

at (202) 523-5800 or by electronic mail at [jgregory@fmc.gov](mailto:jgregory@fmc.gov).

**List of Subjects for 46 CFR Part 531**

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to amend 46 CFR part 531 as follows:

**PART 531—NVOCC SERVICE ARRANGEMENTS**

1. The authority citation for part 531 continues to read as follows:

**Authority:** 46 U.S.C. app. 1715.

2. Revise paragraph (o) of § 531.3 to read as follows:

**§ 531.3 Definitions.**

\* \* \* \* \*

(o) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act, that accepts responsibility for payment of all applicable charges under the NSA.

\* \* \* \* \*

3. Revise paragraph (a) of § 531.5 to read as follows:

**§ 531.5 Duty to file.**

(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC acting as carrier party to the NSA.

\* \* \* \* \*

4. Revise paragraph (c)(2) and add paragraph (d)(4) to § 531.6 to read as follows:

**§ 531.6 NVOCC Service Arrangements.**

\* \* \* \* \*

(c) \* \* \*

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

\* \* \* \* \*

(d) \* \* \*

(4) No NVOCC may knowingly and willfully enter into an NSA with an ocean transportation intermediary that does not have a tariff and a bond,

insurance, or other surety as required by sections 8 and 19 of the Act.

\* \* \* \* \*

**Bryant L. VanBrakle,**

*Secretary.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No.050520136-5136-01; I.D. 040705A]

**RIN 0648-AS80**

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 13 and Framework Adjustment 40-A**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The final rule implementing Amendment 13 and the interim final rule implementing Framework Adjustment (Framework) 40-A to the Northeast (NE) Multispecies Fishery Management Plan (FMP) contained several inadvertent errors and omissions. The intent of this proposed rule is to correct these inadvertent errors and omissions, clarify specific regulations to maintain consistency with and accurately reflect the intent of Amendment 13 and Framework 40-A, and seek comment on these proposed corrections and clarifications. This action is being taken by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before September 7, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:  
• E-mail: [Mula13Corr@NOAA.gov](mailto:Mula13Corr@NOAA.gov). Include in the subject line the following: "Comments on the Proposed Rule to Correct/Modify NE Multispecies Amendment 13."  
• Federal e-Rulemaking Portal: <http://www.regulations.gov>.

• Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

Mark the outside of the envelope, "Comments on the Proposed Rule to Correct/Modify NE Multispecies Amendment 13."

• Fax: (978) 281-9135.

Copies of the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the Final Supplemental Environmental Impact Statement (FSEIS) prepared for Amendment 13 and the environmental assessment (EA) prepared for Framework 40-A may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies stocks managed under the authority of the Magnuson-Stevens Act. NMFS proposed measures to implement Amendment 13 on January 29, 2004 (69 FR 4362). The proposed rule contained a detailed description of the development of Amendment 13. NMFS published final regulations to implement the approved measures in Amendment 13 in the **Federal Register** on April 27, 2004 (69 FR 22906). The majority of the measures in the final rule became effective on May 1, 2004.

However, the final rule implementing Amendment 13 contained several inadvertent errors and inconsistencies with the intent of Amendment 13, as specified below. This action proposes to correct these errors, and clarify or modify the current regulations to maintain consistency with Amendment 13 as proposed by the Council and partially approved by the Secretary of Commerce.

Framework 40-A was developed by the Council to provide additional opportunities for NE multispecies vessels to target healthy stocks in an effort to help achieve optimum yield from the fishery and to mitigate some of the economic impacts resulting from effort reductions implemented under Amendment 13. NMFS published a proposed rule to implement Framework 40-A on September 14, 2004 (69 FR 55388). The proposed rule contained a detailed description of the development

of Framework 40–A. NMFS published an interim final rule implementing Framework 40–A measures on November 19, 2004 (69 FR 67780), which became effective on November 19, 2004. The measures proposed in this action that would modify provisions implemented through the interim final rule for Framework 40–A are not intended to be implemented on an interim basis.

## Proposed Measures

### 1. Monkfish Permit Category Descriptions

The regulations at § 648.4(a)(9) establish four limited access monkfish permit categories based on the size of the vessel and whether the vessel also possesses a limited access NE multispecies or Atlantic sea scallop permit. The regulations at § 648.92(b), as amended by Amendment 2 to the monkfish FMP (April 28, 2005; 70 FR 21927), state that vessels currently possessing a limited access NE multispecies permit that also possess a valid limited access monkfish permit (i.e., currently a Category C or D monkfish permit) must use a multispecies DAS concurrently with their monkfish Days-at-Sea (DAS). These regulations do not differentiate between a limited access NE multispecies DAS category permit and other limited access NE multispecies permits, including the new Handgear A permit implemented under Amendment 13, thereby creating some confusion to its applicability. Since a limited access Handgear A permit is not a DAS category permit and does not require a vessel to use a DAS to fish for groundfish, this regulation essentially precludes those vessels that have been issued a limited access monkfish Category A or B permit (i.e., monkfish vessels not issued a limited access NE multispecies or scallop permit), and that qualify for a limited access Handgear A permit, from obtaining the new limited access Handgear A permit. Further, it is possible that a vessel currently issued a limited access monkfish Category C or D permit may also qualify for a limited access Handgear A permit based upon its previous fishing history. That is, the regulations at § 648.92(b) currently prohibit, unintentionally and contrary to the intent of the measure, a vessel issued a Category C or D monkfish permit that qualifies for a limited access NE multispecies Handgear A permit from obtaining such a permit, because Category C or D monkfish vessels must use a NE multispecies DAS when fishing under a monkfish DAS.

This action would clarify that limited access monkfish Category C and D permits may be issued only to those vessels that have been issued a limited access monkfish permit and a limited access NE multispecies DAS category permit or a limited access scallop DAS permit. This action would also clarify that limited access monkfish Category A and B permits may be issued to vessels without a NE multispecies DAS category permit or a limited access scallop DAS permit.

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

Amendment 13 included 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 the vessel's VMS off, if the vessel is exiting the fishery for an extended period. The use of one calendar month as the minimum participation period was intended to facilitate the administration of the power-down exemption. However, industry has indicated that this requirement represents an unnecessary burden on vessels (e.g., if a vessel requested a letter of exemption on September 15, it would be required to remain under the exemption until November 1) and has requested that NMFS modify this minimum participation period to 30 calendar days. Changing the participation period to a minimum of 30 calendar 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, and would not add to NMFS's burden in administering the VMS power-down exemption. Therefore, this action would change the participation period for the VMS power-down exemption specified at § 648.9(c)(2)(i)(B) from one calendar month to 30 calendar days.

### 3. Prohibitions for GB Hook Sector Participants

#### Sector Landing Prohibition

Amendment 13 included provisions to allow for the formation of fishing sectors. The final rule implementing Amendment 13 included several prohibitions to enforce the regulations governing Sector vessel operations. The prohibition at § 648.14(a)(55) states that it is unlawful for any dealer to purchase, possess, or receive species in excess of the possession limits specified in § 648.85 or 648.86. According to the

regulations at § 648.87(c)(3), Sector vessels may be issued letters of authorization exempting these vessels from any Federal fishing regulation, including the possession limits specified in § 648.85 or 648.86, in accordance with an approved Sector Operations Plan, provided such exemptions are consistent with the goals and objectives of the FMP. Accordingly, this existing prohibition is inconsistent with the possibility of a Sector receiving an exemption from the possession limits, and prevents dealers from receiving species from Sector participants, should an approved Sector Operations Plan specify possession limits in excess of those specified in § 648.85 or 648.86. To be consistent with the exemption provision, this action would modify the prohibition at § 648.14(a)(55) to allow dealers to receive species from Sector participants in accordance with an approved Operations Plan as specified in § 648.87.

#### Sector Operations Prohibition

Amendment 13 approved the formation of the GB Cod Hook Sector. The existing prohibition at § 648.14(a)(156) inadvertently states that vessels fishing under the GB Cod Hook Sector may not fish in the NE multispecies DAS program in a given fishing year. Each approved Sector is allocated a portion of the overall total allowable catch (TAC), based upon the fishing history of Sector participants. The prohibition at § 648.14(a)(156) is inconsistent with the intent of Amendment 13 to allow an approved Sector to set its own rules to ensure that the TAC allocated 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 multispecies DAS program as authorized by their Sector Operations Plan, which was approved by NMFS on May 4, 2005 (70 FR 23096).

### 4. Rolling Closure Areas II and III

Regulations implementing the current seasonal GOM Rolling Closure Areas were originally published on May 5, 1999 (64 FR 24066), as part of the final rule implementing Framework Adjustment 27 to the FMP. The August 1, 2002, interim final rule (67 FR 50292) retained the previous GOM Rolling Closure Areas II and V, but modified the GOM Rolling Closure Areas I, III, and IV.

The August 1, 2002, interim final rule contained inaccurate coordinate points

defining the GOM Rolling Closure Area II specified at § 648.81(g)(1)(ii). The final two coordinate points for the GOM Rolling Closure Area II were erroneously defined as GM6, at 42°30' N. lat. and 68°30' W. long.; and GM9, at 42°30' N. lat. and the intersection with the Massachusetts shoreline. The correct coordinate points are GM13, at 43°00' N. lat. and 68°30' W. long.; and GM10, at 43°00' N. lat. and the intersection with the New Hampshire shoreline. On March 25, 2003, NMFS published a final rule amendment to an interim final rule (68 FR 14347) to correct the inaccurate coordinates contained within the August 1, 2002, interim final rule. While the actual coordinates were corrected in the March 25, 2003, final rule, the coordinate point GM9 was not corrected to read GM10.

The August 1, 2002, interim final rule also contained an additional error in the coordinate points defining the GOM Rolling Closure Area III at § 648.81(g)(1)(iii). This error was continued in the final rule implementing Amendment 13, but specified at § 648.81(f)(1)(iii). The final coordinate point for the GOM Rolling Closure Area III should read GM18, instead of GM10. These inadvertent errors only apply to the names assigned to specific coordinate points and do not affect the actual coordinates contained in the rule. Accordingly, this proposed rule would amend the final rule implementing Amendment 13 by correcting the erroneous coordinate point names by replacing point GM9 with point GM10 for the GOM Rolling Closure Area II at § 648.81(f)(1)(ii), and by replacing point GM10 with point GM18 for the GOM Rolling Closure Area III at § 648.81(f)(1)(iii).

#### 5. GB Seasonal Closure Area

The GB Seasonal Closure Area was first implemented through Framework 33 to the 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 (CA) II and prohibits vessels capable of catching NE multispecies from fishing in this area from May 1 through May 31.

As specified above, the management measures 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 CA II and a small

portion of the northern tip of the CA II 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's intent in Framework 40–A.

Therefore, this action would revise § 648.81(g)(2) to include a provision to exempt vessels fishing under the Eastern U.S./Canada Haddock SAP Pilot Program provisions at § 648.85(b)(8) from the GB Seasonal Closure Area.

#### 6. CA II Habitat Closure Area

The FSEIS for Amendment 13 included several alternatives for the CA II Habitat Closure Area. The FSEIS indicated that the Council selected Habitat Alternative 10B instead of Habitat Alternative 10A. Habitat Alternative 10A was considered, but rejected by the Council. However, in both the proposed and the final rule implementing Amendment 13, the coordinates for the CA II Habitat Closure Area inadvertently reflected the coordinates under Habitat Alternative 10A of the FSEIS instead of the correct coordinates defined under Habitat Alternative 10B.

This action would replace the inaccurate coordinates at § 648.81(h)(1)(v) for Habitat Alternative 10A with the correct coordinates for Habitat Alternative 10B from the FSEIS. While this correction would change the area closed to all bottom tending mobile gear within CA II, this action would not affect current fishing operations within CA II.

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

The final rule implementing Amendment 13 included gear restrictions for vessels targeting regulated groundfish within the Eastern U.S./Canada Area. These gear restrictions are intended to reduce cod bycatch within this area. The final rule required that trawl 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 NMFS Northeast Regional Office on May 27, 2004, to solicit input on the above gear definitions specified in Amendment 13. This workshop was intended to gather together a range of expertise regarding trawl gear to identify possible deficiencies within these definitions and to suggest refinements of these definitions, if necessary. This workshop resulted in a number of

suggestions to refine these definitions based on input from the participants. As a result of this workshop, this action proposes several revisions to the gear definitions specified at § 648.85(a)(3)(iii) and solicits additional public input on the proposed revisions.

Participants in the May 27, 2004, trawl workshop indicated that the use of "balloon nets" may compromise the effectiveness of the haddock separator panel as defined in Amendment 13. They indicated that balloon nets contain a greater number of meshes in the top panel of the net than in the bottom panel of the net, allowing the top panel of the net to extend higher than the bottom panel of the net. Participants agreed that this would result in a higher fishing circle (i.e., opening of the net) than if both panels were made of an equal number of meshes. In accordance with the regulations at § 648.85(a)(3)(iii)(A), a separator panel may be constructed such that the forward edge of the separator panel is 80–85 percent of the width of the after edge of the larger top panel of a balloon net, instead of 80–85 percent of the width of the after edge of the smaller bottom panel of the net. A separator panel constructed in this manner would be wider than intended under the current regulations and may be equal to or greater than the width of the smaller bottom panel of the net. A net that has been designed so that the separator panel is the same width or larger than the width of the bottom panel of the net may result in the separator panel dropping down and mimicking the bottom panel of the net by resting on top of the bottom panel under normal operations. This could potentially close off the bottom portion of the net, resulting in all fish being retained in the upper portion of the net with the closed codend, instead of allowing the cod to escape through the opened bottom portion of the net. To avoid this, participants suggested modifying the haddock separator trawl description to state that the separator panel shall be constructed such that the forward edge of the panel is no less than 80 percent, but not greater than 85 percent, and no less than 90 percent, but not greater than 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. This action proposes to revise the haddock separator trawl specified at § 648.85(a)(3)(iii)(A) as described above.

The May 27, 2004, trawl workshop also resulted in a number of suggested revisions to the two flounder net definitions specified at

§ 648.85(a)(3)(iii). For both net descriptions, the participants agreed that the language restricting the vertical dimension of the forward wing end to 3.0 ft (0.91 m) would not affect the height of the fishing circle (i.e., opening of the net) unless combined with restrictions on the headrope/footrope length. While the flounder trawl net defined at § 648.85(a)(3)(iii)(B)(1) includes a restriction on the headrope, it was decided that the current definition without the restriction on the vertical dimension of the forward wing end would maintain a relatively shallow fishing circle under normal operations. Participants also recommended removing the prohibition on floats in the center 50 percent of this net, stating that it would negatively affect the performance of the net and prevent the center portion of the headrope from maintaining the proper shape of the fishing circle.

The flounder net defined at § 648.85(a)(3)(iii)(B)(2) specifies that the mesh composing the square of the top panel of the net shall not be smaller than 12-inch (30.5-cm) square mesh. The intent of this provision was to allow vessels to target flounder while allowing cod to escape through the large mesh in the square of top panel of the net. This provision should not have included the requirement for square mesh within the square of the top panel of the net. The inclusion of the square mesh requirement within the definition was the result of a misinterpretation of information used to define this flounder trawl net. Twelve-inch (30.5-cm) square mesh is not commercially available at this time, while 12-inch (30.5-cm) diamond mesh is available. Larger square mesh is available, but at a greater cost. As a result, gear manufacturers have had to purchase 12-inch (30.5-cm) 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. Participants in the May 27, 2004, trawl workshop indicated that, due to variations in the design and construction of various flounder nets, the potential exists for different interpretations of the square of the net and where to place the 12-inch (30.5-cm) mesh specified in the definition of the flounder trawl net at § 648.85(a)(3)(iii)(B)(2).

Accordingly, this action would remove the regulations restricting the vertical dimension of the forward wing end to 3.0 ft (0.91 m) from §§ 648.85(a)(3)(iii)(B)(1) and (2), and the prohibition of floats in the center 50

percent of the headrope for the flounder trawl net specified at § 648.85(a)(3)(iii)(B)(1). In addition, this action would change the definition of the flounder net at § 648.85(a)(3)(iii)(B)(2) to allow for the use of diamond mesh in the top panel of the net, remove references to the square of the net, and insert language requiring that the top panel of the net contain a section of mesh at least 10-ft (3.05-m) long, stretching from selvedge to selvedge, composed of at least 12-in (30.5-cm) mesh, inserted no farther than 4.5 meshes behind the headrope. Participants at the May 27, 2004, trawl workshop were uncertain about the appropriate length for the trouser extension of the bottom codend of a haddock separator trawl. NMFS, therefore, specifically requests public comment on the appropriate length for the trouser extension of the bottom codend of a haddock separator trawl. Since square mesh is more costly than diamond mesh, this action would reduce the costs associated with complying with this provision, eliminate unnecessary restrictions on gear, and simplify the gear requirements for the Eastern U.S./Canada Area.

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

The U.S./Canada Resource Sharing Understanding implemented by Amendment 13 included provisions to authorize the Regional Administrator to revise the gear requirements, modify access to the U.S./Canada Management Area, adjust the trip limits, and revise the total number of trips into the U.S./Canada Management Area to prevent the over-harvesting or under-harvesting of the specified U.S./Canada Management Area TAC allocations. According to the regulations at § 648.85(a)(3)(iv)(D), this adjustment could be made when 30 percent and/or 60 percent of the U.S./Canada Management Area TAC allocations are projected to be harvested. The current language is ambiguous as to whether such adjustments may be made only at the precise event when 30 percent or 60 percent of the TAC's would be landed or at any time after those percentage levels have been reached. NMFS believes that the Council intended the Regional Administrator to have flexibility in adjusting measures at different times during the fishing season. Therefore, to eliminate the current ambiguity, this action would clarify the regulations at § 648.85(a)(3)(iv)(D) to specify that adjustments to the U.S./Canada Management Area provisions may be made when 30 percent and/or 60

percent of the TAC allocations are projected to be, or have been, harvested. This allows more flexibility for the Regional Administrator in implementing such adjustments to ensure that the TAC allocations are not over-harvested or under-harvested for a particular fishing year.

#### *9. CA II Yellowtail Flounder SAP 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 CA II Yellowtail Flounder SAP, must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time, and port of departure at least five working days prior to the beginning of any trip that is declared into the U.S./Canada Management Area. The goal of this requirement was to obtain a level of observer coverage on NE multispecies vessels fishing in the U.S./Canada Management Area that is consistent with the rest of the fishery. The provision provides notification to the NMFS Observer Program of planned trips, prior to the departure of the trips, so that the Observer Program has sufficient time to contact and deploy observers.

Although a notification period of five working days was determined, at the time of the implementation of the final rule for Amendment 13, to be optimal in terms of the operational requirements of the NMFS Observer Program, public comments received from numerous industry members have indicated that a shorter notification requirement would provide vessels greater flexibility to react to contingencies such as weather developments. Upon further consideration, NMFS has determined that a notification period of 72 hours represents an acceptable balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of Amendment 13. 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 CA II Yellowtail Flounder SAP as specified at § 648.85(b)(3)(v). Therefore, this proposed rule would reduce the notification time for groundfish DAS

vessels prior to departure of a trip into the CA II Yellowtail Flounder SAP from five working days to 72 hours.

#### 10. *Small-mesh Multispecies Possession Restrictions*

On March 29, 2000, NMFS published the final rule implementing provisions in Amendment 12 to the FMP (65 FR 16766). That rule contained revisions to the regulations governing possession limits for small-mesh multispecies. On the same day, NMFS also published the final rule implementing Framework Adjustment 32 (Framework 32) to the 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) was published (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 inadvertent error was not discovered until recently.

This action would correct § 648.86(d) to accurately reflect the intent of the regulations implemented under Framework 32, as well as any revisions made to these regulations under Amendment 13. Consistent with Council intent, this correction would remove the requirement that a letter of authorization is necessary to fish for, and/or possess, silver hake and offshore hake caught with small mesh where such a requirement should not exist as a result of measures previously implemented by Framework 32. This paragraph would be further clarified to maintain consistency with existing regulations while at the same time decreasing the complexity of the current regulations pertaining to the net size requirements and possession limits.

#### 11. *Yellowtail Flounder Possession Limit Restrictions*

The regulations at §§ 648.86(g)(1) and (2) specify the yellowtail flounder possession limits for vessels fishing within the Cape Cod (CC)/Gulf of Maine (GOM) Yellowtail Flounder Area and the Southern New England (SNE)/Mid-Atlantic (MA) Yellowtail Flounder Area, respectively. These provisions require that vessels fishing within either of

these areas possess on board a yellowtail flounder possession/landing authorization letter (or letter of authorization (LOA)) issued by the Regional Administrator. The LOA specifies seasonal landing limits for each area. Vessels possessing such an LOA 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 LOA during the period of participation.

Amendment 13 implemented the U.S./Canada Management Area and the CA II Yellowtail Flounder SAP to allow U.S. vessels to fish for shared yellowtail flounder resources within these areas. These provisions established a yellowtail flounder possession limit of 30,000 lb (13,608 kg) per trip for vessels fishing within the CA 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. The final rule implementing Framework 40B (June 1, 2005; 70 FR 31323) revised the GB yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP to 10,000 lb (4,536 kg), but did not change the trip limit in the U.S./Canada Management Area outside of the SAP.

Under the current regulations, vessels issued an LOA as specified above that wish to participate in the U.S./Canada Management Area or the CA 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. To participate in the U.S./Canada Management Area and its approved SAP's, and to be subject to the less restrictive yellowtail flounder landing limits for these areas, a vessel issued a yellowtail flounder LOA would have to wait a minimum of seven days before cancelling its LOA before it may begin a trip into the U.S./Canada Management Area or an approved SAP. Given that the provisions of the U.S./Canada Management Area are very tightly controlled (e.g., VMS, daily catch reporting, etc.), this requirement imposes unnecessary restrictions on vessel activities, causes difficulties in planning fishing trips, and makes participation in these programs administratively burdensome for NMFS. As a result, this action would modify the yellowtail flounder possession limit restrictions by allowing vessels possessing a yellowtail flounder LOA to abide by the less restrictive yellowtail

flounder possession limits of the U.S./Canada Management Area and the CA II Yellowtail Flounder SAP when operating within these areas as specified in §§ 648.85(a)(3) and 648.85(b)(3).

#### 12. *Offloading Requirement*

The current regulations are not explicit as to the disposition of a vessel's catch upon the completion of a fishing trip. The regulations at §§ 648.10(b)(2)(iii) and (c)(3) state that DAS counting, and therefore a fishing trip, ends when a vessel has either crossed the VMS demarcation line defined at § 648.10(a), or has called out of the DAS program, respectively. The regulations at § 648.85 specify the possession restrictions for species managed by the U.S./Canada Resource Sharing Understanding, while the regulations at § 648.86 specify the haddock, cod, Atlantic halibut, small-mesh multispecies, and yellowtail flounder possession restrictions for vessels fishing outside of the U.S./Canada Management Area. Possession restrictions include landing limits specified for each species on a per DAS or per trip basis.

This action proposes to include an explicit provision in the regulations at § 648.86 requiring a vessel that has ended its trip (i.e., by crossing the VMS demarcation line or calling out of the DAS program) to offload species regulated by a daily landing limit (i.e., pounds per DAS) prior to leaving port and beginning a subsequent fishing trip. Offloading species for which there is a daily landing limit is necessary to effectively enforce these limits. Conversely, a vessel that has ended its trip could retain on board species regulated by an overall trip limit (i.e., pounds per trip) for a subsequent trip, provided the vessel abides by the overall trip limit for those species during that subsequent trip.

#### 13. *GB Cod Hook Sector Liability Regulations*

The January 29, 2004, proposed rule to implement Amendment 13 specified that the Sector and its participants would be held liable for any violations of applicable Federal regulations. The April 27, 2004, final rule expanded upon this, specifying that it shall be unlawful for any Sector, Sector vessel, and Sector vessel operator and/or owner to violate the conditions of an approved Operations Plan or the LOA exempting Sector vessels from specific regulations. However, both the GB Cod Hook Sector representatives and the Council expressed concern that the regulations, as written in the final rule implementing Amendment 13, could be

interpreted to expand NMFS's enforcement authority beyond that which was intended in Amendment 13 and would make all violations of the Operations Plan, including non-payment of Sector dues, a violation of Federal law.

Section 3.4.16 of the FEIS for Amendment 13 indicates that the intent of Sector provisions is to encourage self-governance of fishing activities. Further, this section assigns responsibility to enforce the provisions of an approved Operations Plan to each Sector. Finally, section 3.4.16.1.2.2 specifies that a Sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors. Because the current regulations could be broadly interpreted to mean that any violation of an approved Sector Operations Plan would constitute a violation of Federal regulations, NMFS proposes to clarify the regulations at § 648.87(b)(2)(x) to indicate that it would be unlawful for Sector participants to violate the conditions of an approved Sector Operations Plan unless such conditions and restrictions are identified as administrative only in the Operations Plan.

#### 14. GB Cod Hook Sector Area Coordinates

Both the January 29, 2004, proposed rule and the April 27, 2004, final rule implementing Amendment 13 incorrectly specified the intended 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. The coordinates specified in the current regulations are not only geographically impossible (e.g., 70°00' N. Lat. does not intersect the east-facing shoreline of Cape Cod, MA), but many of the other coordinates would also require GB Cod Hook Sector vessels to fish outside of the jurisdiction of NMFS. In addition, it was observed that there were two coordinate points named "HS3." To correct this inadvertent error, the final three coordinate points should be renamed "HS4," "HS5," and "HS6" instead of "HS3," "HS4," and "HS5." Accordingly, this proposed rule would modify the final rule implementing Amendment 13 by renaming the coordinate points as specified above and by correcting the erroneous latitude and longitude for each coordinate point for

the GB Cod Hook Sector Area specified at § 648.87(d)(1)(i).

#### 15. Additional Corrections

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

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

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

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

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

In § 648.82, in paragraph (b)(4), the reference to "paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section" would be revised to read "paragraphs §§ 648.80(a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii)." Further, in paragraph (f), the reference to "§ 648.53(f)" would be changed to read "§ 648.53(g)."

In § 648.85, the word "calendar" would be inserted in front of the word "month" in paragraph (b)(3)(vi) to clarify that vessels may only take a maximum of two trips into the CA II Yellowtail Flounder SAP per calendar month as proposed in Amendment 13. In addition, paragraph (b)(3)(x) would be revised to clarify regulatory references and to add language that would allow gear other than a haddock separator trawl or a flounder net to be carried on board, provided this gear is stowed in accordance with § 648.23(b).

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

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

#### Classification

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

NMFS has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA prepared for this action follows NMFS's "Guidelines for Economic Analysis of Fishery Management Actions" (NMFS's guidelines). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY**. A summary of the analysis follows:

The universe of vessels impacted by this action are those vessels that have currently been issued an active limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish 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 and described in the Regulatory Flexibility Act.

Section 5.4 of the FSEIS prepared for Amendment 13 and section 7.2.4 of the EA prepared for Framework 40-A provide an analysis of the economic impacts resulting from the measures implemented under Amendment 13 and Framework 40-A, respectively. This action references and builds upon the 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. Due to a lack of data reflecting costs associated with fishing, changes in total revenue are considered to be a proxy for changes in profitability in this action. This analysis indicates that individual vessels would be likely to increase profitability under most measures proposed in this action. This action would allow limited access monkfish vessels qualified to be issued a limited access NE multispecies

Handgear A permit to be issued such a permit. The issuance of this permit to Category A and B monkfish vessels would allow these vessels additional opportunities to fish, thereby increasing vessel revenue. This action would also eliminate some of the more restrictive gear requirements for vessels operating in the Eastern U.S./Canada Area. These Amendment 13 restrictions pose further economic costs for gear modifications and reduced gear efficiency to vessels without effectively increasing the conservation benefits of the gear requirements. Modification of these gear requirements would reduce these unnecessary costs and therefore increase vessel revenues.

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.

This proposed rule does not contain any new, nor does it revise any existing reporting, recordkeeping, and other compliance requirements. This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements.

A copy of this analysis is available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting.

Dated: August 2, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, the definition for "Gillnet gear capable of catching multispecies" is revised to read as follows:

§ 648.2 Definitions.

\* \* \* \* \*

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

to fish for or catch tunas, swordfish, and sharks.

\* \* \* \* \*

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

§ 648.4 Vessel permits.

- (a) \* \* \*
(9) \* \* \*
(i) \* \* \*
(A) \* \* \*

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

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

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

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

\* \* \* \* \*

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

§ 648.9 VMS requirements.

\* \* \* \* \*

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

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

\* \* \* \* \*

5. In § 648.14, paragraphs (a)(55), (a)(134), and (a)(156) are revised, and paragraph (a)(169) is revised to read as follows:

§ 648.14 Prohibitions.

(a) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

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

**ROLLING CLOSURE AREA II**

[April 1–April 30]

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

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> New Hampshire shoreline.

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

**ROLLING CLOSURE AREA III**

[May 1–May 31]

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

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> Maine shoreline.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

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

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the minimum mesh size of the twine top used in the

dredge by the vessel is 10 inches (25.4 cm), and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or

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

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

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

**CLOSED AREA II HABITAT CLOSURE AREA**

Point	N. Lat.	W. Long.
CIH1	42°10'	67°20'
CIH2	42°10'	67°9.3'
CIH3	42°00'	67°0.5'
CIH4	42°00'	67°10'
CIH5	41°50'	67°10'
CIH6	41°50'	67°20'
CIH1	42°10'	67°20'

\* \* \* \* \*

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

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

8. In § 648.85, paragraphs (a)(3)(iii), (a)(3)(iv)(D), (b)(3)(v), and (b)(3)(x) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

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

(A) *Haddock separator trawl*. A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, with a codend attached only to the upper extension, and the bottom extension left open and with no codend attached. A horizontal separating panel constructed with a minimum of 6.0-inch (15.2-cm) diamond mesh must be installed laterally between the selvages joining the upper and lower panels of a two-seam net, as described in this paragraph (a)(3)(iii)(A) and between the side panels of a four-seam net as described in paragraph (a)(3)(iii)(B) of this section, to completely divide the net into equal top and bottom portions. The separator panel shall be constructed so as to extend forward from the front of the trouser junction to the after edge of the first belly of the net.

(1) *Two-seam bottom trawl nets*. For two-seam nets, the separator panel must be constructed such that the stretched width of the forward edge of the panel is no less than 80 percent, but no larger than 85 percent of the width of the after edge of the first bottom belly of the net where the separator panel is attached. For example, if the first bottom belly of the net is 200 meshes wide (from selvedge to selvedge), the separator

panel must be not less than 160 meshes, but no larger than 170 meshes wide.

(2) *Four-seam bottom trawl nets.* For four-seam nets, the separator panel must be constructed such that the stretched width of the forward edge of the panel is no less than 90 percent, but no larger than 95 percent of the width of the after edge of the first bottom belly of the net where the separator panel is attached. For example, if the first bottom belly of the net is 200 meshes wide (from selvedge to selvedge), the separator panel must be no less than 180 meshes, but no larger than 190 meshes wide. The separator panel must be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50<sup>th</sup> mesh.

(B) *Flounder trawl net.* A flounder trawl net is defined as bottom-tending trawl gear meeting one of the following two net descriptions:

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

(2) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from 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.

(iv) \* \* \*

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in this paragraph (a)(3)(iv), when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be, or have been, harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

(x) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b).

\* \* \* \* \*

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

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

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

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined

silver hake and offshore hake if either of the following conditions apply:

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

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

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

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or

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

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

if both of the following conditions apply:

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

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

(iv) *Application of mesh size.*

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

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

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than

the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

\* \* \* \* \*

- (g) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

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

\* \* \* \* \*

- (2) \* \* \*
- (ii) \* \* \*

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

\* \* \* \* \*

(4) Vessels that obtain a yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section and that fish on a

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

\* \* \* \* \*

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

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

**§ 648.87 Sector allocation.**

\* \* \* \* \*

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

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

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

\* \* \* \* \*

(d) \* \* \*
(1) \* \* \*

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

GEORGES BANK COD HOOK SECTOR AREA

Table with 3 columns: Point, N. Lat., W. Long. Rows include HS1, HS2, HS3, HS4, HS5, HS6 with coordinates and boundary descriptions.

1 The east facing shoreline of Cape Cod, MA.
2 The south facing shoreline of Rhode Island.

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

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

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

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

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

(b) \* \* \*
(1) \* \* \*

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

\* \* \* \* \*
[FR Doc. 05-15644 Filed 8-5-05; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050722198-5198-01; I.D. 071805B]

RIN 0648-AS93

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations supporting the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to revise requirements for the facilitation of observer data transmission, improve support for observers, and provide consistency with current regulations. The proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Comments must be received on or before September 7, 2005.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by any of the following methods:

- E-mail: OCS-0648-AS93@noaa.gov.
Include in the subject line the following identifier: OCS proposed rule. E-mail comments, with or without attachments, are limited to 5 megabytes.
Federal e-Rulemaking Portal: http://www.regulations.gov.
Mail: P.O. Box 21668, Juneau, AK 99802.
Fax: (907) 586-7557.
Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the same mailing address above or from the NMFS Alaska Region website at http://www.fakr.noaa.gov.

Send comments on these or any other aspects of the collection of information to NMFS at the addresses above, and to OMB via e-mail at David.Rostker@omb.eop.gov, or fax (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907-586-7228, or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone under their respective FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS approved and implemented the current "interim" Observer Program (Observer Program) in 1996 (61 FR 56425, November 1, 1996). The requirements of the Observer Program were extended through 1998 (62 FR 67755, December 30, 1997), then through 2000 (63 FR 69024, December 15, 1998), through 2002 (65 FR 80381, December 21, 2000), and again through 2007 (67 FR 72595, December 6, 2002). The Observer Program provides the regulatory