

This final rule does not contain any new, nor does it revise any existing reporting, recordkeeping, and other compliance requirements subject to the Paperwork Reduction Act. Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and the Reason that Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect Small Entities Was Rejected

The primary purpose of this action is to correct inadvertent errors and clarify specific measures found in the final rule and interim final rule implementing Amendment 13 and Framework 40–A, respectively, to the FMP, in order to make the current regulations consistent with the intent of these actions. The administrative nature of the revisions to the regulations implemented by this final rule does not facilitate the development of alternatives to this

action. Alternatives to the substantive provisions revised through this action have previously been developed as part of the development of Amendment 13 and Framework 40–A. Section 5.4 of the FSEIS prepared for Amendment 13 and section 7.2.4 of the EA prepared for Framework 40–A provide an analysis of the economic impacts resulting from the measures implemented under Amendment 13 and Framework 40–A, respectively. This action references and builds upon the analyses presented in the FSEIS and the FRFA prepared for Amendment 13 and the EA and the FRFA prepared for Framework 40–A to assess the impacts of this action. These analyses highlight steps the Agency has taken to minimize the significant economic impact on small entities.

Due to a lack of data reflecting costs associated with fishing, changes in total revenue are considered to be a proxy for changes in profitability in this action. This analysis indicates that individual vessels would be likely to increase profitability under most measures proposed in this action. This action allows limited access monkfish vessels qualified to be issued a limited access NE multispecies Handgear A permit to be issued such a permit. The issuance of this permit to Category A and B monkfish vessels provides these vessels additional opportunities to fish, thereby increasing vessel revenue. This action eliminates some of the more restrictive gear requirements for vessels operating in the Eastern U.S./Canada Area. These Amendment 13 restrictions posed further economic costs for gear modifications and reduced gear efficiency to vessels without effectively increasing the conservation benefits of the gear requirements. Elimination of these gear requirements removes these unnecessary costs and therefore will likely increase vessel revenue.

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 Regional Office, and the guide (i.e., permit holder letter), will be sent to all holders of permits for the NE multispecies and monkfish fisheries.

The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 16, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, 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 § 648.2, the definition for “Gillnet gear capable of catching multispecies” is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at § 648.81(f)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

* * * * *

■ 3. In § 648.4, paragraphs (a)(9)(i)(A)(1) through (4) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(9) * * *

(i) * * *

(A) * * *

(1) *Category A permit (vessels without NE multispecies or scallop limited access DAS permits).* The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(2) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without NE multispecies or scallop limited access DAS permits that do not qualify for a Category A permit).* The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(3) *Category C permit (vessels with NE multispecies or scallop limited access DAS permits).* The vessel landed at least 50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(4) *Category D permit (all vessels with NE multispecies limited access DAS permits and vessels less than 51 GRT with scallop limited access DAS permits that do not qualify for a Category C permit).* The vessel landed at least 7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

* * * * *

■ 4. In § 648.9, paragraph (c)(2)(i)(B) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

- (c) * * *
- (2) * * *
- (i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

■ 5. In § 648.14, paragraphs (a)(55), (a)(134), and (a)(156) are revised; paragraphs (a)(170) and (a)(171) are removed and reserved; and paragraph (a)(172) is added to read as follows:

§ 648.14 Prohibitions.

- (a) * * *

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species are purchased or received from a member of an approved Sector as specified at § 648.87 that is exempt from such possession limits in accordance with an approved Sector Operations Plan.

* * * * *

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8).

* * * * *

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, unless authorized by an approved Sector Operations Plan, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as otherwise provided under § 648.87(b)(1)(xii).

* * * * *

- (170) [Reserved]
- (171) [Reserved]

(172) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(iii) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

* * * * *

■ 6. In § 648.81, paragraphs (b)(2)(ii), (b)(2)(iii), (f)(1)(ii), (f)(1)(iii), (g)(2)(ii), (g)(2)(iii), and (h)(1)(v) are revised, and paragraph (g)(2)(iv) is added to read as follows:

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

* * * * *

- (b) * * *
- (2) * * *

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(1)(v) of this section;

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified at § 648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

* * * * *

- (f) * * *
- (1) * * *

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II
[April 1–April 30]

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM5	42°00'	68°30'
GM13	43°00'	68°30'
GM10	43°00'	(4)

¹ Massachusetts shoreline.
² Cape Cod shoreline on Cape Cod Bay.
³ Cape Cod shoreline on the Atlantic Ocean.
⁴ New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (f)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III
[May 1–May 31]

Point	N. Lat.	W. Long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM4	42°00'	70°00'
GM23	42°30'	70°00'
GM6	42°30'	68°30'
GM14	43°30'	68°30'
GM18	43°30'	(4)

¹ Massachusetts shoreline.
² Cape Cod shoreline on Cape Cod Bay.
³ Cape Cod shoreline on the Atlantic Ocean.
⁴ Maine shoreline.

* * * * *

- (g) * * *
- (2) * * *

(ii) That are fishing as charter/party or recreational vessels;

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the minimum mesh size of the twine top used in the dredge by the vessel is 10 inches (25.4 cm), and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or

(iv) That are fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program as defined at § 648.85(b)(8).

* * * * *

- (h) * * *
- (1) * * *

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in this paragraph (h)(1) apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

CLOSED AREA II HABITAT CLOSURE AREA

Point	N. Lat.	W. Long.
CIH1	42°10'	67°20'
CIH2	42°10'	67°9.3'
CIH3	42°00'	67°0.5'
CIH4	42°00'	67°10'
CIH5	41°50'	67°10'

CLOSED AREA II HABITAT CLOSURE
AREA—Continued

Point	N. Lat.	W. Long.
CIH6	41°50'	67°20'
CIH1	42°10'	67°20'

* * * * *

■ 7. In § 648.82, paragraphs (b)(4) and (f) are revised to read as follows:

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

* * * * *

(b) * * *

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in § 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii).

* * * * *

(f) *Good Samaritan credit.* See § 648.53(g).

* * * * *

■ 8. In § 648.85, paragraphs (a)(2)(i)(D), (a)(3)(iii) introductory text, (a)(3)(iii)(B)(1) and (2), (a)(3)(iv)(D), (b)(3)(v), (b)(3)(vi), and (b)(3)(x) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *
(2) * * *
(j) * * *

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. NMFS shall review the Council's recommendations and shall publish in

the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

* * * * *

(3) * * *

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in this paragraph (a)(3)(iii) may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(B) * * *

(1) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end.

(2) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from seldedge to seldedge, composed of at least 12-in (30.5-cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

(iv) * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in this paragraph (a)(3)(iv), when 30 percent and/or 60 percent of the TAC

allocations specified under paragraph (a)(2) of this section are projected to be, or have been, harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

* * * * *

(b) * * *

(3) * * *

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 72 hours prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of Closed Area II that resides within the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in these areas under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to one trip per calendar month, during the season described in paragraph (b)(3)(iii) of this section.

* * * * *

(x) *Gear requirements.* NE multispecies vessels fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Areas defined in paragraph (a)(1) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph

(a)(3)(iii) of this section may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b).

* * * * *

■ 9. In § 648.86, paragraphs (d), (g)(1)(ii)(B), and (g)(2)(ii)(B) are revised, and paragraphs (g)(4) and (i) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). “Incorporated into a fully constructed net” means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm).* Owners or operators of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph

(d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Incorporated into a fully constructed net” means that any mesh smaller than 2.5 inches (6.35 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 inches (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake if both of the following conditions apply:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and

(B) The mesh size of any net or part of a net on board the vessel not incorporated into a fully constructed net is equal to or greater than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Incorporated into a fully constructed net” means that any mesh smaller than 3 inches (7.62 cm) that is incorporated into a fully constructed net may occur only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv) of this section, and the net into which the mesh is incorporated must be available for immediate use.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i) through (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft by 3 ft (0.9 m by 0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel’s letter of authorization from the Regional Administrator.

* * * * *

(g) * * *
(1) * * *
(ii) * * *

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g), unless otherwise specified in paragraph (g)(4) of this section. Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

* * * * *

(2) * * *
(ii) * * *

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive

days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g), unless otherwise specified in paragraph (g)(4) of this section. Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

* * * * *

(4) Vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section, and that fish on a separate trip in the U.S./Canada Management Area according to the regulations at § 648.85(a), including a trip into an approved SAP as specified at § 648.85(b)(3), are exempt from the possession limits and restrictions specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section during the authorized time period.

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* Vessels that have ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possess on board species regulated by a daily possession limit (i.e., pounds per DAS) as specified at § 648.85(a)(3)(iv), § 648.85(a)(6)(iv)(D), or § 648.86 must offload these species prior to leaving port on a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel ending a trip in October that possesses cod and yellowtail flounder harvested from the Gulf of Maine is subject to a daily possession limit for cod of 800 lb (363 kg)/DAS and an overall trip limit of 250 lb (113 kg)/trip for yellowtail flounder. This vessel would be required to offload any cod harvested, but may retain any yellowtail flounder on board prior to leaving port on a subsequent trip.

■ 10. In § 648.87, paragraphs (b)(2)(ix), (b)(2)(x), and (d)(1)(i) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(2) * * *

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(1)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

* * * * *

(d) * * *

(1) * * *

(i) *GB Cod Hook Sector Area (GBCHSA).* The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. Lat.	W. Long.
HS1	(¹)	70°00'
HS2	42°20'	70°00'
HS3	42°20'	3 67°18.4'
Follow the U.S. EEZ boundary south to HS4		
HS4	39°00'	66°45.5'
HS5	39°00'	71°40'
HS6	(²)	71°40'

¹The east facing shoreline of Cape Cod, MA.

²The south facing shoreline of Rhode Island.

³The U.S. Canada Maritime Boundary.

* * * * *

■ 11. In § 648.90, paragraph (a)(2)(iv) is revised to read as follows:

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

* * * * *

(a) * * *

(2) * * *

(iv) The Council shall review the target TACs recommended by the PDT and all of the options developed by the PDT and other relevant information;

consider public comment; and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut, and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

* * * * *

■ 12. In § 648.92, paragraph (b)(1)(i) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *General provision.* All limited access monkfish permit holders shall be allocated monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless modified by paragraph (b)(1)(ii) of this section according to the provisions specified at § 648.96(b)(3). The number of monkfish DAS to be allocated, before accounting for any such modification, is 40 DAS minus the amount calculated in paragraph (b)(1)(iv) of this section, unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iii) of this section. Limited access NE multispecies and limited access sea scallop DAS permit holders who also possess a valid limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with their monkfish DAS, except as provided in paragraph (b)(2) of this section, unless otherwise specified under this subpart F.

* * * * *

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