

FEDERAL REGISTER prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the Council: for cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

[69 FR 22984, Apr. 27, 2004, as amended at 71 FR 62196, Oct. 23, 2006; 72 FR 73281, Dec. 27, 2007; 75 FR 18348, Apr. 9, 2010; 76 FR 23076, Apr. 25, 2011; 76 FR 42587, July 19, 2011; 77 FR 25630, May 1, 2012; 77 FR 26125, May 2, 2012; 78 FR 26164, 26208, May 3, 2013]

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

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

(a) *NE multispecies*. For the purpose of this paragraph (a), the term “NE multispecies fishery” is defined as common pool vessels, sector vessels, and private recreational and charter/party vessels, as defined in this part; the term “NE multispecies commercial fishery” is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term “NE multispecies recreational fishery” is defined as private recreational vessels and charter or party boats, as further defined in this part.

(1) *NE Multispecies annual SAFE Report*. The NE Multispecies Plan Development Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report

shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review*. (i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information.

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the

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projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; and designating habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the

use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

(iv) The Council shall review the ACLs 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 objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with 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 applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the FEDERAL REGISTER as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the

recommended management measures should be published as a final rule, the action will be published as a final rule in the FEDERAL REGISTER, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark

assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(4) *Process for setting ABCs and ACLs—*
 (i) *ABC/ACL recommendations.* As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(6) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(ii) *Timing.* The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law. After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner

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consistent with the Administrative Procedure Act.

(iii) *ABC/ACL distribution.* The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (H) of this section. For transboundary stocks managed by the Understanding, pursuant to §648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (H) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP.* The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

(B) *Regulated species or ocean pout catch by exempted fisheries.* Unless otherwise specified in paragraphs (a)(4)(iii)(F) or (G) of this section, regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in §648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework

adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. The Atlantic sea scallop fishery shall be allocated 40 percent of the GB yellowtail flounder ABC (U.S. share only) in fishing year 2013, and 16 percent in fishing year 2014 and each fishing year thereafter, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section. Based on information available, NMFS shall project the expected scallop fishery catch of GB and SNE/MA yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB or SNE/MA yellowtail flounder sub-ACL, the Regional Administrator may reduce the pertinent scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised GB or SNE/MA yellowtail flounder groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(iii)(H)(I) of this section.

(D) *Haddock catch by the Atlantic herring fishery.* One percent each of the GOM haddock and GB haddock ABC (U.S. share only) shall be allocated to the Atlantic herring fishery, pursuant to the restrictions in §§648.85(d) and 648.86(a)(3), and pursuant to the process

for specifying ABCs and ACLs described in paragraph (a)(4) of this section. An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(E) *SNE/MA windowpane flounder catch by the Atlantic sea scallop fishery.* SNE/MA windowpane flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. The Atlantic sea scallop fishery shall be allocated 36 percent of the SNE/MA windowpane flounder ABC in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(F) *SNE/MA windowpane flounder catch by exempted fisheries.* SNE/MA windowpane flounder catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). The specific value of the sub-components of the ABC/ACL for SNE/MA windowpane flounder distributed to these other fisheries shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section.

(G) *GB yellowtail flounder catch by small mesh fisheries.* GB yellowtail flounder catch by bottom trawl vessels fishing with a codend mesh size of less than 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify

ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(H) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (G) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(H).

(I) *Recreational allocation.* Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(H)(I) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(i) *Stocks allocated.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(I), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(ii) *Process for determining if a recreational allocation is necessary.* A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the

overall catch for a particular stock of regulated species or ocean pout.

(2) *Commercial allocation.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(2), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(H)(1) of this section, shall be divided between vessels operating under approved sector operations plans, as described at §648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to §648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to §648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(H)(2) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in §648.82(n), or whether sector ACE overages must be deducted, pursuant to §648.87(b)(1)(iii).

(3) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) *ACL monitoring—(A) Landings.* For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and

other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to §648.87(b)(1)(v)(A).

(v) *Adjustments to ACLs.* The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) through (G) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(H) of this section, then the applicable a.m. for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A)

through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(2) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the por-

tion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(H)(2) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(I) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(I) of this section, then no AMs shall take effect for the recreational fishery.

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, or Atlantic wolffish was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

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(1) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(I), by any amount greater than the management uncertainty buffer, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in §648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in §648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in §648.84(e); or any other gear approved consistent with the process defined in §648.85(b)(6). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in §648.80(b)(3). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(2) of this section, the applicable AM Area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of overages of both the groundfish fishery and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a

sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at §648.90(a)(4), and AMs are otherwise developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to §648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. Latitude	W. Longitude
1	41°10'	67°40'
2	41°10'	67°20'
3	41°00'	67°20'
4	41°00'	67°00'
5	40°50'	67°00'
6	40°50'	67°40'
1	41°10'	67°40'

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. Latitude	W. Longitude
1	42°10'	67°40'
2	42°10'	67°20'
3	41°00'	67°20'
4	41°00'	67°00'
5	40°50'	67°00'
6	40°50'	67°40'
1	42°10'	67°40'

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. Latitude	W. Longitude
1	41°10'	71°30'
2	41°10'	71°20'
3	40°50'	71°20'
4	40°50'	71°30'
1	41°10'	71°30'

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA 1

Point	N. Latitude	W. Longitude
1	41°10'	71°50'
2	41°10'	71°10'
3	41°00'	71°10'
4	41°00'	71°20'
5	40°50'	71°20'
6	40°50'	71°50'
1	41°10'	71°50'

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SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. Latitude	W. Longitude
1	(¹)	73°30'
2	40°30'	73°30'
3	40°30'	73°50'
4	40°20'	73°50'
5	40°20'	(²)
6	(³)	73°58.5'
7	(⁴)	73°58.5'
8	40°32.6' (⁵)	73°56.4' (⁵)
1	(¹)	73°30'

¹The southern-most coastline of Long Island, NY at 73°30' W. longitude.

²The eastern-most coastline of NJ at 40°20' N. latitude, then northward along the NJ coastline to Point 6.

³The northern-most coastline of NJ at 73°58.5' W. longitude.

⁴The southern-most coastline of Long Island, NY at 73°58.5' W. longitude.

⁵The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(2) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(2), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented and any vessel issued a NE multispecies permit or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in §648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in §648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in §648.84(e); or any other gear approved consistent with the process defined in §648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut

Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with §648.23(b), or such gear was approved consistent with the process defined in §648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at §648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to §648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC HALIBUT TRAWL GEAR AM AREA

Point	N. Latitude	W. Longitude
1	42°00'	69°20'
2	42°00'	68°20'
3	41°30'	68°20'
4	41°30'	69°20'

ATLANTIC HALIBUT FIXED GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1	42°30'	70°20'
2	42°30'	70°15'
3	42°20'	70°15'
4	42°20'	70°20'

ATLANTIC HALIBUT FIXED GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1	43°10'	69°40'
2	43°10'	69°30'
3	43°00'	69°30'
4	43°00'	69°40'

(3) *Atlantic wolffish.* If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(3), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph

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(a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in §648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in §648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in §648.84(e); or any other gear approved consistent with the process defined in §648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with §648.23(b), or such gear was approved consistent with the process defined in §648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at §648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to §648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC WOLFFISH TRAWL GEAR AM AREA

Point	N. Latitude	W. Longitude
1	42°30'	70°30'
2	42°30'	70°15'
3	42°15'	70°15'
4	42°15'	70°10'
5	42°10'	70°10'
6	42°10'	70°20'
7	42°20'	70°20'
8	42°20'	70°30'

ATLANTIC WOLFFISH FIXED GEAR AM AREA 1

Point	N. Latitude	W. Longitude
1	41°40'	69°40'
2	41°40'	69°30'
3	41°30'	69°30'
4	41°30'	69°40'

ATLANTIC WOLFFISH FIXED GEAR AM AREA 2

Point	N. Latitude	W. Longitude
1	42°30'	70°20'
2	42°30'	70°15'
3	42°20'	70°15'
4	42°20'	70°20'

(4) [Reserved]

(E) [Reserved]

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (G) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the

fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is exceeded.* At the end of the NE multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in §648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the FEDERAL REGISTER, accordance with the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

(6) *Specifications process*—(i) *PDT recommendations.* Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines.* As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations.* Based on the PDT's recommendations and any public comment received, the Groundfish Oversight Committee shall recommend to the Council appropriate specifications a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis.* Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(b) *Small-mesh multispecies*—(1) *Three-year specifications process, annual review, and specifications package.* The Council shall specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every 3 years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the specifications package, described in paragraph (b)(4) of this section, recommendations for ABC from the SSC, and any other relevant information, the Whiting PDT shall recommend to the Whiting Oversight Committee and Council specifications including the OFL, ABC, ACL, and TAL for each

small-mesh multispecies stock for a period of at least 3 years. The Whiting PDT and the Council shall follow the process in paragraph (b)(2) of this section for setting these specifications.

(ii) The Whiting PDT, after reviewing the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or specifications package described in paragraphs (b)(2) and (b)(4), respectively, of this section, the advice of the SSC, and any other relevant information, the Whiting PDT may also recommend to the Whiting Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) *Council recommendation.* (A) The Council shall review the recommendations of the Whiting PDT, Whiting Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly

stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) *Process for specifying ABCs, ACLs, and TALs.* The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake—(A) ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* (1) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

(ii) *Silver and Offshore Hake—(A) ABCs.* The Council's SSC will recommend an ABC to the Council for

both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The combined silver hake and offshore hake ABC in the southern area will be the southern whiting ABC. The silver hake and whiting ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFLs.

(B) *ACLs*. The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) *TALs*. (1) The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern whiting TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as proscribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

(3) *Annual Review*. (i) Using a report provided by NMFS that includes trends in the fishery, changes in stock biomass, and total catch data, the Whiting PDT shall meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it shall recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; discards; stock status (exploitation rate and survey biomass); sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information

from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Whiting PDT shall consider it during this annual review. Based on this review, the Whiting PDT shall provide guidance to the Whiting Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering this guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) *Specifications Package*. (i) The Whiting PDT shall prepare a specification package, including a SAFE Report, at least every 3 years. Based on the specification package, the Whiting PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The specifications package shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The specifications package shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a specifications package, including a SAFE Report, is not completed by the Whiting PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

(5) *Accountability measures for the small-mesh multispecies fishery*—(i) *In-season adjustment of possession limits*. If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock to the incidental level, as specified in

§ 648.86(d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(ii) *Post-season adjustment for an overage.* If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the in-season accountability measure adjustment trigger, as specified in paragraph (b)(5)(i) of this section, shall be reduced in a subsequent fishing year by 1 percent for each 1 percent by which the ACL was exceeded through notification consistent with the Administrative Procedure Act. For example, if the in-season adjustment trigger is 90 percent, and an ACL is exceeded by 5 percent, the adjustment trigger for the stock whose ACL was exceeded would be reduced to 85 percent for subsequent fishing years.

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes; effort monitoring; data reporting; possession limits; gear restrictions; closed areas; permitting restrictions; crew limits; min-

imum fish sizes; onboard observers; minimum hook size and hook style; the use of crucifer in the hook-gear fishery; sector requirements; recreational fishing measures; area closures and other appropriate measures to mitigate marine mammal entanglements and interactions; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(ii) The Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable); modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies; adjustments to whiting stock boundaries for management purposes; adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable); season adjustments; declarations; participation requirements for any of the Gulf of Maine/Georges Bank small-mesh multispecies exemption areas; OFL and ABC values; ACL, TAL, or TAL allocations, including the proportions used to allocate by season or area; small-mesh multispecies possession limits, including in-season AM possession limits; changes to reporting requirements and methods to monitor the fishery; and biological reference points, including selected reference time series, survey strata used to calculate biomass, and the selected survey for status determination.

(iii) *Adjustment process for whiting DAS.* The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by

the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in

paragraph (c)(3) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL REGISTER requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

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(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the FEDERAL REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action

and interim measures under section 305(c) of the Magnuson-Stevens Act.

[69 FR 22984, Apr. 27, 2004, as amended at 70 FR 76429, Dec. 27, 2005; 73 FR 4754, Jan. 28, 2008; 75 FR 18349, Apr. 9, 2010; 76 FR 23076, Apr. 25, 2011; 76 FR 42587, July 19, 2011; 76 FR 56999, Sept. 15, 2011; 76 FR 81848, Dec. 29, 2011; 77 FR 16948, Mar. 23, 2012; 77 FR 19143, Mar. 30, 2012; 77 FR 26125, May 2, 2012; 78 FR 20265, Apr. 4, 2013; 78 FR 26164, 26208, May 3, 2013; 78 FR 53368, Aug. 29, 2013]

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)—Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)—Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200-mile limit, then in a northerly direction along the 200-mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions—(1) Minimum mesh size—(i) Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including