

**REGULATORY IMPACT REVIEW AND INITIAL REGULATORY FLEXIBILITY
ANALYSIS FOR THE PROPOSED RULE CORRECTING
THE FINAL RULE IMPLEMENTING AMENDMENT 13 AND THE
INTERIM FINAL RULE IMPLEMENTING FRAMEWORK ADJUSTMENT 40-A
TO THE NORTHEAST MULTISPECIES FISHERY**

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1.0 Introduction

The National Marine Fisheries Service (NOAA Fisheries) requires the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new FMP or significantly amend an existing plan. This RIR is part of the process of preparing and reviewing FMPs or amendments to FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. This analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of this analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. This RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866. It also includes a certification under the Regulatory Flexibility Act (RFA) stating that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

2.0 Economic Analysis for Compliance with E.O. 12866 and the Regulatory Flexibility Act

NOAA Fisheries developed guidelines for the development of economic analysis of fisheries management actions. These guidelines identify analytical elements and issues that need to be addressed during economic analysis prepared to meet the requirements of the Regulatory Flexibility Act (RFA) and E.O. 12866. Elements required for this type of analysis include an assessment of the following components:

- Potential changes in prices, quantities produced or consumed, fishing trips, etc. as a result of changing supply and demand conditions in the marketplace;
- Changes in revenues and operating costs for fisheries entities in response to changes in the market, biological conditions, and fishery management regulations;
- The affect of management regulations on fishing fleet size and composition; and
- The response of the stock or stocks of living marine resources to the proposed regulation.

Each of these four components will be assessed for each of the measures proposed under this action to determine the economic effects of the proposed action on the Northeast (NE) multispecies fishery. The analysis conducted will be described in detail in Section 2.3 below. The economic effects of the proposed action are considered in qualitative terms relative to annual impacts considered within the Final Supplemental Environmental Impact Statement (FSEIS) prepared for Amendment 13 and the Environmental Assessment (EA) prepared for Framework Adjustment 40-A (Framework 40-A) to the NE Multispecies Fishery Management Plan (FMP). The Final Regulatory Flexibility Analysis prepared for Amendment 13 and Framework 40-A are attached with this action.

2.1 Management Objectives

Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild stocks managed by the NE Multispecies FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Amendment 13 includes measures to minimize bycatch, protect essential fish habitat, and implement improved reporting and recordkeeping provisions. Amendment 13 also provides opportunities for vessels to offset some of the adverse economic impacts of days-at-sea (DAS) reductions through the implementation of a DAS Leasing and DAS Transfer Programs. Amendment 13 included a complex array of provisions designed to conserve fisheries resources managed under the NE Multispecies FMP and to provide opportunities for the fishing industry to offset some of the adverse economic and social impacts associated with the provisions implemented. For a complete discussion of the management objectives and the development of Amendment 13, refer to the proposed rule to implement measures contained within Amendment 13 as published in the Federal Register on January 29, 2004 (69 FR 4362). NOAA Fisheries published final regulations to implement Amendment 13 on April 27, 2004 (69 FRO 22906).

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. The NOAA Fisheries proposed measures to implement Framework 40-A on September 14, 2004 (69 FR 55388). NOAA Fisheries published an interim final rule implementing Framework 40-A measures on November 19, 2004 (69 FR 67780). These regulations became effective on November 19, 2004.

Due to the need to publish regulations implementing Amendment 13 by May 1, 2004, in accordance with results of the Settlement Agreement Among Certain Parties in the case of Conservation Law Foundation et al., v. Evans (Case No. 00CVO1134), Amendment 13 included a number of inadvertent errors and omissions from the regulations that would compromise the intent of Amendment 13 as approved by the Council. NOAA Fisheries identified a number of corrections of a technical nature and several more substantive revisions to the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A. This action includes corrections that are administrative in nature and intended to correct inaccurate references and other inadvertent errors, while other revisions are necessary to clarify specific regulations to maintain consistency with the intent of Amendment 13 and Framework 40-A. In addition, this action would clarify the NE multispecies regulations regarding whether a vessel must offload its catch upon ending a trip by requiring vessels to offload only species regulated by daily possession limits. These corrections and revisions have been included in the proposed action and would ensure that the regulations governing the NE multispecies fishery are consistent with the intent of Amendment 13 and Framework 40-A as approved by the Council. The substantive revisions are described in Section 2.3 below.

Due to the scale of Amendment 13 and Framework 40-A, the complexity of these provisions, the need to correct the regulations to clarify the intent of Amendment 13 and Framework 40-A, and the public interest in and the potential controversiality of some of the regulations that would be revised through this action, NOAA Fisheries proposes to make corrections to the final rule

implementing Amendment 13 and the interim final rule implementing Framework 40-A as described in further detail in Section 2.3, below.

2.2 Description of Affected Entities

The multispecies fishery in the Northeastern United States is made up of a commercial sector and a recreational sector, which target the twelve species that constitute the large-mesh multispecies management unit and the three small-mesh species managed as a separate multispecies unit. The NE multispecies fishery is generally conducted from Maine through New York by vessels using a range of gear types. Amendment 13 modified the permit categories for the fishery by eliminating the Fleet DAS permit categories and by modifying the previous open access handgear permit by creating an open access NE multispecies Handgear B permit and a limited access NE multispecies Handgear A permit. As a result, the fishery is currently divided into a total of six limited access permit categories, including the newly created limited access NE multispecies Handgear A permit implemented by Amendment 13. For this action, only the commercial sector is affected. Section 9.4 of the FSEIS prepared for Amendment 13 and Section 6.0 of the EA prepared for Framework 40-A contain a detailed description of the NE multispecies fishery.

The monkfish fishery is unique in that it is prosecuted differently in the North, including the Gulf of Maine (GOM) and Georges Bank (GB) regions, than in the South (within Southern New England and Mid-Atlantic regions). For this reason, along with biological considerations, the fishery is separated into two management units, the Northern Fishery Management Area and the Southern Fishery Management Area. Currently, limited access monkfish permits are divided into four categories in relation to vessel size and whether vessels have also been issued a limited access NE multispecies permit. Limited access monkfish Category A and B permits are those vessels that have not been issued a limited Access NE multispecies permit, while Category C and D permits are those vessels that have also been issued a limited access NE multispecies permit. Limited access monkfish Category C and D vessels have been considered as limited access NE multispecies vessels for this analysis. Section 6.4 of the monkfish FMP contains a detailed description of the monkfish fishery. Furthermore, the 2001 and 2002 SAFE Reports, which are available from the Council, contained an updated description of the fishery using the best and most current data available.

The proposed measures contained in this action would affect any vessel holding an active limited access NE multispecies permit or an open access NE multispecies Handgear B permit as well as those vessels issued an active limited access monkfish Category A or B permit. Vessels that have currently been issued a NE multispecies Handgear B permit were formerly issued an open access Handgear permit prior to the implementation of Amendment 13 and may qualify for a limited access Handgear A permit under Amendment 13. Data from the NE permit application database show that, as of October 4, 2004, there were 2,622 vessels issued a limited access NE multispecies permit or an open access NE multispecies Handgear B permit, including a total of 1,304 vessels issued an open access Handgear B permit. There were a total of 712 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 (SBA) and described in the RFA.

2.3 Description of Alternatives

The administrative nature of the revisions to the regulations proposed under this action do 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 to the NE Multispecies FMP. Therefore, no further alternatives have been developed that would support the objectives of this action to correct inadvertent errors and clarify specific regulations in the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A that would maintain consistency with the provisions under Amendment 13 and Framework 40-A as approved by the Council. When assessing the economic impacts of this action, comparison is made to the regulations currently in place. The current regulations could be considered a no action alternative under this action.

This action is not expected to change any of the impacts analyzed under Amendment 13 or Framework 40-A. However, if this action is not implemented, some adverse economic impacts may result as described for each of the substantive provisions specified below in Section 2.4. Because of the inadvertent omissions in the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A, some of the adverse economic impacts discussed below represent impacts that were not intended or previously considered in the economic analysis prepared for Amendment 13. For other provisions, failure to implement this action would result in the economic impacts addressed in the economic analysis prepared for Amendment 13.

2.4 Description of the Problem and Economic Impacts

As stated above, the final rule implementing Amendment 13 contained several inadvertent errors and omissions that are inconsistent with the intent of the FSEIS prepared for Amendment 13 and approved by the Council and partially approved by the Secretary of Commerce (Secretary) on March 18, 2004. Further, the interim final rule implementing Framework 40-A contained one inadvertent error that is inconsistent with the intent of the EA prepared for Framework 40-A. Finally, this action includes a measure that would clarify that a vessel is required to offload groundfish regulated by a daily landing limit. This action would correct these inadvertent errors and modify the current regulations to maintain consistency with Amendment 13 and Framework 40-A as specified below.

The discussion below includes a brief description of the problem and a qualitative description of the potential associated economic impacts for each proposed substantive revision under this action. For a more thorough description of the problem addressed by each proposed provision below, refer to the proposed rule for this action. This action contains administrative measures to correct errors found within Amendment 13 and Framework 40-A and does not materially affect the economic analysis developed for Amendment 13 or Framework 40-A. For a complete

description of the economic impacts resulting from the provisions contained within Amendment 13, refer to Section 5.4 of the FSEIS. A complete description of the economic impacts for measures contained within Framework 40-A can be found in Section 7.2.4 of the EA.

2.4.1 Eligibility for the Limited Access Handgear A Permit

Amendment 13 implemented a new limited access permit in the fishery with the development of the Handgear A permit. Under the current regulations implementing Amendment 13, it is possible that a vessel that has currently been issued a limited access NE multispecies or limited access monkfish Category A or B permit may also qualify for a limited access Handgear A permit. However, the regulations at § 648.4(a)(1)(I) state that a vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Further, the regulations at § 648.92(b) state that vessels currently possessing a limited access NE multispecies permit who also possess a valid limited monkfish permit must use a multispecies DAS concurrently with their monkfish DAS. Since a limited access Handgear A permit is not a DAS permit, this regulation may preclude limited access monkfish Category A and B vessels that qualify for a limited access Handgear A permit from obtaining such a permit. These regulations do not differentiate between a limited access NE multispecies DAS permit and a limited access Handgear A permit. As a result, this action would modify the regulations to allow vessels that currently possess a limited access NE multispecies permit who also qualify for a limited access Handgear A permit to chose to fish under either one or the other permit and allow limited access monkfish Category A or B vessels to concurrently be issued a limited access NE multispecies Handgear A permit, without affecting their monkfish permit category.

Not modifying the regulations to allow vessels to either chose to fish under the limited access NE multispecies Handgear A permit or be issued such a permit would impose further negative economic impacts on affected vessels through costs resulting from lost opportunities to fish. As a result of DAS reductions, many NE multispecies DAS vessels have been allocated zero Category A or B DAS and, therefore, may not fish for groundfish during the 2004 fishing year. Approximately 500 vessels would receive zero DAS under Amendment 13. A total of 47 vessels have been issued a limited access monkfish Category A or B permit. Some of these vessels also qualify for the limited access Handgear A permit. Allowing qualified NE multispecies and monkfish Category A and B vessels to fish under the limited access Handgear A provisions would enable these vessels to continue to fish for groundfish and land upwards of 300 lb of cod and the daily possession limits of haddock and yellowtail flounder, depending on the area fished. For vessels allocated zero Category A or B DAS, this represents a minimum increase in daily revenue, and therefore, profitability, of approximately \$420.00 over that which they would be able to earn under the NE multispecies DAS program, assuming the vessel lands the maximum of 300 lb of cod each day. Revenue would be further increased if the vessel also lands other species such as haddock (currently no trip limit), yellowtail flounder (trip limit determined by area fished), or other regulated species such as pollock that do not have specific trip limits. This action would allow qualified vessels the opportunity to increase their revenues through fishing under the limited access Handgear A provisions and therefore increase vessel revenues as stated above. This would, in turn, help avoid unnecessary economic hardship to these vessels, help mitigate the loss of revenue for affected fishing vessels and associated communities, and provide

for limited reduction in fleet size and capacity by allowing vessels to choose to fish under the limited access Handgear A permit instead of their limited access NE multispecies DAS permit. This provision would not affect the availability of fishery resources.

2.4.2 Vessel Monitoring System Power Down Exemption

Amendment 13 implemented a provision to allow vessels issued a limited access NE multispecies permit to turn off their VMS units for a minimum period of one calendar month by obtaining a letter of exemption. This measure provides an opportunity to reduce costs since a vessel operator can choose to turn his vessel's VMS off if exiting the fishery for an extended period. Although a period of one calendar month would facilitate the administration of the program, it represents an unnecessary burden on vessels. Changing the participation period to a minimum of 30 days would satisfy the intent of the measure as defined in Amendment 13 without unnecessarily limiting the operations of the fishing industry to the beginning of a calendar month. This action is administrative in nature. This action would allow for greater flexibility for vessels owners to take advantage of periods of low prices or fish availability to call out of the fishery or repair their vessel, thereby maximizing the economic efficiency of vessel operations. While this action increases flexibility, there is little or no effect on profitability. This action would reduce operating costs by minimizing the time out of the fishery to 30 days instead of a potentially longer period of time to comply with calendar month restrictions. This action would not affect fleet size, fleet composition, or the availability of fishery resources.

2.4.3 Prohibitions for Georges Bank Hook Sector Participants

Amendment 13 implemented provisions to allow for the formation of fishing sectors. The final rule implementing Amendment 13 included several prohibitions to enforce the regulations governing vessel and dealer operations, including prohibiting dealers from purchasing or receive species in excess of the possession limits. However, an approved sector operations plan may allow sector participants to possess and land fish in excess of specified possession limits. Accordingly, this prohibition would prevent sector vessels from landing, and dealers from receiving, legally caught and landed fish. This represents opportunity costs for both vessels and dealers. This action would modify this prohibition to allow dealers to receive species from sector participants consistent with an approved operations plan as specified in § 648.87.

This action would enable vessels to take advantage of high market prices when available; legally possess and land the amount of fish authorized under an approved sector operations plan; and avoid unnecessary violations, sanctions, and fines for authorized actions. This action may provide for a steady supply of fish, resulting in lower consumer costs and therefore higher consumer surplus. Landing fish in excess of the possession limits for non-sector vessels would allow for reduced operation costs, including lower fuel, food, bait and gear costs resulting from fewer trips necessary to land a sector's total allowable catch (TAC). In addition, considering that this action relieves a restriction, profitability is increased. This action would not have any adverse effects on fishing fleet size or composition and the availability of biological resources outside of the affects considered through the assessment of sector formation and operation plan submissions addressed through Amendment 13.

Amendment 13 approved the formation of the GB Cod Hook Sector. The prohibition at § 648.14(a)(156) states that vessels fishing under the GB Cod Hook Sector may not fish in the NE multispecies DAS program in a given fishing year. This prohibition is inconsistent with the intent of Amendment 13 to allow an approved sector to set their own rules to ensure that the TAC allocated to it will not be exceeded through the implementation of sector hard TACs or DAS allocations as described in Section 3.4.16.1 of the FSEIS to Amendment 13. This action would modify the prohibition at § 648.14(a)(156) to allow vessels participating in the GB Cod Hook Sector to fish under the NE DAS program authorized by their Sector operations plan approved by NOAA Fisheries on July 21, 2004 (69 FR 43535).

This action does not have any effects outside of those considered in the approval of the GB Cod Hook Sector submission as submitted to the Council and NOAA Fisheries and in the operations plan approved by NOAA Fisheries. Further, this action would not affect changes in price, quantities of fish available, vessel or dealer revenues, operating costs, or fleet size or composition. Allowing vessels to participate in the DAS program and TAC-based program as specified in an approved operations plan would provide flexibility for sector vessels to take advantage of market opportunities or fish availability in the most economically efficient manner.

2.4.4 Gillnet Tag Requirements for Trip Gillnet Vessels in the Georges Bank Regulated Mesh Area

Gillnet tag restrictions and a cap on the number of gillnets a Day gillnet vessel could use were first implemented under an interim final rule implementing Framework 20 to the FMP on April 1, 1997 (62 FR 15381). This action established a limit on the maximum number of gillnets that may be used through a cap on the number of gillnet tags that must be attached to each net. This cap was established at 160 tags based, in part, upon the current fishing practices at the time and a need to reduce effort in the groundfish fishery. These restrictions were extended to Trip gillnet vessels through the August 1, 2002 interim final rule (67 FR 50292). Amendment 13 increased the number of gillnets that Trip gillnet vessels may fish with in the GB Regulated Mesh Area (RMA) to 150 nets. However, this rule inadvertently failed to change the tagging requirements to maintain the maximum net tag cap of 160 net tags as implemented under Framework 20. Accordingly, this rule would correct this error by changing the tagging requirements for Trip gillnet vessels fishing in the GB RMA to require only one gillnet tag per net.

This action is administrative in nature and has little effect on profitability of vessels. However, allowing vessels to purchase up to 300 tags (2 tags per net for 150 nets) would result in an increased operational cost to vessels for the purchase of these tags that was not anticipated in the development of Amendment 13. This cost would amount to an additional \$180.00 (150 additional tags at \$1.20 each) for each vessel utilizing the maximum number of nets in this area. In addition, requiring two tags per net necessitates additional time spent attaching these tags to the increased number of nets that may be used. This represents an additional burden to vessels in the form of lost time to conduct fishing operations without a corresponding benefit in revenue. Additional tags could result in increased landings due to the potential for more nets to be used, but would not affect fleet size or composition. Finally, these tags would not affect the

availability of fisheries resources. This action would avoid the additional economic impacts listed above and ensure that the biological and economic impacts of the changes to the gillnet regulations implemented under Amendment 13 and analyzed in the FSEIS would be realized.

2.4.5 Gulf of Maine Rolling Closure Areas II and III

Regulations implementing the seasonal GOM Rolling Closure Areas were originally published on May 5, 1999 (64 FR 24066), as part of the final rule implementing regulations in Framework Adjustment 27 of the NE Multispecies FMP. The August 1, 2002, interim final rule retained the original GOM Rolling Closure Areas II and V, but modified the GOM Rolling Closure Areas I, III, and IV. This rule contained an error in the coordinate points for the GOM Rolling Closure Area II. A March 25, 2003 final rule, amendment to an interim final rule (68 FR 14347), corrected the coordinate points for the GOM Rolling Closure Area II, but failed to correct the label for coordinate point GM9 to GM10. Another error in the coordinate points for the GOM Rolling Closure Area III was discovered upon the implementation of Amendment 13 in the label for coordinate point GM10. This action would correct the inaccurate coordinate points for both areas by replacing point GM9 with point GM10 for the GOM Rolling Closure Area II and replacing point GM10 with point GM18 for the GOM Rolling Closure Area III. This action is purely administrative in nature and does not have any economic effects.

2.4.6 GB Seasonal Closure Area

The GB Seasonal Closure Area was first implemented through Framework 33 to the NE Multispecies FMP (April 24, 2000, 65 FR 21658). This closure area stretches from the eastern shore of Cape Cod to the western boundary of Closed Area II and prohibits vessels capable of catching NE multispecies from fishing in this area from May 1 through May 31.

The management measures contained in Framework 40-A were implemented on November 19, 2004. Framework 40-A included several new programs that allow vessels to target healthy stocks using a Category B Regular DAS, including the Eastern U.S./Canada Haddock Special Access Program (SAP) Pilot Program. The Eastern U.S./Canada Haddock SAP Pilot Program allows vessels to fish for haddock in an area bordering the western edge of Closed Area II and a small portion of the northern tip of the closed area from May 1, through December 31. The regulations implementing Framework 40-A inadvertently excluded a provision that would exempt vessels fishing under this SAP from the GB Seasonal Closure Area. This omission is inconsistent with the Council intent when developing Framework 40-A measures. Therefore, to correct this oversight, this action would revise the regulations at § 648.81(g)(2) to include a provision that would exempt vessels fishing under the Eastern U.S./Canada Haddock SAP Pilot Program provisions specified at § 648.85(b)(8) from the GB Seasonal Closure Area.

Extensive closure areas during the month of May prohibit vessels from fishing throughout most of the inshore Gulf of Maine and Georges Bank. This generally results in higher fish prices due to decreased supply. Therefore, allowing NE multispecies vessels to fish in this SAP in May as intended in Framework 40-A and proposed in this action would allow vessels to conduct fishing

operations in the most economically efficient manner by taking advantage of higher market prices during the month of May.

Failure to allow vessels to fish in this area in May as intended in Framework 40-A and proposed in this action would result in opportunity costs to the fishing industry. This is because the current regulations would prohibit vessels from fishing in the Eastern U.S./Canada Haddock SAP Pilot Program during the month of May due to the GB Seasonal Closure Area. This would limit the ability of these vessels to fully harvest the total allowable catch (TAC) allocated to the SAP and the Eastern U.S./Canada Area. This, in turn, could reduce the potential additional revenue derived from fishing in this SAP in May.

Section 5.2.4.6.3 of the FSEIS for Amendment 13 indicates that when fishing operations in the Eastern U.S./Canada Area, including portions of the area contained within the GB Seasonal Closure Area, are constrained by a hard TAC, fishing mortality for GB cod, haddock, or yellowtail flounder should not increase above acceptable limits. Framework 40-A build upon the analysis prepared for Amendment 13, allowing vessels to fish in this area during the month of May under the provisions of the Eastern U.S./Canada Haddock SAP Pilot Program, including a hard TAC for GB cod, haddock, and yellowtail flounder. Since this action maintains the hard TAC's for GB cod, haddock, and yellowtail flounder, revising the regulations under this action would not change the impacts analyzed in the FSEIS for Amendment 13. Therefore, since stock conditions are not expected to change by allowing vessels to fishing under the provisions of this SAP, there would be no additional economic impacts resulting from changes in stock abundance from this action.

This action does not have any effects outside of those considered in the EA prepared for Framework 40-A. Further, this action would not affect changes in price, quantities of fish available, dealer revenues, operating costs, or fleet size or composition. Allowing vessels to participate in the Eastern U.S./Canada Haddock SAP Pilot Program during the month of May would allow NE multispecies vessels to fish in this highly productive area and take advantage of market opportunities.

2.6.7 Closed Area II Habitat Closure Area

The FSEIS prepared for Amendment 13 included several alternatives for the Closed Area II (CA II) Habitat Closure Area. The FSEIS indicated that the Council selected Habitat Alternative 10B instead of Habitat Alternative 10A. However, in both the proposed and the final rule for Amendment 13, the coordinates for the CA II Habitat Closure Area contained within these rules reflected the coordinates under Habitat Alternative 10A of the FSEIS, instead of the correct coordinates defined under Habitat Alternative 10B. The proposed action would correct this error and replace the inaccurate coordinates for Habitat Alternative 10A with the correct coordinates for Habitat Alternative 10B from the FSEIS.

Current regulations at § 648.81(b)(1) prohibit vessels from entering, fishing, or being in CA II except as specified in § 648.81(a)(2). In addition, the regulations at § 648.81(h)(1) prohibit vessels fishing with bottom-tending mobile gear from entering, fishing, or being in the CA II

Habitat Closure Area. None of the vessels exempted under § 648.81(a)(2) target regulated groundfish using bottom-tending mobile gear. Therefore, these vessels are not affected by this regulation and may fish in the CA II Habitat Closure Area. As a result, the inadvertent error specifying the wrong coordinates for the CA II Habitat Closure Area in the proposed and final rules implementing Amendment 13 has not affected fishing operations of vessels impacted by this action. Since this action proposes no changes to current vessel operations, does not affect fishery resource availability, and is purely administrative in nature, there are no expected economic affects from this action beyond that which was considered in Amendment 13. This action merely maintains consistency with the provisions intended to be implemented for under Amendment 13.

2.4.8 DAS Leasing and DAS Transfer Restrictions

Amendment 13 implemented a DAS Leasing Program and a DAS Transfer Program to temporarily lease or permanently transfer DAS in the NE multispecies fishery. These programs were intended to provide flexibility to the fishing industry to help mitigate some of the adverse economic impacts resulting from DAS reductions under Amendment 13. Both of these programs contained provisions restricting leasing and transferring DAS between vessels of different sizes to maintain the conservation objectives of Amendment 13. Section 3.4.7.2 of the FSEIS states that a Lessor may not lease DAS to any vessel with a main engine horsepower rating that is 20 percent more than that of the Lessor's vessel and may not lease DAS to any vessel that is 10 percent more than that of the Lessor vessel's length overall (LOA). This language is mirrored in Section 3.5.2.1 of the FSEIS in relation to the DAS Transfer Program. These size restrictions are based upon an established and accepted method for limiting effort increases resulting from vessel replacements as specified at § 648.4(a)(1)(i)(E). These vessel replacement size restrictions have been in place since the implementation of Amendment 5 to the NE Multispecies FMP on March 1, 1994 (59 FR 9872). However, both the proposed rule and the final rule for Amendment 13 indicate that a Lessor may only lease or transfer DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel and a baseline length overall (and gross tonnage for DAS transfers) that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For example, under this restriction as specified in the proposed and final rules for Amendment 13, a Lessor vessel with a baseline LOA of 100 feet would only be allowed to lease DAS to a Lessee vessel with a baseline LOA of no greater than 20 feet. This is not consistent with the intent of the Council as specified in the FSEIS for Amendment 13 or the vessel upgrade provisions specified at § 648.4(a)(1)(E). As a result, this action would correct the regulations restricting the size of the Lessee and Transferee vessels to maintain consistency with the intent of Amendment 13 as outlined in the FSEIS.

This action is administrative in nature. This action corrects typographic errors that, if left uncorrected, would affect the interpretation of the regulation as intended. This action would correct these errors to implement regulations that the fishing industry is familiar with from the vessel replacement provisions and that is consistent with their understanding of how the upgrade provisions were approved by the Council. Using the example cited above, vessels would only be able to lease or transfer DAS to vessels substantially smaller than their baselines and would only

be able to lease or transfer DAS from a vessel substantially larger than their baselines. This would essentially remove the opportunity for vessels to transfer or lease DAS and would, therefore, eliminate the potentially positive economic impacts of the program, as discussed in the FRFA prepared for Amendment 13.

2.4.9 Eastern U.S./Canada Management Area Gear Requirements

The final rule implementing Amendment 13 included gear restrictions for vessels targeting regulated groundfish within the Eastern U.S./Canada Management Area. These gear restrictions were intended to reduce cod bycatch within this area while allowing vessels to target the more healthy GB haddock and GB yellowtail flounder stocks. The final rule required that vessels fishing within this area use a haddock separator trawl or one of two types of flounder trawl nets as defined at § 648.85(a)(3)(iii).

An informal trawl workshop was held at the Northeast Regional Office on May 27, 2004, to solicit input on the above gear definitions specified in Amendment 13. This workshop resulted in a number of suggestions to refine these definitions based on input from the participants as follows:

- For the haddock separator trawl defined at § 648.85(a)(3)(iii)(A), modify the separator trawl description to state that the separator panel shall be constructed such that the forward edge of the panel is 80-85 and 90-95 percent of the after edge of the first bottom belly of the net where the panel is attached for both two-seam and four-seam bottom trawl nets, respectively;
- For both flounder net descriptions specified at § 648.85(a)(3)(iii), remove the language restricting the vertical dimension of the forward wing end to 3.0 feet;
- For the flounder trawl net specified at § 648.85(a)(3)(iii)(B)(1), remove the prohibition on floats in the center 50 percent of this net; and
- For the flounder net defined at § 648.85(a)(3)(iii)(B)(2), insert language requiring that the top panel of the net contains a section of mesh at least 10-ft (3.05 m) long and stretching from selvedge to selvedge composed of at least 12-in (30.5-cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

The proposed action to correct the position of the haddock separator panel would ensure that the haddock separator trawl would perform correctly under normal operations. This would allow vessels to target healthy haddock stocks without compromising the ability of the net to reduce cod bycatch. This action would not result in changes in prices, decreased availability of fisheries resources; increased compliance costs; changes in vessel operations; or changes in fleet size or composition. In the short-term (i.e., 2005 fishing year), these revisions may actually extend the time in which the GB cod TAC is available within the Eastern U.S./Canada Haddock SAP Pilot Program implemented under Framework Adjustment 40-A and the remaining Eastern U.S./Canada Management Area by ensuring that the net performs as intended to reduce cod bycatch. This may result in sustained cod market availability and therefore sustained prices and revenues from cod landed for the 2005 fishing year and potentially avoid imposing restrictive trip limits or area closures should the GB cod TAC be reached or exceeded. Exceeding the cod

TACs may jeopardize the rebuilding schedule of GB cod, resulting in long-term opportunity costs caused by reductions in future GB cod TAC and associated possession/landing limits.

The removal of the restrictive limitations on wing ends and the prohibition of floats in the center portion of the headrope for the flounder trawl nets would not compromise the ability of these nets to reduce bycatch of GB cod. According to industry participants in the May 27, 2004, workshop, these provisions unnecessarily and negatively affect trawl performance. Eliminating these restrictions would minimize efforts to modify existing nets to maintain compliance with these revised gear requirements. Therefore, for those vessels that have not modified their nets to comply with this provision, no further compliance costs are incurred. For those vessels that have modified their nets to comply with such provisions, the costs incurred stem mainly from a 3-foot length of chain commonly attached to the top and bottom portions of the wing ends to ensure a maximum vertical height of 3-feet. This is considered the most common means of compliance, although other vessels have modified their wings by lengthening them until the forward wing edge is only 3-feet in height. The additional cost that from this modification is dependent upon the specific orientation of a vessel's gear and cannot be generalized or estimated at this time. If this action were implemented, costs associated with the modification of the wing edge would be incurred unnecessarily between the date Amendment 13 became effective (May 1, 2004) and the date this action would be implemented.

Twelve-inch (30.5-cm) square mesh was not commercially available at the time Amendment 13 was implemented. Larger square mesh was available, but at a greater cost. As a result, gear manufacturers have had to purchase more expensive 12-inch diamond mesh and reorient it to meet the square mesh requirements. This is not only an additional expense to comply with the current regulations, but it also results in a weaker net design that may change shape during normal fishing operations. As a result, the proposed gear modifications would allow vessels to use the cheaper and more effective diamond mesh within the top panels of flounder trawl nets required in the Eastern U.S./Canada Management Area. In addition, by removing the language specifying the square of the top panel of the net and replacing it with more simplified language requiring a 10 foot long section of at least 12-inch mesh in the top panel of the net, a more universal net description is defined that can more easily be adapted to the diversity of flounder nets used by vessels throughout the NE multispecies fishery. This may result in further compliance costs to vessels intending to fish in the Eastern U.S./Canada Management Area, especially if modifications to fishing gear to comply with the provisions as originally implemented in Amendment 13 differ from those that would be required under this action. However, the use of cheaper 12-inch diamond mesh and the elimination of the confusing reference to the square in the top panel of the net may allow vessel owners/operators to modify their gear themselves, thereby reducing further compliance costs associated with this action.

Overall, this action would not affect prices of fish, vessel revenues caused by market fluctuations, fleet size or composition, or the availability of fisheries resources. The original economic impacts for compliance with these provisions have been estimated in the economic analysis prepared for Amendment 13 and attached with this submission. This action would, however, reduce potential vessel compliance costs by simplifying the gear requirements for the Eastern U.S./Canada Management Area.

2.4.10 Closed Area II Yellowtail Flounder Special Access Program Observer Declaration

The final rule implementing Amendment 13 included an administrative measure for the purpose of selecting vessels for observer coverage. Vessel owners who choose to fish in either of the two U.S./Canada Areas, including the Closed Area II Yellowtail Flounder SAP, must provide notice to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers. A notification period of five working days was implemented under Amendment 13. However, a notification period of 72 hours would provide vessels greater flexibility to react to contingencies such as weather developments without compromising the ability of the NMFS Observer Program to deploy sufficient observers as required.

On June 14, 2004, a final rule, regulatory amendment was published in the Federal Register (69 FR 32900) correcting this regulation for the U.S./Canada Area at § 648.85(a)(3)(ii). However, this rule inadvertently did not correct the observer declaration for vessels fishing in the Closed Area II Yellowtail Flounder SAP as specified at §648.85(b)(3)(v). Therefore, this final rule reduces the notification time for groundfish DAS vessels prior to departure of a trip into the Closed Area II Yellowtail Flounder SAP from five working days to 72 hours. This revision is purely an administrative measure that would not impose any additional measures than were implemented in Amendment 13. Accordingly, this revision would not affect market prices, quantities produced or consumed, vessel revenues or operating costs, fleet size, or stock status.

2.4.11 Small-mesh Multispecies Possession Restrictions

On March 29, 2000, NMFS published the final rule implementing revised possession limits for small-mesh multispecies contained in Amendment 12 to the NE Multispecies FMP (65 FR 16766). On the same day, NMFS published the final rule implementing provisions contained in Framework Adjustment 32 (Framework 32) to the NE Multispecies FMP (65 FR 16780). Framework 32 revised the regulations at § 648.86(d) governing small-mesh multispecies, superceding the regulations implemented under Amendment 12. On June 19, 2000, the final rule to implement provisions under Framework Adjustment 13 to the Atlantic Sea Scallop FMP and Framework Adjustment 34 to the NE Multispecies FMP (Frameworks 13/34) (65 FR 37903). However, when revising the regulations governing small-mesh multispecies possession limits at § 648.86(d)(1)(i) through (iii), the final rule for Frameworks 13/34 inadvertently modified the regulations implemented under Amendment 12 rather than the regulations implemented under Framework 32 that superceded those in Amendment 12. This action would correct the regulations at § 648.86(d) to accurately reflect the regulations implemented under Framework 32 as well as any revisions made to these regulations under Amendment 13. This revision is purely an administrative measure that would not affect market prices, quantities produced or consumed, vessel revenues or operating costs, fleet size, or stock status.

2.4.12 Yellowtail Flounder Possession Limit Restrictions

The regulations at § 648.86(g)(1) and (2) require that vessels fishing within either the Cape Cod (CC)/GOM Yellowtail Flounder Area or the Southern New England (SNE)/Mid-Atlantic (MA)

Yellowtail Flounder Area possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. The landing authorization letters specify seasonal landing limits for each area. Vessels possessing such authorization letters may fish outside of the CC/GOM or SNE/MA Yellowtail Flounder Areas, provided the vessels comply with the possession/landing limits specified in the authorization letter during the period of participation. Amendment 13 implemented the U.S./Canada Management Area and the Closed Area II Yellowtail Flounder SAP to allow U.S. vessels to fish for shared yellowtail flounder resources within these areas. These provisions established a possession limit of 30,000 lb per trip for vessels fishing within the Closed Area II Yellowtail Flounder SAP, while vessels fishing outside of the SAP within the U.S./Canada Management Area are not restricted by daily or trip limits for yellowtail flounder.

Vessels issued a possession/landing authorization letter specified above who wish to participate in the U.S./Canada Management Area or the Closed Area II Yellowtail Flounder SAP would be required to abide by the restrictive yellowtail flounder possession limits of the CC/GOM or SNE/MA Yellowtail Flounder Areas when operating within the U.S./Canada Management Area during the participation period of the authorization letter. This could lead to increased discards to comply with the restrictive possession limits. Vessels intending to fish in the U.S./Canada Management Area could cancel this authorization letter following a minimum participation period of seven day, imposing unnecessary restrictions on vessel activities, including causing difficulties in planning fishing trips. This action proposes to modify the yellowtail flounder possession limit restrictions by allowing vessels possessing a yellowtail flounder possession/landing authorization letter to abide by the less restrictive yellowtail flounder possession limits of the U.S./Canada Management Area and the Closed Area II Yellowtail Flounder SAP when operating within these areas as specified in §§ 648.85(a)(3) and 648.85(b)(3).

This action could encourage vessels to fish in the U.S./Canada Management Area, including the associated SAP's, under the less restrictive trip limits. According to the analysis conducted for Amendment 13, this could reduce yellowtail flounder bycatch in the CC/GOM and SNE/MA areas and therefore mortality on these stocks. However, this could also lead to more yellowtail flounder being landed at one time due to the larger landing limits of the U.S./Canada Management Area and the absence of any delay to cancel a vessel's LOA for the CC/GOM or SNE/MA areas. This, in turn, may depress yellowtail flounder prices and potentially reduce vessel revenue. However, the degree of this influx of additional yellowtail flounder is likely to be extremely low based solely on this minor revision. The added flexibility in vessel operations could allow vessels to more effectively take advantage of periods of higher market prices and stock availability.

2.4.13 Offloading Requirement

The current regulations are unclear as to whether a vessel is required to offload its catch upon the completion of a fishing trip. While the current regulations define when a fishing trip ends and the possession restrictions for particular species, there are currently no regulations that specifically require vessels to offload their catch prior to leaving port for a subsequent fishing

trip. This action proposes to clarify the regulations at § 648.86 by 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., lbs per DAS) prior to leaving port and beginning a subsequent fishing trip. Offloading species for which there is a daily landing limit is necessary to effectively enforce these limits.

Under the current interpretation of the regulations, vessels are required to offload all species upon the completion of their trip. This could result in opportunity costs for vessels that have to end their trip early due to unforeseen circumstances. This is especially true in circumstances that force a vessel to enter a port that may not have either the capacity to offload species or the market available to sell landed fish. Opportunity costs arise by delaying a vessel's ability to begin a subsequent trip until all fish are offloaded. Allowing vessels to retain fish that are regulated by overall trip limits on subsequent trips enables vessels to operate in a more economically efficient manner by reducing time in port and allowing vessels opportunity to fully harvest available trip limits.

This action does not have any effects outside of those previously considered in the FSEIS prepared for Amendment 13 as it would not change the DAS allocations or the daily and trip possession restrictions. Further, this action would not affect changes in price, quantities of fish available, dealer revenues, or fleet size or composition. Allowing vessels to only offload species regulated by daily possession limits could potentially reduce vessel opportunity costs caused by delays for offloading all species on board prior to a subsequent trip.

2.4.14 GB Cod Hook Sector Area Coordinates

Both the proposed rule and the final rule implementing Amendment 13 incorrectly specified the coordinates defining the GB Cod Hook Sector Area. Within both rules, the latitude and longitude for each coordinate point defining this area were inadvertently reversed such that the latitude of each coordinate point appeared in the longitude column and the longitude of each coordinate point appeared in the latitude column. Accordingly, this rule would amend the final rule implementing Amendment 13 by correcting the erroneous latitude and longitude for each coordinate point for the GB Cod Hook Sector Area. These erroneous coordinates would require vessels to fish in the middle of Greenland. This is an inadvertent error that would prevent Sector vessels from fishing anywhere.

This revision is necessary to ensure that the GB Cod Hook Sector has the opportunity to harvest regulated multispecies as intended under Amendment 13. Without this revision, the quantity of fish available would decrease, but may increase the price of fish, most notably GB cod. This would also completely eliminate Sector vessel revenue based on groundfish and would reduce the size of the Sector fleet as vessels would not be allowed to fish for multispecies outside of this area. This action revising this error would allow the Sector to realize the economic benefits of forming their Sector as analyzed in Amendment 13.

3.0 Evaluation of Significance Under E.O. 12866

E.O. 12866 indicates that a “significant regulatory action” is an action that may result in the following criteria being met:

- The action would have an annual effect on the economy of \$100 million or more or would adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- The action would create serious inconsistencies with an action of another agency;
- The action would materially alter budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- The action would raise novel legal or policy issues.

Section 2.0 above contains information concerning the fishery, the nature of the problem being addressed, and a qualitative discussion of the economic impacts associated with each provision proposed to be revised under this action. The proposed action does not constitute a significant regulatory action under E.O. 12866. It will not have an annual effect on the economy of more than \$100 million. The provisions specified for modification above affecting the NE multispecies and monkfish fisheries are not expected to have any additional economic impact beyond that analyzed through the FSEIS for Amendment 13 or the EA prepared for Framework 40-A. This action merely corrects inadvertent errors contained in the final rule implementing Amendment 13 and the interim final rule implementing Framework 40-A and proposes measures that would either modify the regulations implementing Amendment 13 or Framework 40-A or insert specific provisions inadvertently omitted from the final rule to maintain consistency with the FSEIS and EA, respectively, as approved by the Council and partially approved by the Secretary of Commerce. The action will also not adversely affect, in the long-term, competition, jobs, the environment, public health or safety, or state, local or tribal government communities. Secondly, the action will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Thirdly, the action will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of their participants. Finally, the action does not raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866.

4.0 Initial Regulatory Flexibility Analysis

The following sections contain analyses of the effect of the proposed action on small entities in accordance with Section 603(b) of the Regulatory Flexibility Act. A statement of the legal basis for and the objectives of this proposed rule are described in Section 2.1 above. A description and estimate of the number of small entities affected by this action is described in Section 2.2 above. The impacts to these small entities are described in Section 2.4 above and an explanation of the determination whether this action would impose “significant economic impacts” is described in Section 3.0 above.

4.1 Reporting, recordkeeping and other compliance requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements than those previously assessed under Amendment 13 or Framework 40-A. The

reporting and recordkeeping requirements contained in the FMP were approved under OMB control numbers 0648-0018, 0648-0202, 0648-0212, 0648-0229, 0648-0350, 0648-0475, 0648-0489, 0648-0501, and 0648-0502.

4.2 Duplication, overlap or conflict with other Federal rules

The proposed rule does not duplicate, overlap or conflict with other Federal rules.

4.3 Economic Impacts on Small Entities Resulting From the Proposed Action

Section 5.4 of the FSEIS prepared for Amendment 13 provides an analysis of the economic impacts resulting from the measures implemented under Amendment 13. Section 7.2.4 of the EA prepared for Framework 40-A describes the economic impacts resulting from the measures included in Framework 40-A. This action references and builds upon the analysis 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.

Issues relevant to this action and assessed within the analysis conducted for Amendment 13 include: Gear restrictions for vessels operating in the Eastern U.S./Canada Area and the limited access Handgear A provisions. The analysis for Amendment 13 specified that the average cost for vessels fishing in the eastern US/Canada Management Area to replace their nets with a flatfish net as defined in Amendment 13 was estimated to be \$7500, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately \$747. The modification of an existing flatfish net to meet the requirements of the final rule is estimated to be \$550. A preliminary assessment of qualification for a limited access Handgear A permit indicates that approximately 150 vessels would qualify for a limited access Handgear A permit. Analysis indicated that 519 vessels would receive a zero baseline allocation under Amendment 13.

Issues relevant to this action and assessed by the economic impact analysis prepared for Framework 40-A include the potential revenue resulting from trips into the Eastern U.S./Canada Haddock SAP Pilot Program. Based on previous vessel operations in the area of this SAP and affected by the GB Seasonal Closure Area, vessel revenue averaged \$32,000 per trip into this SAP. Average daily revenues for trips into this SAP area ranged from \$3,000 per day for smaller vessels to \$4,700 per day for larger vessels.

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. The analysis presented in Section 3.0 above indicates that individual vessels would be likely to increase profitability under most measures proposed in this action. Under this proposed action, vessels would be able to select whether they wish to fish under the NE multispecies DAS program or fish under the limited access Handgear A permit, if qualified, thus increasing revenues and profitability for vessels involved. For vessels qualified for the limited access Handgear A permit and allocated zero Category A DAS, this action would enable these vessels to continue to fish in the NE

multispecies fishery by choosing to fish under the provisions of the limited access Handgear A permit instead of the DAS program. Similarly, this action would allow limited access monkfish Category A and B 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 vessels also possessing limited access monkfish permits would allow these vessels additional opportunities to fish, thereby increasing vessel revenue. In addition, this action would allow vessels fishing in the U.S./Canada Management Area to fish in both the Eastern and Western U.S./Canada Management Area on the same trip and to transit the CA II Yellowtail Flounder SAP, if applicable, allowing for more fishing opportunities on the same trip and potentially consolidating operation costs by enabling more efficient trips into the U.S./Canada Management Area and, thereby, increasing profitability by enabling vessels to increase revenue and reduce food, fuel, and other costs. This action would also eliminate some of the more restrictive gear requirements for vessels operating in the Eastern U.S./Canada Management Area. These restrictions pose further economic costs for gear modifications and reduced gear efficiency to vessels without effectively increasing the conservation benefits of the gear requirements. The elimination of these gear requirements would reduce these unnecessary costs and therefore increase vessel revenue. Finally, this action would also revise the regulations to allow vessels to fish in the Eastern U.S./Canada Haddock SAP Pilot Program during the month of May. This is likely to increase vessel revenue, particularly for smaller vessels, as analyzed in the EA for Framework 40-A.