

whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (a)(2)(iv) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS, Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800-758-4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888-219-9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement.* An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv) of this section.

(iii) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4-hour reporting feature may utilize the 4-hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of this paragraph (a)(2) of this section, "in port" means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in

paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if--

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888-219-9228, or via an attached VMS terminal.

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■ 3. In § 622.16, paragraph (c)(3)(i) is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more

than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070809451-7644-02]

RIN 0648-AV79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42

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

ACTION: Final rule.

SUMMARY: This rule corrects and clarifies a number of inadvertent errors, omissions, and ambiguities in the regulations implemented by recent actions taken under the Northeast (NE) Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40-A, FW 41, and FW 42. The measures corrected or clarified by this rule ensure that the current regulations maintain consistency with, and accurately reflect, the intent of measures adopted by the New England Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary).

DATES: Effective January 28, 2008.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the environmental assessments (EAs) prepared for FW 38, 40–A, FW 41, FW 40–A, and FW 42; and the supplemental environmental impact statements (SEIS) prepared for Amendments 5 and 13 may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FSEIS/RIR for Amendment 13 and the EA/RIRs for FW 42, FW 41, and FW 40–A are also accessible via the Internet at <http://www.nefmc.org>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395–7285.

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

SUPPLEMENTARY INFORMATION:

Background

Upon review of regulations implemented by the FW 42 final rule (October 23, 2006; 71 FR 62156), NMFS found that the current regulations contained several inadvertent errors, omissions, and ambiguities that appear to be inconsistent with the measures adopted by the Council and approved by the Secretary. Errors were found not only in the regulations implemented by the FW 42 final rule, but also in regulations implemented by other recent management actions under the FMP, including final rules implementing Amendments 5 (March 1, 1994; 59 FR 9872) and 13 (April 27, 2004; 69 FR 22906), FW 38 (July 9, 2003; 68 FR 40808), FW 40–A (November 19, 2004; 69 FR 67780), and FW 41 (September 14, 2005; 70 FR 54302).

Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS proposed measures intended to correct errors identified in the current regulations, revise specific measures to facilitate administration of such measures, and clarify or modify the current regulations to maintain consistency with FW 42 and other previous actions under the FMP. Accordingly, NMFS published a proposed rule in the **Federal Register** on

October 16, 2007 (72 FR 58622) with public comments accepted through October 31, 2007.

Measures Revised by this Rule

The details of the rationale behind the need for the corrections/clarifications to the measures revised by this action were included in the preamble to the proposed rule for this action and are not repeated here. A description of these revisions follows.

1. Definitions for Lessee, Lessor, Transferee, and Transferor

This rule inserts definitions for the terms “lessee,” “lessor,” “transferee,” and “transferor,” into the current regulations at 50 CFR 648.2 to clarify the applicability of the Days-at-Sea (DAS) Leasing and Transfer Program provisions.

2. Vessel Monitoring System (VMS) Notification Requirements

This rule modifies the VMS notification requirements at § 648.10(b)(2) to specify that NMFS will send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders, as necessary. For example, NMFS would send letters specifying VMS procedures if declaration menus or reporting requirements change as a result of a regulatory action, or as a reminder of current requirements to clarify observed operator errors and increase compliance with VMS requirements. In addition, this rule specifies that vessels required, or electing, to use VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letter. Finally, this action inserts a new provision at § 648.10(b)(5) to clarify that vessels using VMS must declare the vessel’s intended fishing activity via VMS prior to leaving port before each fishing trip. These revisions are made to help eliminate any ambiguity in the current regulations regarding the applicability of the VMS notification requirements.

3. Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery Prohibitions

This action inserts a reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery at § 648.80(a)(16) to the prohibitions at § 648.14(a)(35) and (a)(43).

4. In-season Action Prohibition

This action implements a provision at § 648.14(a)(78) prohibiting vessels from violating the requirements of an in-season action to increase the ability to

enforce measures implemented by an in-season action.

5. Georges Bank (GB) Seasonal Closure Area Applicability

The exemption from the GB Seasonal Closure Area for vessels participating in the Eastern U.S./Canada Haddock Special Access Program (SAP) specified at § 648.81(g)(2)(iv) is removed, as it is no longer necessary now that the Eastern U.S./Canada Haddock SAP opens after the GB Seasonal Closure Area expires on May 31.

6. DAS Leasing Program Application Requirements

This action reinserts the DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications specified at § 648.82(k)(3)(i) through (iii) that were inadvertently removed by the FW 42 final rule.

7. VMS Positional Polling Rates for U.S./Canada Management Area

This action removes references to an increased VMS positional polling rate for vessels participating in the U.S./Canada Management Area at §§ 648.9(c)(1)(ii), 648.10(b)(2)(iii), and 648.85(a)(3)(i) because NMFS does not have the technical capacity to automatically change a vessel’s VMS positional polling rate based on its intended fishing activity, and the Council did not specifically recommend that NE multispecies vessels must pay for a higher VMS polling rate while fishing in the U.S./Canada Management Area.

8. Haddock Total Allowable Catch (TAC) in the Closed Area (CA) I Hook Gear Haddock SAP

To accurately reflect the provisions adopted by the Council and implemented under the FW 41 final rule and to effectively administer the Closed Area I Hook Gear Haddock SAP, this action reinserts the FW 41 provisions at § 648.85(b)(7)(iv)(F) that were inadvertently removed by the FW 42 final rule. These provisions distribute the haddock TAC between the two seasons of the SAP and allow the Regional Administrator to adjust the quota to each season to account for under- or over-harvest of the haddock TAC during the first season of the SAP.

9. White Hake Trip Limits

This action corrects the white hake trip limit found at § 648.86(e) to accurately reflect the 1,000–lb (453.6–kg)/DAS, up to 10,000–lb (4,536–kg)/

trip white hake trip limit adopted by the Council in FW 42.

10. Approval of Sector Applications

This action revises the existing sector approval regulations at § 648.87(c)(1) and (2) by removing the absolute requirement to develop a proposed rule, but indicates that sectors would be approved “consistent with applicable law.” This would allow NMFS to waive opportunity for public comment in very limited circumstances, consistent with the requirements of the Administrative Procedure Act.

11. Recreational Fish Size Restrictions

This action applies the skin-on provision outlined for commercial vessels at § 648.83(a)(2) to both party/charter and recreational vessels by inserting a similar provision at § 648.89(b)(4). This clarifies the minimum fish size restrictions applicable to party/charter and private recreational vessels, as intended in Amendment 5.

12. Additional Corrections

In addition to the changes specified above, the following changes to the regulations, as amended by the final rule implementing FW 42, are implemented to correct inaccurate references and to further clarify the intent of FW 42 and previous actions. The changes listed below are in the order in which they appear in the regulations.

In § 648.4(c)(2)(iii)(A), the reference to the annual designation as either a Day or Trip gillnet vessel at “§ 648.82(k)” is corrected to read “§ 648.82(j).”

In § 648.14, the reference to “§ 648.81(d)” in paragraph (a)(38) is corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.81(b)(2)(i)” in paragraph (a)(39) is corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.51(a)(2)(ii) and (e)(2)” in paragraph (a)(53) is corrected to reference the gear stowage provisions at § 648.23(b); the reference to “§ 648.85(b)(6)” in paragraph (a)(153) is corrected to read “§ 648.85(b)(4);” the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” in paragraph (b)(3) is revised to read “§ 648.86(g)(1);” the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” and “§ 648.81(g)(1)(ii) and (g)(2)(ii)” in paragraph (b)(4) is corrected to read “§ 648.86(g)(1);” the reference to “§ 648.86(b)(1)(i)” in paragraph (c)(24) is corrected to read “§ 648.86(b)(1);” and the reference to “§ 648.86(b)(2)(ii) or (iii)” in paragraph (c)(26) is corrected to read “§ 648.86(b)(2).”

In § 648.80(b)(2)(vi), the reference to “(a)(11)(i)(A) and (B)” in the introductory text is corrected to read “(b)(11)(i)(A) and (B).”

In § 648.82(e)(1), the reference to “§ 648.10(c)(5)” is corrected to read “§ 648.10.”

In § 648.85, the reference to “§ 648.94(b)(7)” in paragraph (b)(6)(iv)(D) is revised to read “§ 648.94(b)(3);” and the references to “§ 648.85(b)(7)(iv)(G)” in paragraphs (b)(7)(iii), (b)(7)(v)(D), and (b)(7)(vi)(D) are corrected to read “§ 648.85(b)(7)(iv)(F).” In addition, reference to specific stock areas at § 648.85(b)(6)(v) is added to § 648.85(b)(6)(iv)(D) to clarify that the landing limits specified in this paragraph apply to particular stock areas. Further, reference to § 648.10 is inserted at § 648.85(b)(7)(iv)(A) to clarify how DAS would be counted in the Closed Area I Hook Gear Haddock SAP. Finally, § 648.85(b)(7)(vi)(G) through (I) are removed.

In § 648.86(i), the references to “§ 648.85(a)(3)(iv)” and “§ 648.85(a)(6)(iv)(D)” are corrected to read “§ 648.85.”

In § 648.92, paragraph (b)(2)(iii) is deleted, as this repeats the regulations at § 648.92(b)(2)(ii) and is not necessary.

Comments and Responses

One comment with three issues regarding the proposed action was received from one industry group during the comment period. A summary of the issues raised by the commenter and the associated NMFS response follows.

GB seasonal Closure Area Applicability

Comment 1: The commenter supported removal of the exemption to the GB Seasonal Closure Area, provided access to the Eastern U.S./Canada Haddock SAP Area is allowed prior to August 1 for approved gears, including hook gear.

Response: As explained in the preamble to the proposed rule for this action, the exemption from the seasonal closure is no longer necessary, as the SAP currently opens after the seasonal closure expires. No vessels are allowed into the Eastern U.S./Canada Haddock SAP Area prior to the opening date of the SAP on August 1. Therefore, because Council action is required to further revise the opening date of the SAP, NMFS cannot allow any vessels, including those using gear approved for use in the SAP, into the SAP Area before August 1. Further, hook gear is not considered an approved gear for this SAP at this time and cannot be used in the SAP Area under the SAP provisions.

However, a vessel may fish with hook gear in the Eastern U.S./Canada Area, an area that includes all of the SAP Area except a portion of the Area contained within Closed Area II, beginning May 1 of each fishing year under the provisions of the Regular B DAS Program (if fishing under a Regular B DAS) and/or the U.S./Canada Resource Sharing Understanding, unless otherwise notified. As a result, this action removes the exemption to the GB Seasonal Closure Area, but does not allow vessels fishing with hook gear or any other gear into the SAP Area prior to August 1.

Haddock TAC in the Closed Area I Hook Gear Haddock SAP

Comment 2: The commenter supported reinserting the Closed Area I Hook Gear Haddock SAP provisions that were inadvertently removed.

Response: This action reinserts the SAP measures that were inadvertently removed.

Approval of Sector Applications

Comment 3: The commenter noted the impacts of delays in the approval of sector operations during previous fishing years and supports efforts to streamline the process, including the pursuit of notice action rather than proposed rulemaking, especially if sector measures do not change between fishing years. However, this group suggested that public comment is warranted for new sectors or substantive exemptions.

Response: As specified in the preamble to the proposed rule for this action, the Administrative Procedure Act allows public comment to be waived in very limited circumstances. Regulations at § 648.87(c)(1) require NMFS to solicit public comment on a sector operations plan. To increase the likelihood that sector operations plans will be approved in a timely manner under unforeseen circumstances precluding opportunity for comment, this action eliminates the absolute requirement to publish a proposed rule.

Changes from the Proposed Rule

One change to the proposed rule has been made to further clarify a measure originally implemented by a December 27, 2005, final rule (70 FR 76422). That rule implemented a provision clarifying that NE multispecies vessels must offload species regulated by a daily landing limit (i.e., lbs per DAS) prior to leaving port to begin a subsequent fishing trip. That provision was necessary to effectively enforce such landing limits by prohibiting a vessel from beginning a trip while possessing

more than 1-day's worth of a species regulated by a daily landing limit at the start of a subsequent fishing trip. Although this intent was clearly reflected in the January 17, 2006, permit holder letter describing the measures corrected by that correction rule, the corresponding regulation failed to specify that a vessel may retain up to 1-day's worth of a species regulated by a daily landing limit. Accordingly, this final rule revises the regulations at § 648.86(i) to indicate that a vessel must offload species in excess of the daily landing limit prior to leaving port and beginning a subsequent fishing trip and may retain on board up to 1-day's worth of a species regulated by a daily landing limit, provided the vessel abides by the overall trip limit for such species during the subsequent trip.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures outlined in the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The proposed action would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the New England Fishery Management Council and approved by the Secretary of Commerce. This action would ensure that the economic impacts analyzed in previous actions would be realized, but would not impose any additional economic impacts on affected entities. The proposed action would not significantly reduce profit for affected vessels, as the proposed measures are either administrative in nature and would not affect vessel operations, or would have no economic impact beyond that previously analyzed. For example, FW 42 indicated that declarations of a vessel's intended activity via VMS prior to each trip would cost groundfish vessels approximately \$0.50 per declaration, or about \$15,000 per year. In addition, Amendment 13 indicated that the U.S./Canada Management Area gear requirements would cost participating vessels \$7,500 for a modified flounder net, or \$747 to comply with the haddock separator trawl requirement. This action would simply

clarify or reinstate such requirements, respectively, but would not increase costs associated with these measures. Other measures corrected or clarified by this action would ensure that unnecessary costs, such as the costs for higher VMS positional polling rates, are eliminated or that vessels would be able to fully realize the economic benefits of special management programs by correctly distributing the available haddock resources in the Closed Area I Hook Gear Haddock SAP.

As a result, neither an initial, nor a final, regulatory flexibility analysis was required and none have been prepared.

This final rule contains a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB as follows:

1. VMS purchase and installation, OMB #0648-0202, (1 hr/response);
2. VMS proof of installation, OMB #0648-0202, (1 hr/response);
3. Automated VMS polling of vessel position, OMB #0648-0202, (5 sec/response);
4. Area and DAS declarations via VMS, OMB #0648-0549 (5 min/response);
5. Standardized catch reporting requirements, OMB #0648-0212 (15 min/response);
6. Sector manager daily reports for CA I Hook Gear Haddock SAP, OMB #0648-0212, (2 hr/response);
7. DAS Leasing Program application, OMB #0648-0202, (5 min/response);
8. Annual declaration to participate in the CA I Hook Gear Haddock SAP, OMB #0648-0202, (2 min/response);
9. Sector allocation proposal, OMB #0648-0202, (50 hr/response); and
10. Sector operations plan submission, OMB #0648-0202, (50 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This action does not create new information collections or modify the response time associated with any of the information collection referenced above. Instead, this action revises the regulations underlying these information collections to correct inadvertent errors, omissions, and ambiguities in the current regulations, as described in the preamble of this rule.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting.

Dated: December 19, 2007

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.2, definitions for “lessee,” “lessor,” “transferee,” and “transferor” are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Lessee means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

Lessor means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k).

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Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

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■ 3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

- (c) * * *
- (2) * * *
- (iii) * * *

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing

him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

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§ 648.9 [Amended]

- 4. In § 648.9, remove and reserve paragraph (c)(1)(ii).
- 5. In § 648.10, the introductory text of paragraph (b)(2), and paragraph (b)(2)(iii) are revised; and paragraph (b)(5) is added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

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(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with

the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

* * * * *

(5) VMS notification requirements for other fisheries. Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

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■ 6. In § 648.14, paragraphs (a)(35), (a)(38), (a)(39), (a)(43), (a)(53), (a)(153), (b)(3), (b)(4), (c)(24), and (c)(26) are revised and paragraph (a)(78) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has

not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

* * * * *

(153) If fishing under the SNE/MA Winter Flounder SAP described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

* * * * *

(b) * * *

(3) While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) * * *

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

* * * * *

■ 7. In § 648.80, paragraph (b)(2)(vi) is revised to read as follows:

§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this

section; or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively; or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

§ 648.81 [Amended]

■ 8. In § 648.81, remove paragraph (g)(2)(iv).

■ 9. In § 648.82, paragraph (e)(1) is revised and paragraphs (k)(3)(i) through (iii) are added to read as follows:

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

* * * * *

(e) * * *

(1) When a vessel is participating in the DAS program, as required by the regulations, DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

* * * * *

(k) * * *

(3) * * *

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph

(k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

* * * * *

■ 10. In § 648.85, paragraphs (b)(7)(vi)(G) through (I) are removed, and paragraphs (a)(3)(i), (b)(6)(iv)(D), (b)(7)(iii), (b)(7)(iv)(A) and (F), (b)(7)(v)(D), and (b)(7)(vi)(D) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, white

hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

* * * * *

(7) * * *

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2006 fishing year and beyond, the participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) * * *

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

* * * * *

(F) *Haddock TAC—(1) Allocation and Distribution.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the

western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $Biomass_{YEAR} \times = (1,130 \text{ mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{YEAR} / \text{WGB Haddock Exploitable Biomass}_{2004})$. The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(2) *Adjustments to the haddock TAC.* The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or over-harvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear

Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

■ 11. In § 648.86, paragraphs (e) and (i) are revised to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit.* A vessel that has ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possesses on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (i.e., the vessel may retain up to 1,000 lb (453 kg) of Georges Bank cod, but must offload any additional cod), but may retain on

board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS demarcation line to begin a subsequent trip.

* * * * *

■ 12. In § 648.87, paragraphs (b)(1)(ix), (b)(1)(xv) and (xvi), (b)(2)(x), and (c) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of such conditions and requirements and any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant 15 CFR part 904.

* * * * *

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by NMFS pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel

upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

* * * * *

(2) * * *

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) 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 violations of Sector Operations Plan requirements as well as any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided

such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

* * * * *

■ 13. In § 648.89, paragraph (b)(4) is added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel, or at the time of landing. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

* * * * *

§ 648.92 [Amended]

■ 14. In § 648.92, remove paragraph (b)(2)(iii).

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