kg)). For example, if the GOM cod trip limit specified at § 648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) * * *

(iv) *Declaration.* To fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator declaring an intent to fish south of the GOM Regulated Mesh Area, and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. Such a vessel may transit the GOM Regulated Mesh Area, provided that their gear is stowed in accordance with the provisions at § 648.23(b).

* * * * *

■ 9. In § 648.89, revise paragraph (e)(1) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) * * *

(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(o)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(o)(2)(iii).

* * * * *

■ 10. In § 648.90, revise paragraph (a)(4)(iii)(E)(*2*) to read as follows:

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

(a) * * *

(4) * * *

(iii) * * *

(E) * * *

(2) Commercial allocation. The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between sectors operating under an approved sector operations plan, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels/permits participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

* * * * *

[FR Doc. 2011–9705 Filed 4–19–11; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110201085–1212–02]

RIN 0648–XY55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2011 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule partially approves and implements 19 sector operations plans and contracts for fishing year (FY) 2011. NMFS received sector operations plans and contracts from the following 22 sectors: The Georges Bank (GB) Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Massachusetts Permit Bank Sector; the New Hampshire Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; the Rhode Island Permit Bank Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. This interim final rule partially approves the operations plans and contracts, and allocates an annual catch entitlement (ACE) of certain NE multispecies stocks to the following 19 sectors: The GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were not approved to operate in FY 2011. Certain exemptions proposed in the operations plans have not been approved, as explained in detail below. Additionally, NMFS is modifying, for the purposes of this rule, the definition for "unmarketable" fish (see Exemption 11) and will accept further comment on this definition. NMFS is also accepting further comment on final sector membership. NMFS will publish a subsequent final rule, if necessary, making any further changes to this definition or in light of additional comments on changes to membership of sectors since the publication of this rule.

DATES: Effective May 1, 2011, through April 30, 2012. Written comments must be received on or before May 10, 2011.

ADDRESSES: You may submit comments on the new definition of "unmarketable" fish and changes to sector membership, identified by 0648–XY55, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison Murphy.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or

protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of each sector's final operations plan, contract, the environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on 19 sector operations plans and contracts was published in the **Federal Register** on February 28, 2011 (76 FR 10852), with public comments accepted through March 15, 2011. After review of the public comments, NMFS has partially approved 19 sector operations plans and contracts after determining the operations plans to be consistent with the goals of the NE Multispecies Fishery Management Plan (FMP), as described in Amendment 16 to the NE Multispecies FMP and other applicable laws, and in compliance with the proposed measures that govern the development and operation of a sector as specified in Section 4.2.3 of Amendment 16. Certain exemptions proposed in the operations plans have not been approved, as explained in detail below.

Background

The final rule for Amendment 13 to the FMP (69 FR 22906, April 27, 2004) implemented the GB Cod Hook Sector in 2004, and the Framework Adjustment 42 final rule (71 FR 62156, October 23, 2006) implemented the GB Cod Fixed Gear Sector in 2006. The final rule implementing Amendment 16 (75 FR 18262; April 9, 2010) revised and expanded the rules for sectors and authorized an additional 17 new sectors, including the Northeast Coastal Communities Sector, Northeast Fishery Sectors I through XIII, the Port Clyde Community Groundfish Sector, the Sustainable Harvest Sector, and the Tri-State Sector, in accordance with the revised Amendment 16 rules. Framework Adjustment 45 (FW 45), which is being implemented concurrently with this action, further revises the rules for these existing sectors and authorizes five new sectors (for a total of 24 sectors). The 5 sectors newly authorized by FW 45 are the Maine Permit Bank Sector, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, the Rhode Island Permit Bank Sector, and Sustainable Harvest Sector 3.

In accordance with Amendment 16, the proposed rule for this action discussed authorization of 22 sector operations plans and contracts for FY 2011. As discussed in the proposed rule, NMFS received sector operations plans and contracts from the following 22 sectors: The GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Massachusetts Permit Bank Sector; the New Hampshire Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; the Rhode Island Permit Bank Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. This rule partially approves the operations plans and contracts, and allocates an ACE of certain NE multispecies stocks to the following 19 sectors: The GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II through XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, their operations were not approved for FY 2011. Since FW 45 revises some rules for all existing sectors and authorizes an additional five sectors, NMFS suggests that interested readers review the final rule for FW 45 to fully understand the measures being implemented in this final rule.

Amendment 16 defined a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding NE multispecies limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives." A sector's total allowable catch (TAC) is referred to as an ACE. Regional Administrator approval is required for these sectors to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each FY. Each individual sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contribution (PSC) of permits participating in that sector for that FY. Therefore, sectors will be allocated all regulated multispecies stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and Southern New England/Mid-Atlantic (SNE/MA) winter flounder. Sectors will also not be allocated ocean pout. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

Concurrent with the implementation of FW 45, NMFS and the states of Maine, Massachusetts, New Hampshire, and Rhode Island have entered into separate Memoranda of Agreement (MOA) for the administration of state-managed permit banks in accordance with grants awarded to these states. Terms and conditions for permit banks include: The permit banks may only transfer out ACE, it may not transfer in ACE; the permit banks may only transfer ACE to sectors for use by vessels that are 45 ft (13.72 m) in length or smaller, based out of ports with a population of 30,000 residents or less.

For state permits banks to transfer ACE to approved sectors under the current regulations, each state permit bank developed and submitted an operations plan. Although the states of Massachusetts, New Hampshire, and Rhode Island met deadline requirements when submitting their operations plans and contracts, they were unable to fulfill roster requirements in time for their sectors to be considered in this rulemaking process for FY 2011. The Maine Permit Bank Sector, the only permit bank sector that met all of the requirements, consists of two privately held permits, as well as an additional five permits that are owned by the State of Maine. The permits owned by the State of Maine must abide by the terms of the MOA.

Sector ACEs

As of February 1, 2011, 836 of the 1,475 eligible NE multispecies permits, which accounts for 98.8 percent of the historical commercial NE multispecies landings during the Amendment 16 qualifying period, have indicated their intent to participate in a sector for FY 2011 (see Table 1). Following input

during the public comment period for FW 45, and based on industry request, NMFS has allowed for a limited opportunity for additional changes to sector rosters for FY 2011 to accommodate permit holders who took ownership of their limited access NE multispecies permit(s) after the December 1, 2010, roster deadline. Reopening the rosters provides additional flexibility to new permit holders without disrupting the organization of sectors; however, each sector may decide whether or not a member may leave the sector and whether or not to accept new members. This window to reopen FY 2011 sector rosters began on March 23, 2011, and will end on April 30, 2011. An announcement of this limited opportunity to reopen sector rosters was sent out to all sector managers on March 16, 2011, and to all NE multispecies permit holders on March 23, 2011. All permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2011, to withdraw from a sector and fish in the common pool for FY 2011, if they so choose. NMFS will publish final sector ACEs, based upon final rosters for FY 2011 and common pool sub-ACL totals, as soon as possible after the start of FY 2011 on May 1, 2011. This final rule responds to public comments on the proposed rule and implements the approved regulatory exemptions that were requested by the individual sectors.

Table 2 details the maximum cumulative PSC (a percentage) each sector will receive based on their rosters as of February 1, 2011. Tables 3a and 3b detail the maximum ACEs (in thousands of pounds and metric tons, respectively) each sector will be allocated based on their February 1, 2011, sector rosters for FY 2011. While the common pool does not receive a specific allocation of ACE, it has been included in each of these tables for comparison.

Note that individual sector members are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather each sector is allocated a portion of the GB cod and GB haddock ACE to harvest exclusively in the Eastern U.S./Canada Area. The amount of cod and haddock that a sector may harvest in the Eastern U.S./Canada Area is calculated by multiplying the cumulative PSC of the GB cod and GB haddock allocated to a sector by the Eastern U.S./Canada Area by the GB cod and GB haddock TACs, respectively.

Each sector is required to ensure that its ACE is not exceeded during the FY. Sectors are required to monitor their landings, track their available ACE, and submit weekly catch reports to NMFS. In addition, the sector manager is required to provide NMFS with aggregate sector reports on a daily basis when a threshold (specified in the operations plan) is reached. Once a sector's ACE for a particular stock is caught, a sector is required to cease all fishing operations in that stock area until it acquires additional ACE for that stock. Each sector must also submit an annual report to NMFS and the New England Fishery Management Council (Council) within 60 days of the end of the FY detailing all of the sector's catch (landings and discards of all stocks by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

In accordance with Amendment 16, at the start of FY 2011, NMFS will withhold 20 percent of each sector's FY 2011 ACE for each stock for a period of up to 61 days, to allow time to process any FY 2010 ACE transfers submitted after May 1, 2011, and to determine whether the FY 2011 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2010 ACE overage by that sector. At the request of the Council, NMFS is relaxing the May 14 deadline to submit ACE transfers for FY 2010. NMFS will allow sectors to transfer FY 2010 ACE for 14 days after the date that NMFS provides final FY 2010 catch data to sectors. NMFS will notify the Council and sectors of this date in writing.

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Table 1. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2011 sectors.*

Sector	Permits Enrolled	Number of Active Vessels	Gear Type Fished	Regulated Mesh Areas
Northeast Fishery Sector II	85	42	100% trawl	Gulf of Maine (GOM), Offshore GB, Inshore GB and Southern New England (SNE)
Northeast Fishery Sector III	94	47	85% gillnet, 5% hook gear, 5%pots/traps, 5% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IV	43	0	Lease-only sector	n/a
Northeast Fishery Sector V	34	27	3% gillnet, 97% trawl	Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VI	19	5	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VII	20	13	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VIII	20	16	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IX	60	25	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector X	51	21	36% gillnet, 13% hook, 6% pots/traps, 45% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XI	46	21	80% gillnet, 20% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XII	11	6	50% gillnet, 50% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XIII	35	29	5% gillnet, 95% trawl	GOM, Offshore GB, Inshore GB and SNE
Fixed Gear Sector	100	40	45% gillnet, 55% hook	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector I	105	38	14% gillnet, 86% trawl	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector III	18	0	Lease-only sector	GOM, Offshore GB, Inshore GB and SNE
Port Clyde Sector	39	24	52% gillnet, 48% trawl	GOM
Tri-State Sector	19	6	14% gillnet, 14% hook, 71% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Coastal Community Sector	30	10	3% gillnet, 83% hook gear, 4% trawl	GOM, Offshore GB, Inshore GB and SNE
Maine Permit Bank Sector	7	0	Lease-only sector	n/a

*The data in this table is from the sector operations plans rosters submitted as of February 1, 2011, and is subject to change based on final sector rosters, submitted April 30, 2011, as well as approval of FW 45. These numbers may increase due to changes in permit ownership or decrease due to a permit holder dropping out of a sector prior to the beginning of FY 2011.

Table 2. Cumulative PSC (a percentage (%)) of each sector by stock for FY 2011.*†

Sector Name	GB Cod**	GOM Cod	GB Haddock **	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	5.6488	19.8046	11.6889	18.3292	1.7102	1.7987	20.9085	8.7718	13.6138	1.6871	21.1028	16.6149	6.4183	12.3665
Northeast Fishery Sector III	1.2722	17.5142	0.1686	12.3554	0.0488	0.4094	9.5311	4.4444	3.0777	0.0332	11.0214	1.5541	5.2355	7.8642
Northeast Fishery Sector IV	4.986	7.9239	5.3969	6.3806	2.1591	2.3496	5.6749	9.113	9.0618	0.6946	5.2483	6.3399	7.8146	5.5114
Northeast Fishery Sector V	2.0169	0.1074	3.9224	0.3241	6.4689	24.6766	1.058	1.4547	1.7364	1.9876	0.3251	0.2893	0.2239	0.3082
Northeast Fishery Sector VI	2.0333	1.6866	2.8666	2.9698	2.695	5.1455	2.0704	3.5882	4.3721	1.4203	3.1218	5.2614	3.7111	3.227
Northeast Fishery Sector VII	4.396	0.4304	3.7899	0.562	9.0482	3.7208	2.6828	3.3936	3.0843	11.3692	0.8717	0.6456	0.7538	0.6925
Northeast Fishery Sector VIII	6.4176	0.4952	5.842	0.2143	11.3405	5.6501	6.6742	1.7347	2.614	16.1388	3.3718	0.4327	0.5016	0.6114
Northeast Fishery Sector IX	14.6524	1.6421	11.9671	4.6977	27.5463	8.103	10.6534	8.3833	8.3618	42.7913	2.4388	5.7766	4.1062	3.8955
Northeast Fishery Sector X	1.185	5.5302	0.3123	2.5837	0.0173	0.5471	13.8201	2.0181	3.6116	0.0154	27.348	0.5674	0.9716	1.5111
Northeast Fishery Sector XI	0.3951	12.5327	0.0359	2.5034	0.0008	0.0173	2.1834	1.4871	1.5354	0.0009	2.0243	0.9588	2.4371	6.5804
Northeast Fishery Sector XII	0.0153	2.428	0.0026	0.859	0.0008	0.0022	0.4841	0.7493	0.6076	0.0025	0.3168	1.0593	2.4958	2.9604
Northeast Fishery Sector XIII	7.9945	0.7006	14.88	0.8572	17.2305	12.6506	3.0582	3.8598	5.0271	10.832	1.2533	4.5673	1.8689	2.3411
Fixed Gear Sector	28.2003	1.9828	6.3521	1.3078	0.0125	0.301	1.9145	0.5519	0.8367	0.0274	2.2063	2.9012	5.8504	7.85
Sustainable Harvest Sector 1	16.3963	18.2919	28.8126	40.1049	11.6841	6.296	10.0961	39.3623	33.6617	9.9458	5.4883	48.1528	51.1011	38.7842
Sustainable Harvest Sector 3	1.1913	0.6756	1.9492	1.518	0.5156	4.1737	2.2232	1.117	1.5202	0.4394	3.2572	1.624	0.8672	1.0495
Port Clyde Sector	0.0882	3.9854	0.0316	2.1443	0.0032	0.6589	0.8582	5.7694	3.8318	0.002	1.2841	2.0356	3.6387	3.0283
Tri-State Sector	0.6752	0.8017	1.4476	0.4632	7.2444	1.2288	2.0391	1.0028	0.9409	1.9212	2.0843	0.0053	0.0184	0.0384
Northeast Coastal Community Sector	0.1711	0.7656	0.1213	0.3397	0.8379	0.7225	0.6148	0.1486	0.2172	0.0686	0.9058	0.44	0.857	0.4509
Maine Permit Bank Sector	0.1006	0.3269	0.0007	0.0433	0.0004	0.0002	0.2691	0.5862	0.3355	0.0045	0.8461	0.0154	0.0798	0.0713
All Sectors Combined	97.8361	97.6258	99.5883	98.5576	98.5645	78.452	96.8141	97.5362	98.0476	99.3818	94.5162	99.2416	98.951	99.1423
Common Pool	2.2992	2.6031	0.4178	1.4639	1.5255	21.8782	3.3421	2.5078	1.9901	0.6635	5.7657	0.7755	1.1787	0.9901

CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

*The data in this table are based on signed roster contracts as of February 1, 2011.

** For FY 2011, 4.56 percent of the GB cod ACE would be allocated for the Eastern U.S./Canada Area, while 31.26 percent of the GB haddock ACE would be allocated for the Eastern U.S./Canada Area.

† Percentages have been rounded to the nearest hundredth of a percent in this table, but thousandths of a percent are used in calculating ACEs in metric tons and tons. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

Table 3a. ACE (in thousands of pounds) each sector will receive by stock for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	25	511	2107	2484	5463	318	43	21	433	601	371	75	74	2762	421	3804
Northeast Fishery Sector III	6	115	1863	36	79	214	1	5	198	305	84	1	38	258	343	2419
Northeast Fishery Sector IV	22	451	843	1147	2522	111	54	27	118	624	247	31	18	1054	512	1695
Northeast Fishery Sector V	9	182	11	834	1833	6	163	285	22	100	47	88	1	48	15	95
Northeast Fishery Sector VI	9	184	179	609	1340	52	68	59	43	246	119	63	11	875	243	993
Northeast Fishery Sector VII	19	397	46	805	1771	10	228	43	56	233	84	503	3	107	49	213
Northeast Fishery Sector VIII	28	580	53	1242	2730	4	286	65	138	119	71	714	12	72	33	188
Northeast Fishery Sector IX	65	1325	175	2543	5593	82	694	94	221	574	228	1893	8	960	269	1198
Northeast Fishery Sector X	5	107	588	66	146	45	0	6	286	138	98	1	95	94	64	465
Northeast Fishery Sector XI	2	36	1333	8	17	43	0	0	45	102	42	0	7	159	160	2024
Northeast Fishery Sector XII	0	1	258	1	1	15	0	0	10	51	17	0	1	176	164	911
Northeast Fishery Sector XIII	35	723	75	3162	6955	15	434	146	63	264	137	479	4	759	123	720
Fixed Gear Sector	124	2550	211	1350	2969	23	0	3	40	38	23	1	8	482	384	2415
Sustainable Harvest Sector 1	72	1482	1946	6123	13466	696	294	73	209	2697	917	440	19	8005	3350	11930
Sustainable Harvest Sector 3	5	108	72	414	911	26	13	48	46	77	41	19	11	270	57	323
Port Clyde Community Groundfish Sector	0	8	424	7	15	37	0	8	18	395	104	0	4	338	239	931
Tri-State Sector	3	61	85	308	677	8	182	14	42	69	26	85	7	1	1	12
Northeast Coastal Community Sector	1	15	81	26	57	6	21	8	13	10	6	3	3	73	56	139
Maine Permit Bank Sector	0	9	35	0	0	1	0	0	6	40	9	0	3	3	5	22
All Sectors	431	8846	10385	21165	46546	1710	2482	906	2006	6683	2672	4397	329	16499	6488	30495
Common Pool	10	196	253	88	192	25	36	249	66	169	53	27	19	126	69	264

*The data in this table are based on signed roster contracts as of February 1, 2011. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs proposed in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

Table 3b. ACE (in metric tons) each sector will receive by stock for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	11	232	956	1127	2478	144	20	9	197	273	168	34	33	1253	191	1725
Northeast Fishery Sector III	3	52	845	16	36	97	1	2	90	138	38	1	17	117	156	1097
Northeast Fishery Sector IV	10	204	382	520	1144	50	25	12	53	283	112	14	8	478	232	769
Northeast Fishery Sector V	4	83	5	378	832	3	74	129	10	45	21	40	1	22	7	43
Northeast Fishery Sector VI	4	83	81	276	608	23	31	27	19	112	54	29	5	397	110	450
Northeast Fishery Sector VII	9	180	21	365	803	4	103	19	25	105	38	228	1	49	22	97
Northeast Fishery Sector VIII	13	263	24	563	1239	2	130	30	63	54	32	324	5	33	15	85
Northeast Fishery Sector IX	29	601	79	1154	2537	37	315	42	100	261	103	859	4	436	122	544
Northeast Fishery Sector X	2	49	267	30	66	20	0	3	130	63	45	0	43	43	29	211
Northeast Fishery Sector XI	1	16	605	3	8	20	0	0	21	46	19	0	3	72	72	918
Northeast Fishery Sector XII	0	1	117	0	1	7	0	0	5	23	8	0	1	80	74	413
Northeast Fishery Sector XIII	16	328	34	1434	3155	7	197	66	29	120	62	217	2	344	56	327
Fixed Gear Sector	56	1156	96	612	1347	10	0	2	18	17	10	1	3	219	174	1095
Sustainable Harvest Sector I	33	672	883	2778	6108	316	133	33	95	1223	416	200	9	3631	1520	5411
Sustainable Harvest Sector III	2	49	33	188	413	12	6	22	21	35	19	9	5	122	26	146
Port Clyde Community Groundfish Sector	0	4	192	3	7	17	0	3	8	179	47	0	2	154	108	423
Tri-State Sector	1	28	39	140	307	4	83	6	19	31	12	39	3	0	1	5
Northeast Coastal Community Sector	0	7	37	12	26	3	10	4	6	5	3	1	1	33	25	63
Maine Permit Bank Sector	0	4	16	0	0	0	0	0	3	18	4	0	1	1	2	10
All Sectors	196	4012	4710	9600	21113	776	1126	411	910	3031	1212	1995	149	7484	2943	13832
Common Pool	4	89	115	40	87	11	16	113	30	77	24	12	9	57	31	120

*The data in this table are based on signed roster contracts as of February 1, 2011. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs proposed in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

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Sector Operations Plans and Contracts

All sectors must submit an operations plan and sector contract to NMFS by a specified deadline to be authorized to fish and receive an allocation of groundfish for the following FY. Of the 24 (19 current and 5 newly authorized under FW 45) sectors, a total of 19 sectors met the operations plan deadline and the roster deadline for FY 2011, including the Maine Permit Bank Sector. Two of the 24 sectors, the GB Cod Hook Sector and Northeast Fishery Sector I, again elected not to submit operations plans for FY 2011, and three sectors, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were not approved for operations in FY 2011. Two of the FY 2011 sectors, Northeast Fishery Sector IV and Sustainable Harvest Sector 3, will operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits onto active vessels. Each sector operations plan contains the rules under which each approved sector would fish. The sector contract provides the legal contract that binds members to a sector and its operations plan. Most sectors submitted one document to NMFS that encompasses both the operations plan and contract.

While each sector conducts fishing activities according to its approved operations plan, Amendment 16 contains numerous provisions that apply to all sector operations plans and sector members. All permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (i.e., in the common pool) during the FY. Participating vessels are required to comply with all Federal fishing regulations, unless specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator, as part of the approved sector's operations plan, as described further below.

Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes would be included in updated LOAs issued to sector members and through amendments to the approved operations plan.

Sector vessels are required to retain all legal-sized allocated groundfish, unless an exemption is granted allowing sector vessels to discard legal-sized unmarketable fish at sea (see Exemption 10 below). Catch (including discards) of all allocated groundfish stocks by a sector's vessels counts against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish bycatch caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (e.g., not fishing under provisions of a NE multispecies exempted fishery) shall have their groundfish catch (including discards) on those trips debited against the sector's ACE. Discard ratios applied to sectors will be determined by NMFS, based on observed trips.

All vessels that fish in an approved sector, with the exception noted below, must receive a LOA for FY 2011 to fish under regulations that apply to the sector in which they are enrolled and to be exempted from the regulations that otherwise would be applicable if the vessels were not fishing as a sector vessel. Permits and vessels enrolled in Northeast Fishery Sector IV, which is a lease-only sector, will not receive an LOA to fish, as no vessels in that sector are authorized to actively fish.

Amendment 16 required sectors to develop independent third-party dockside monitoring programs (DSM) for monitoring landings and utilization of ACE, and to verify landings at the time they are weighed by the dealer to certify that the landing weights are accurate as reported by the dealer. FW 45, which is being implemented concurrently with this action, changes the required coverage level for DSM to the level NMFS is able to fund, up to 100-percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. In addition, FW 45 removes DSM requirements (a reporting requirement) from the list of prohibited exemptions for sectors.

Each sector operations plan and contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the contract. Sector members may be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector operations plan and contract submitted for FY 2011 withholds an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector operations plan and contract also details the method for initial ACE allocation to sector members; for FY 2011, each sector will allow each member to harvest an amount of fish equal to the amount that member's permit(s) contributed to the sector's ACE.

In order to comply with the National Environmental Policy Act (NEPA) in an efficient manner, a single EA was prepared analyzing all 19 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The summary findings of the EA conclude that each sector will likely produce similar effects that result in non-significant impacts. An analysis of aggregate sector impacts was also conducted and Finding of No Significant Impact for the sector EA were issued by the Regional Administrator on April 13, 2011.

Amendment 16 created several universal exemptions that are applicable to all sectors, including exemptions from: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB; and portions of the GOM Rolling Closure Areas. Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements). FW 45 removes DSM from the reporting requirements from which sectors may not be exempted. Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Additional background information on requested exemptions for FY 2011 can be found in the proposed rule for this action.

Approved FY 2011 Sector Exemption Requests

In addition to the universal exemptions in Amendment 16, sectors requested 31 additional exemptions from the NE multispecies regulations in their FY 2011 sector operations plans. After thorough review and consideration of public comments on

the exemption requests, NMFS authorizes 17 exemptions from the following regulations for the individual sectors that requested them, the first 9 of which were previously approved in FY 2010: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) prohibition on a vessel hauling another vessel's gillnet gear; (3) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (4) limitation on the number of gillnets imposed on Day gillnet vessels; (5) 20-day spawning block out of the fishery required for all vessels; (6) limits on the number of hooks that may be fished; (7) DAS Leasing Program length and horsepower restrictions; (8) prohibition on the possession or use of squid or mackerel in the Closed Area I (CA I) Hook Gear Haddock Special Access Program (SAP); (9) sink gillnet mesh size restrictions in the GOM from January through April; (10) extension of sink gillnet mesh size restrictions in the GOM through the month of May; (11) prohibition on discarding; (12) daily catch reporting by Sector Managers for vessels participating in the CA I Hook Gear Haddock SAP; (13) trawl gear restrictions in the U.S./Canada Management Area; (14) the requirement to power a VMS while at the dock; (15) DSM requirements for vessels fishing west of 72°30′ W. long.; (16) DSM requirements for Handgear A-permitted Sector Vessels; and (17) DSM Requirements for monkfish trips in the monkfish Southern Fishery Management Area (SFMA). Details of these exemptions are discussed below.

This interim final rule approves FY 2011 exemption requests only for sectors that requested those exemptions through their sector operations plans and contracts. The accompanying EA has analyzed all exemption requests as if all sectors had requested the exemptions. Therefore, sectors not granted an approved exemption may request any of the approved exemptions at any time during the FY, except the discarding exemption, and could add these exemptions to their operations plans and contracts through amendments. NMFS will accept additional public comment on this approach.

1. 120-Day Block Out of the Fishery Requirement for Day Gillnet Vessels

The 120-day block out of the fishery requirement for Day gillnet vessels was implemented in 1997 under Framework 20 (62 FR 15381; April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, given that gillnets continue to fish as long as they are in the water. Regulations at 50 CFR 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery each FY. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. An exemption from this requirement was previously approved for FY 2010 based upon the rationale that this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. This exemption is again approved in FY 2011 based on the same rationale. Approval of this exemption increases the operational flexibility of sector vessels and is expected to increase profit margins of sector fishermen. For additional information pertaining to this exemption and other exemptions previously approved in FY 2010, please refer to the proposed and final sector rules for FY 2010 sectors (74 FR 68015, December 22, 2009; and 75 FR 18113, April 9, 2010, respectively). The exemption from the Day gillnet 120-day block requirement has been approved for the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

2. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Regulations at §§ 648.14(k)(6)(ii)(A) and 648.84(a) specify the manner in which gillnet gear must be tagged, requiring that information pertinent to the vessel owner or vessel be permanently affixed to the gear. No provisions exist in the regulations allowing for multiple vessels to haul the same gear. An exemption from this regulation, which was previously approved in FY 2010 because it was determined that the regulations pertaining to hauling and setting responsibilities are no longer necessary when sectors are confined to an ACE for each stock, would allow a sector to share fixed gear among vessels, thereby reducing costs. This exemption is again approved in FY 2011 based on the same rationale. Consistent with the exemption as originally approved, the sectors requesting this exemption have agreed that all vessels utilizing community fixed gear will be jointly liable for any violations associated with that gear. Additionally, each member intending to haul the same gear will be required to tag the gear with the appropriate gillnet tags, consistent with § 648.84(a). The exemption from the prohibition against hauling another vessel's gear has been approved for the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

3. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

Regulations at § 648.80(a)(4)(iv) prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB were implemented as a groundfish mortality control under Amendment 13. An exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS was previously granted in FY 2010 because it would allow nets deployed under existing net limits under the Monkfish FMP to be hauled more efficiently by vessels dually permitted under both FMPs. This exemption is again approved in FY 2011 based on the same rationale. The exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS has been approved for the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

4. Limitation on the Number of Gillnets for Day Gillnet Vessels

Current gear restrictions in the groundfish regulated mesh areas (RMA) restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the SNE and MA RMAs (§§ 648.80(b)(2)(v) and 648.80(c)(2)(iv), respectively). This exemption was previously approved in FY 2010, and allows sector Day gillnet vessels to fish up to a maximum of 150 nets (any combination of flatfish or roundfish nets) in any RMA, and provides greater operational flexibility to sector vessels in deploying gillnet gear. This exemption was previously approved for FY 2010 because it is designed to control fishing effort and is no longer necessary, since each sector is restricted by an ACE for each stock,

which caps overall fishing mortality. This exemption is again approved in FY 2011 based on the same rationale. The exemption from the limit on the number of gillnets for Day gillnet vessels has been approved for the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

5. 20-Day Spawning Block

Regulations at §§ 648.82(b)(6) and 648.82(g) require vessels to refrain from fishing in NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. This 20-day period must be declared in advance. This regulation was developed to reduce fishing effort on spawning groundfish stocks and an exemption was approved for FY 2010 sectors based upon the rationale that the sector's ACE will restrict fishing mortality, making this measure no longer necessary as an effort control. This exemption is again approved in FY 2011 based on the same rationale. An exemption from this requirement provides vessel owners greater flexibility to plan operations according to fishing and market conditions. The exemption from the 20-day block requirement has been approved for the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

6. Limitation on the Number of Hooks That May Be Fished

Current regulations for the GOM RMA, GB RMA, SNE RMA, and MA RMA at §§ 648.80(a)(3)(iv)(B)(*2*), 648.80(a)(4)(iv)(B)(*2*), 648.80(b)(2)(iv)(B)(*1*), and 648.80(c)(2)(v)(B)(*1*), respectively, prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA. This measure, which was initially implemented in 2002 through an interim action (67 FR 50292; August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort. An exemption from the limitation on the number of hooks that a vessel may fish was approved for FY 2010 because it would allow sector vessels to more efficiently harvest ACE and is no longer a necessary control on effort by sector vessels. This exemption is again approved in FY 2011 based on the same rationale. The exemption from the limitation on the number of hooks that may be fished has been approved for the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

7. Length and Horsepower Restrictions on DAS Leasing

While sector vessels are exempt from the requirement to use NE multispecies DAS to harvest groundfish, sector vessels have been allocated, and still need to use, NE multispecies DAS for specific circumstances. For example, the Monkfish FMP includes a requirement that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish possession limit must fish under both a monkfish and a groundfish DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

An exemption from the DAS Leasing Program length and horsepower baseline restrictions on DAS leases among vessels within individual sectors, as well as between vessels in different sectors, was approved in FY 2010. Restricting sectors to their ACEs eliminates the need to use vessel characteristics to control groundfish fishing effort. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and little redirection of effort to non-allocated species in their FY 2010 operations plans. In addition, any potential redirection in effort would be restricted by the sector's ACE for each stock, as well as by effort controls in other fisheries (*e.g.,* monkfish trip limits and DAS). This exemption is again approved in FY 2011 based on the same rationale. The exemption from the length and horsepower restrictions on DAS leasing has been approved for the GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; all 12 Northeast Fishery Sectors; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

8. Prohibition on the Possession or Use of Squid or Mackerel in the CA I Hook Gear Haddock SAP

The restriction on the possession or use of squid or mackerel as bait in the CA I Hook Gear Haddock SAP was originally approved by the Council in Framework 41, and analyzed in the FEIS for Framework 41, but inadvertently not included in the regulations implementing Framework 41. To correct this oversight, this provision was implemented in the Amendment 16 final rule. This restriction was intended to control the catch rates of cod, as squid and mackerel have been demonstrated to result in higher catch rates of cod. NMFS received comments on Amendment 16 that the bait restrictions should not apply to sector vessels. In the final rule implementing Amendment 16, NMFS stated that "* * * because the Council did not provide for a specific exemption from such bait restriction in Amendment 16, NMFS cannot provide a sector an exemption from the bait requirements for this SAP in the final rule." However, because the bait restriction in Framework 41 was included under Section 4.2.2.2 "Requirements for Vessels not in the Hook Sector," NMFS has determined that Framework 41 specified that this bait restriction applied only to vessels fishing outside of a sector (i.e., the common pool). Based on this, NMFS intends to revise the current regulations for this requirement in an upcoming correction rule and, until the correction is effective, exempt any interested sector from this provision for FY 2011. Until the correction rule becomes effective, this exemption from this bait restriction has been approved for the GB Cod Fixed Gear Sector.

9. Sink Gillnet Mesh Size Restrictions in the GOM From January Through April

The regulations require a minimum mesh size of 6.5 inches (16.51 cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)). Minimum mesh size requirements have been used to reduce overall mortality on groundfish stocks, as well as to reduce discarding of, and improve survival of, sub-legal groundfish. An exemption from this requirements allows sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2012, to April 30, 2012, when fishing for haddock. The designation of this season is consistent with the pilot program originally proposed in Amendment 16 and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets on trips in the GOM, however, sector vessels may transit the GOM RMA with tie-down gillnets, provided they are properly stowed and not available for immediate

use in accordance with one of the methods specified at § 648.23(b). Day gillnet vessels granted the sector exemption from Day gillnet net limits, as explained under Exemption 4, are not subject to the general net limit in the GOM RMA, and thus are able to fish up to 150 nets in the GOM RMA. To maximize the flexibility for vessels fishing under both exemptions, NMFS is allowing Day gillnet vessels granted both the Sink Gillnet Mesh Size Restrictions in the GOM exemption and the general net limit exemption to fish up to 150 stand-up sink gillnets in the GOM RMA during this period (up to 150 nets total in all RMAs). Day gillnets vessels participating in a sector that have not also been approved for the general net limit exemption are restricted to the limit of 50 stand-up sink gillnets during this period. To improve enforceability and increase flexibility, vessels using this exemption must declare their intent on a trip-by-trip basis through a VMS form. There is no limit on the number of nets that participating Trip gillnet vessels are able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

For additional information pertaining to this exemption, please refer to the proposed and final supplemental rules for FY 2010 sector operations plans and contracts (75 FR 53939, September 2, 2010 and 75 FR 80720, December 23, 2010, respectively). The exemption from sink gillnet mesh size restrictions in the GOM from January through April has being approved for the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

10. Extension of the Sink Gillnet Mesh Size Restrictions in the GOM Through May

For a full description of the Sink Gillnet Mesh Size Restrictions in the GOM, please see Exemption 9 of this section. As stated above under Exemption 9, the implementation of the sink gillnet mesh size restriction in the GOM during the January through April season is consistent with the pilot program originally proposed in Amendment 16 and is the time period when haddock are most available in the GOM. Since fishing effort by sector vessels is restricted by ACE for allocated stocks, overall mortality is capped. Extending this exemption through May will provide sector vessels the opportunity to potentially catch more GOM haddock, a fully rebuilt stock, and will also provide sector participants the opportunity to more fully harvest their allocation of GOM haddock, thereby increasing efficiency and revenues for vessel participating in this program. All provisions specified under Exemption 8 also apply to this exemption. The extension of the exemption of the sink gillnet mesh size restriction in the GOM through May has been being approved for the GB Cod Fixed Gear Sector, and Northeast Fishery Sectors III, VI–VIII, and X.

11. Prohibition on Discarding

Current regulations prohibit sector vessels from discarding legal-sized fish of any of the 14 stocks allocated to sectors while at sea (§ 648.87(b)(1)(v)(A)): GB cod, GOM cod, GB haddock, GOM haddock, GB yellowtail flounder, SNE/MA yellowtail flounder, CC/GOM yellowtail flounder, plaice, witch flounder, GB winter flounder, GOM winter flounder, redfish, white hake, and pollock. Amendment 16 contained this provision to ensure that the sector's ACE is accurately monitored. Sectors requested a partial exemption from this prohibition because of concerns that retaining and landing large amounts of unmarketable fish, including fish carcasses, creates operational difficulties and potentially unsafe working conditions for sector vessels at sea. NMFS has approved a partial exemption from the requirement to retain all legal-sized fish for FY 2011 sectors, which will allow sector vessels to discard these fish. However, all legal-sized unmarketable allocated fish will be accounted for in the overall sector-specific discard rates in the same way discards of undersized fish are currently accounted for, through observer and at-sea monitor coverage. The final supplemental rule to implement amendments to 17 FY 2010 sector operations plans and contracts initially defined unmarketable fish as "any legal-sized fish the vessel owner/captain elects not to retain because of condition or marketability problems." The intent of this exemption is to permit the discarding of fish that cannot be sold because of physical damage, not because of market price or availability; the regulations implementing Amendment 16 were developed to reduce the potential for any high-grading of catch. Therefore, NMFS is revising its definition of "unmarketable" fish. For the purpose of this regulatory exemption, "unmarketable" fish is re-defined as "any legal-sized fish the vessel owner/captain elects not to retain because of poor quality as a result of damage prior to, or from, harvest." NMFS is requesting additional comments on this revised definition of "unmarketable" fish and, depending on comments provided by the public, may further revise the definition in a future action. NMFS will publish a subsequent final rule, if necessary, with any changes to this definition. The definition of unmarketable fish will be included in the sector's LOA.

All vessels in a sector opting for this exemption will be required to discard legal-sized unmarketable fish at sea on all trips (*i.e.,* not just on select trips). Legal-sized unmarketable fish, as defined by the vessel operator, will be prohibited from being landed to prevent the potential to skew observed discards. NMFS intends to modify the sector-specific discard rates for each sector utilizing this exemption because this exemption represents a change to the treatment of unmarketable fish (from landings to discards). Once the discarding exemption takes effect and the discard rates have been modified, unmarketable fish discarded by the sector's vessels on observed trips will be deducted from the sector's ACE and incorporated into the sector's discard rates to account for discarding under this exemption on unobserved trips.

This exemption will enhance operational flexibility, foster safer working conditions for sector vessels, and relieve the burden on sector vessels and their dealers from having to dispose of the unmarketable fish upon landing. The determination of what fish should be discarded under this exemption is at the discretion of the vessel operator, but must be based on physical damage to the fish. There is an incentive for vessel operators to retain and market as much of their catch of allocated stocks as possible to maximize the value of the sector's ACE, because discarded fish will still count against the sector's ACE and be incorporated into the sector's discard rates, without any financial benefit. Thus, it is unlikely that this exemption will lead to additional mortality, but will provide flexibility to sector vessels. This exemption is expected to result in negligible impacts to allocated species, non-allocated species, and bycatch, because discarded unmarketable fish are already dead. Impacts to protected resources and the physical environment are also expected to be negligible because overall effort by sectors is limited by an ACE. Implementation of this exemption for all sectors may increase safety at sea, and may increase the expected profit margins of fishermen by eliminating any costs associated with disposal of unmarketable fish, thereby resulting in

a positive impact on sector participants. The discarding exemption, in combination with the required reporting of legal-sized unmarketable fish discarded, will improve the monitoring of this portion of sector catch, particularly on unobserved sector trips. NMFS cannot add this exemption to a sector's operations plan in season, because adjusting sector-specific discard rates mid-season would disrupt the cumulative year-long dataset used to monitor the sector's ACE. The discard exemption has been approved for the GB Cod Fixed Gear Sector; and Northeast Fishery Sectors XI–XIII.

12. Daily Catch Reporting by Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP

The regulations at § 648.85(b)(7)(v)(C) require that sector vessels that declare into the CA I Hook Gear Haddock SAP submit daily catch reports to the sector manager, and that the sector manager report catch information to NMFS on a daily basis. This reporting requirement was originally implemented through Framework 40A, to facilitate real-time monitoring of quotas by NMFS. Amendment 16 granted authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. Through the final rule implementing Amendment 16, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), but reporting requirements were retained for the CA I Hook Gear Haddock SAP, because NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP. This rule exempts sector managers from the daily reporting requirement for the CA I Hook Gear Haddock SAP.

NMFS evaluated the possibility of using the sector manager's weekly report, rather than daily reports, to monitor the TAC. Sector weekly reports are received in a timely enough manner to adequately monitor other SAPs. However, the weekly reports, in their current form, would not provide sufficient information, and would require NMFS and all sectors to update their reporting systems to accommodate any change to the weekly report to gather sufficient information. Requiring all sectors to modify their individual systems would produce unnecessary burden on sectors whose vessels do not participate in this SMP. However, participating vessels could submit a daily VMS catch report directly to NMFS containing all required information, analogous to the requirements for common pool vessels to satisfy this reporting requirement. Therefore, as proposed, an exemption from the daily catch reporting requirements for sector managers for member vessels participating in the CA I Hook Gear Haddock SAP with the requirement that sector vessels submit daily VMS catch reports directly to NMFS has been approved for the GB Cod Fixed Gear Sector and the Northeast Coastal Communities Sector.

13. Trawl Gear Requirements in the U.S./Canada Management Area

Current regulations require that a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area must fish with a Ruhle trawl, a haddock separator trawl, or a flounder trawl net. The final rule implementing Amendment 13 clarified that the restriction to use a haddock separator trawl or a flounder trawl net was designed to "ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal." The requirement to utilize a Ruhle trawl in the Eastern U.S./Canada Area was implemented through several inseason actions, and made permanent in Amendment 16. This gear configuration was originally authorized for its demonstrated ability to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. The addition of the Ruhle Trawl to gear previously approved (haddock separator trawl and flounder trawl net) provided added flexibility to trawl vessels.

An exemption from these specific gear requirements will enhance operational flexibility for sector vessels while not impacting overall fishing mortality given that sectors are constrained by the allocated ACE for each stock. An exemption from the gear requirements in the U.S./Canada Management Area has been approved for Northeast Fishery Sectors II and V, the Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector. Any trawl gear not currently approved for the U.S./Canada Management Area, but utilized under this exemption, will be included in the standard otter trawl discard rate strata. For sectors approved to utilize this exemption, NMFS will apply the final sector-specific FY 2010 standard otter trawl rate derived for stocks in the Western GB stock area as the initial discard rate for FY 2011, prior to transitioning into an inseason discard rate based upon observed trips in those strata.

14. Requirement To Power a VMS While at the Dock

The regulations at § 648.10(b)(4) require that a vessel issued certain categories of NE multispecies permits, or participating in a sector, must have an operational VMS unit onboard. Additionally, the regulations at § 648.10(c)(1)(i) require that the VMS units onboard a NE multispecies vessel transmit accurate positional information (i.e., polling) at least every hour, 24 hr per day, throughout the year. Amendment 5 first included the requirement for vessels to use VMS (59 FR 9872; March 1, 1994). While the requirement to use VMS was delayed until a later action (FW 42 ultimately implemented a VMS requirement for NE multispecies DAS vessels), NMFS supported polling due to its ability to insure adequacy of monitoring requirements and address enforcement concerns, and because it could be beneficial in the event of an at-sea emergency.

Under certain circumstances, the regulations at § 648.10(c)(2) allow NMFS to issue a LOA allowing vessels to sign out of the VMS program for a minimum of 30 consecutive days. An exemption from the requirement to power a VMS at the dock request is administrative in nature, and is expected to have negligible impacts to allocated species, non-allocated species, protected resources, and the physical environment. Additionally, this exemption provides operational flexibility for sector vessels and may help to lower the costs associated with the operation of a VMS unit. Because sector managers are ultimately responsible for ensuring that their sector members adhere correctly to the operations plans requirements, the enforcement concerns related to powering down at the dock are mitigated. For these reasons, an exemption from the requirement to power a VMS while at the dock has been approved for the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors IV, VI, and X; the Port Clyde Community Groundfish Sector, and the Tri-State Sector. Vessels will be granted this exemption provided the vessel is at the dock and not underway. The Regional Administrator reserves the right to revoke this exemption, should it be determined that the exemption is being misused or abused. Vessels granted this exemption and electing to

power down must submit the appropriate VMS declaration, as specified on the sector's LOA. Since sectors may only request exemptions from NE multispecies regulations, this exemption only applies to NE multispecies requirements; vessels must continue to comply with the requirements of other FMPs for which the vessel is permitted. For instance, a vessel in a sector granted this exemption that has a surfclam/ocean quahog permit would still need to have an active VMS 24 hr a day, 7 days a week.

15. DSM Requirements for Vessels Fishing West of 72°30′ W. long.

Upon receiving requests for an exemption from the DSM requirement (§ 648.87(b)(1)(v)(B)(*1*)) for vessels fishing in SNE and MA waters during FY 2010, the Regional Administrator, in a September 1, 2010, letter to the Council, requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. At its November 18, 2010, meeting, the Council considered this request and voted to remove DSM from the list of prohibited exemptions.

Several Northeast Fishery Sectors and the Sustainable Harvest Sector proposed exemptions from areas in the SNE and MA RMAs; the Northeast Fishery Sectors requested an exemption from DSM requirements when fishing in certain statistical areas (615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 633, 635, 637, and 638) and the Sustainable Harvest Sector requested an exemption from DSM requirements for vessels fishing west of 72°30′ W. long. All noted that historical data indicate that little groundfish incidental catch has been observed in these areas, and monitoring of such trips is burdensome and not a beneficial use of financial resources. Using VMS declarations and Vessel Trip Report (VTR) data, NMFS has verified that little groundfish has been landed from these areas. For example, VTR data from FY 2009 indicates that of 1,220 groundfish trips fishing west of 72°30′ W. long., 74 trips (approximately 6 percent) landed a total of 11,345 lb (5,146.01 kg) of groundfish. Similarly, VTR data available from FY 2010 (May 1, 2010 through February 3, 2011) indicates that 8 out of 390 trips (2 percent) fishing west of this line landed approximately 1,500 lb (680.39 kg) of groundfish.

NMFS believes that one exemption area based on a longitudinal line will better facilitate enforcement and, therefore, has approved the request for a southern boundary drawn along the 72°30′ W. long. line, where vessels that fish exclusively west of this line on a fishing trip would be exempted from DSM requirements for that trip. Vessels fishing under this exemption must stow all gear capable of catching groundfish consistent with the regulations at § 648.23(b) while steaming to or from areas west of 72°30′ W. long. Sectors electing to utilize this exemption must coordinate with their contracted DSM providers to establish a method to exclude these trips from DSM.

Trip start and trip end hails are used by NMFS to coordinate the deployment of enforcement resources in monitoring offloads. Therefore, NMFS will continue to require vessels utilizing this exemption to comply with all hail requirements. An exemption from DSM requirements for vessels fishing west of 72°30′ W. long. has been approved for the GB Cod Fixed Gear Sector, Northeast Fishery Sectors III, V–VI, X–XII, Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector; as well as Northeast Fishery Sectors VII,VIII, and XIII, which requested an exemption from DSM requirements when fishing in certain statistical areas.

16. DSM Requirements for Handgear A-Permitted Sector Vessels

The FY 2011 proposed rule included two requests for exemption from DSM requirements (§ 648.87(b)(1)(v)(B)(*1*)) for vessels using hook gear (Exemption 22: DSM Requirements for Jig Vessels and Exemption 26: DSM, Roving Monitoring, and Hail Requirements for Hook-only or Handgear Vessels), noting that vessels utilizing this gear type are among the smallest operators, have historically landed small amounts of groundfish, and are able to target certain species with little incidental catch of other allocated groundfish species. The sectors pointed out that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields, and that the proceeds from these trips may be less than the cost of deploying monitors.

FW 45 removes DSM requirements in FY 2011 for Handgear A- and B-permitted vessels, as well as for Small Vessel-permitted vessels (Category HA, HB and C, respectively) in the common pool, because the small quantities of groundfish landed by these permit categories would make monitoring such trips uneconomical. Consistent with flexibility provided for Handgear-permitted vessels in FW 45, NMFS has partially approved the two exemption requests highlighted above, allowing limited access Handgear A-permitted sector vessels to be exempt from DSM requirements. As explained in the proposed rule, hail requirements (including trip start and trip end hails) remain reporting requirements, and sectors may not be exempted from such provisions. Additionally, hails are used by NMFS to coordinate the deployment of enforcement resources in monitoring offloads. An exemption from DSM requirements for Handgear A-permitted sector vessels has been approved for the GB Cod Fixed Gear Sector, the Northeast Coastal Communities Sector, and Northeast Fishery Sectors VI and X.

17. DSM Requirements for Monkfish Trips in the Monkfish SFMA

Amendment 13 specified that sectors are responsible for monitoring sector catch, and Amendment 16 expanded this requirement. Unless a vessel is fishing in a NE multispecies exempted fishery specified in § 648.80, directed monkfish, skate and dogfish trips are considered a sector trip. Several sectors requested exemptions from DSM while on directed fishing trips for monkfish, skate, and/or dogfish, contending that: Data collected from observed FY 2010 trips demonstrate that little groundfish incidental catch occurs in these fisheries, making the cost of DSM per pound of groundfish too low to support it; and that the implementation of DSM in FY 2010 has not met the objectives stated in Amendment 16 in an economically efficient manner.

NMFS cited several operational concerns about exempting these trips from DSM in the proposed rule for this action. Vessels fishing on a directed monkfish, dogfish, or skate trip, outside of an exempted fishery, must declare a NE multispecies DAS or sector trip through VMS or IVR prior to starting their trip because the gear utilized on such trips has the ability to catch groundfish, and because groundfish retention is permitted. It is currently impossible to distinguish most directed fishing trips for monkfish, skate and/or dogfish from directed fishing trips for groundfish because neither the skate nor the spiny dogfish FMPs currently require VMS. It is not possible for a groundfish action to implement VMS requirements for fisheries managed under other FMPs.

Trawl vessels fishing on a NE multispecies DAS or on a sector trip in the Southern New England RMA must use a minimum 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh through the body and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of a trawl net (648.80(b)(2)(i)). Day and Trip gillnet vessels must fish with a minimum mesh size of 6.5 inches (16.5 cm) throughout the entire net (§ 648.80(b)(2)(iv)). Monkfish management measures at

§ 648.91(c)(1)(i) require vessels fishing under the monkfish DAS program with trawl gear in the SFMA to utilize a minimum 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend and for at least 45 continuous meshes forward of the terminus of the net. The monkfish regulations also require vessels fishing under the monkfish DAS program with gillnet gear to fish with a minimum diamond mesh size of 10 inches (25.4 cm) or larger (§ 648.91(c)(1)(iii)). Vessels that are issued both monkfish limited access and NE multispecies limited access permits must comply with the more restrictive set of management measures. Therefore, a vessel that is fishing under concurrent monkfish DAS and NE multispecies DAS on a sector trip must abide by the more restrictive monkfish gear requirements.

Since publication of the proposed rule for this action, NMFS was able to identify a subset of groundfish trips under concurrent monkfish/NE multispecies DAS. Data from VTRs from April 2010 through March 2011 for this subset of trips show sector trips declared into the SFMA monkfish fishery using 10-inch (25.4-cm) or larger mesh, as required in the Monkfish FMP, landed only a small amount (1,248 lb, or 566.1 kg) of groundfish on 18 trips out of the 847 trips declared in the monkfish SFMA through March, 31, 2011. Based on this information, NMFS has approved an exemption from dockside monitoring for sector trips declared into the SFMA when fishing on a concurrent monkfish/NE multispecies DAS trip provided that the vessel fishes the entirety of its trip in the SFMA. Sector vessels utilizing this exemption must have non-conforming gear stowed as specified in § 648.23(b), and comply with dockside monitoring hail requirements specified at § 648.87(b)(5)(i)(A). Sector vessels utilizing this exemption must determine with their dockside monitoring provider how to notify their provider that a given sector trip is utilizing this exemption. Therefore, NMFS has partially approved an exemption from DSM requirements for directed monkfish trips for gillnet and trawl vessels on concurrent NE multispecies and monkfish DAS trips when declared into the monkfish SFMA and fishing with 10-inch (25.4-cm) or greater mesh size nets for the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–X, and XIII; and the Tri-State Sector.

Special Management Program (SMP) Reporting Requirements

Amendment 16 provided the Regional Administrator with the authority to remove SMP-specific reporting requirements for sectors if it is determined that the reporting requirements are unnecessary. Consistent with the provisions adopted under Amendment 16, NMFS retained the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs. For FY 2010, the Regional Administrator determined that daily SMP-specific VMS catch reports for vessels participating in sectors were unnecessary, because sectors were allocated ACE for most NE multispecies regulated species, and ocean pout, and, therefore, would not be subject to any SMP-specific TACs or other restrictions on catch; would be responsible for ensuring that sector allocations are not exceeded; and would provide sufficient information to monitor all sector catch through the submission of weekly sector catch reports. For these same reasons, the Regional Administrator has determined, unless otherwise noted above, that SMP-specific reporting requirements are not necessary to monitor sector catch for FY 2011. This exemption from the SMP reporting requirements for sector vessels will not apply to vessels participating in the CA I Hook Gear Haddock SAP, as this SAP includes an overall haddock TAC that is applicable to both sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for sector managers to provide daily catch reports by participating sector vessels is maintained for the CA I Hook Gear Haddock SAP only.

Disapproved Exemption Requests

After completing an initial review of the 19 sector operations plans and contracts submitted as of September 1, 2010, NMFS discussed all sector exemption requests in the proposed rule for this action, and highlighted exemption requests of concern when soliciting public comment. Public comment that was received pertaining to these exemptions did not provide new data or sufficient additional rationale to mitigate concerns raised by NMFS in the proposed rule. Due to the fact that no new information was received by the public that would provide sufficient rationale to grant such exemption requests, exemption requests from the following regulations have not been approved by NMFS for FY 2011: Access to GOM Rolling Closure Areas in May and June; prohibition on pair trawling; minimum hook size requirements for demersal longline gear; minimum trawl mesh size requirement; Ruhle and haddock separator trawl requirements to utilize the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl in areas where these gear types have previously been approved; all DSM and roving monitoring requirements; DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4,535.9 kg) of groundfish per year; DSM requirements when fishing in several mid-Atlantic NMFS Statistical Areas; DSM, roving monitoring, and hail requirements for vessels using demersal longline, jig and handgear while targeting spiny dogfish in Massachusetts state waters in NMFS Statistical Area 521; DSM requirements when at-sea monitoring has previously observed the trip; the requirement to delay offloading due to the late arrival of the assigned monitor; the prohibition of offloading non-allocated stocks prior to the arrival of the monitor; and the requirement to provide a sector roster to NMFS by the specified deadline. These requests and NMFS's decisions on them are discussed below.

18. Access to GOM Rolling Closure Areas in May and June

Exemptions from GOM Rolling Closure Areas, specifically blocks 138 and 139 during May and/or access to blocks 139, 145, and 146 during June, for FY 2011 are disapproved for the same reasons that these exemptions were ultimately disapproved in the final rule implementing the FY 2010 sector operations plans. This request is disapproved because the requesting sectors failed to consider that, despite ACE limits, direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. In addition, this request has been disapproved because that the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine mammals.

The sectors requesting this exemption for FY 2011 asserted that the GOM Rolling Closure Areas were originally intended as mortality closures and are therefore now unnecessary because fishing mortality for sectors is capped by the ACE allocated for each groundfish stock. They also argued that vessels fishing in the requested closed areas would provide information, which could serve as a pilot study for future use of these areas and times by all sectors.

One sector noted that Table 177 in the EIS for Amendment 16 indicates that May is not a particularly important time for groundfish spawning, with the exception of plaice and haddock. While

previous actions addressed the protection of spawning cod, NMFS believes that the protection of spawning stocks of all species is relevant, and necessary to the rebuilding and maintaining of rebuilt stocks.

FW 45 includes a closure of the Whaleback region of the GOM in June to protect spawning cod. In addition, a scientific paper (Stock Identification of Atlantic Cod in U.S. Waters Using Microsatellite and Single Nucleotide Polymorphism DNA Analyses by Wirgin *et al.,* 2007) indicates that there is some cod spawning in the GOM in June, which supports this decision.

One sector proposed a strategy to minimize the impacts to spawning fish, whereby the harvesting of any species in these areas and times would be restricted by capping the percentage of the sector's available ACE that could be harvested from these areas, and would institute a closure of these areas if, based on NMFS Northeast Fisheries Observer Program (NEFOP) data, a significant amount of spawning fish were harvested. Additionally, that sector proposed to implement a program to notify the sector manager and other vessels if spawning aggregations and/or marine mammals were detected in these areas. NEFOP does not currently collect data on spawning activities; therefore, this is not a viable option to limit the impacts on spawning aggregations of fish.

Ancillary benefits from the GOM Rolling Closure Areas afford protection to harbor porpoise and other marine mammals. Further, increased harbor porpoise interactions could trigger Coastal GOM Consequence Closure Areas, as specified in the Harbor Porpoise Take Reduction Plan, resulting in the closure of the GOM to all gillnet gear, including gear deployed by both sector and common pool vessels. Given these concerns, it is not prudent to allow further exemptions from the GOM Rolling Closure Areas at this time.

19. Prohibition on Pair Trawling

The prohibition to prohibit pair trawling in the NE multispecies fishery was originally implemented through an emergency rule in 1993 (58 FR 32062; June 8, 1993), and made permanent in Amendment 5 (59 FR 9872; March 1, 1994). This prohibition was originally implemented to protect cod and haddock because of the high efficiency of this gear and the need to drastically reduce fishing effort on these stocks. Several Northeast Fishery Sectors requested an exemption from the pair trawling restriction for FY 2011 to allow pairs of vessels to utilize either the Ruhle Trawl or the Eliminator Trawl, asserting that sectors are managed under an ACE and should be exempt from effort controls. These sectors asserted that the exemption would enable participating vessels to harvest the sector's ACE more efficiently and economically.

NMFS raised concerns in the proposed rule for this action that the impacts and effects of these gear configurations have not been studied. NMFS believes that pair trawling using the Ruhle Trawl or Eliminator Trawl could diminish the established selectivity of these gears through increased herding of fish, and could result in increased catch of prohibited stocks, for which sectors have no ACE and little incentive to reduce catch. In addition, NMFS has observed an increase in interactions between bottom trawl fisheries on GB and Atlantic white-sided dolphins, a protected species, and is concerned that granting this exemption could increase these interactions. For these reasons and concerns, NMFS has disapproved the exemption from the prohibition on pair trawling.

20. Minimum Hook Size Requirements for Demersal Longline Gear

The minimum longline gear size of 12/0 was first implemented through Amendment 13 to reduce the catch of small fish and improve their survivability, as well as to reduce overall effort in the hook fishery. The Northeast Coastal Communities Sector requested an exemption from this regulation in FY 2011 to target flatfish, stating this exemption would allow its members to more effectively harvest the sector's ACE and increase profit margins for sector fishermen.

Due to concern that this exemption would increase catch of sublegal fish and result in recruitment overfishing, and that potential changes to size selectivity of the fishery would be inconsistent with those used to determine current Allowable Biological Catch levels, NMFS has disapproved the exemption from the minimum hook size requirements for demersal longline gear.

21. Minimum Mesh Size Requirements on Targeted Redfish Trips

The current minimum mesh size requirements at § 648.80 were implemented to provide protection to spawning fish and increase the size of targeted fish. Several Northeast Fishery Sectors requested an exemption from the current minimum mesh size codend for targeted redfish trips in FY 2011; replacing this requirement with a 5-inch (12.7-cm) minimum mesh size codend when fishing on directed redfish trips, stating that this reduced codend mesh size could increase operational flexibility and profit margins of sector fishermen.

As stated in the proposed rule for this action, NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM, which will include determining the success of various mesh sizes within the fishery. Recognizing that there is an established mechanism through the Council for the review and incorporation of scientific research, NMFS believes that the exemption request from minimum mesh size requirements on targeted redfish trips is premature, and has, therefore, not approved this request.

22. Ruhle and Haddock Separator Requirements To Utilize the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl

NMFS has previously authorized the use of the Ruhle Trawl (f.k.a., Eliminator Trawl and Haddock Rope Trawl) as one of the gears required to be used in the B DAS Program (§ 648.85(b)(6)(iv)(J)), Eastern U.S./Canada Haddock SAP (§ 648.85(b)(8)(v), and the Eastern U.S./Canada Area (§ 648.85(a)(1)(iii)). NMFS approval of this gear was based upon a recommendation from the Council, following review of a study that demonstrated that this experimental net was successful at targeting haddock and significantly reducing the catch of other groundfish species. Several of the Northeast Fishery Sectors requested an FY 2011 exemption to utilize a smaller version of the approved Ruhle trawl, *i.e.,* the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl, in areas and programs where the Ruhle trawl has been approved as an acceptable gear, asserting that this gear will provide sector members with greater flexibility, as many vessels are too small to utilize the currently approved version of the net. The sectors cited the final results of "Exploring Bycatch Reduction in the Haddock Fishery through the use of the Eliminator Trawl with Fishing Vessels in the 250 to 550 HP Range," by Laura Scrobe, David Beutel, and Jonathan Knight, 2006, which indicated that this smaller net may reduce the catch of major stocks of concern, while allowing vessels to selectively target haddock.

The results of the smaller-scale trawl study were reviewed at the March 16, 2011, Research Steering Committee (RSC) meeting. At that meeting, the RSC determined that the statistical analysis presented was not appropriate to

measure the performance of the gear against the control and requested additional statistical analysis of the results before continuing their review of the study.

There is an established mechanism for the incorporation of additional gear types for special management programs through review by the RSC and approval by the Council, and approval of this exemption request would be inconsistent with this process. Based on this, the exemption request from Ruhle and Haddock Separator requirements to utilize the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl has been disapproved. Currently, there is no prohibition against vessels using this smaller-scale trawl net outside of SAPs and the Eastern U.S./Canada Area.

23. All DSM and Roving Monitoring Requirements

The DSM program was implemented under Amendment 16 to ensure that catch is accurately monitored to bolster compliance monitoring. For FY 2011, several sectors requested an exemption from all DSM requirements at § 648.87(b)(1)(v)(B)(*1*), arguing that there is little value to the program, and that it is not meeting its objectives as an enforcement tool.

At its November 18, 2010, meeting, the Council voted to alter several of the DSM provisions originally implemented by Amendment 16, including setting a goal of 100-percent DSM and prioritizing DSM for trips that did not receive an at-sea monitor, and removing DSM from the list of reporting requirements, thereby removing this requirement from the list of prohibited sector exemptions. These provisions were included in FW 45, and approved by NMFS. The Council's modifications to DSM, as highlighted in their comment on the proposed rule for this action (Comment 28), do not support exemptions from DSM for all trips. Therefore, NMFS has disapproved the request for an exemption from all DSM and roving monitoring requirements.

NMFS acknowledges that the DSM program could be strengthened and is modifying DSM requirements through FW 45 for the start of FY 2011 to include provisions such as inspection of fish holds, to help ensure better compliance monitoring, the primary objective of the program.

24. DSM Requirements for Hook Vessels When the Sector Has Caught Less Than 10,000 lb (4,535.9 kg) of Groundfish per Year

VTR data collected through February 2011, document that hook vessels, i.e., handgear and longline vessels, have landed approximately 2.3 percent of the total groundfish catch thus far for FY 2010 (May 1, 2010–March 21, 2010); of this amount, longline gear landed 2.13 percent of the total groundfish catch. Although handgear vessels represent a small portion of this amount, FW 45, as approved by NMFS, exempts handgear permitted vessels from DSM. Unless otherwise exempted by the Council, the current regulations at § 648.87(b)(1)(v) require catch of all stocks on sector trips to be monitored, to help ensure the accuracy of the total catch being documented by dealers, which is used to calculate sector discards. The sector requested that this exemption start once a certain threshold of fish is caught.

Implementation of a DSM program mid-year would not meet the requirements that trip selection be random and representative. Further, the threshold of 10,000 lb (4,535.9 kg) is arbitrary, and could be construed as unfair to vessels fishing other gear types with minimal pounds caught for the year. Therefore, NMFS has disapproved the request for an exemption from DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4,535.9 kg) of groundfish per year.

25. DSM Requirements When Fishing in Certain Mid-Atlantic (MA) Areas

Several Northeast Fishery Sectors requested an exemption from DSM requirements at (§ 648.87(b)(1)(v)(B)(*1*)) in May and June on non-groundfish directed trips that occur in the following NMFS statistical areas: 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 633, 635, 637, and 638 (§ 648.87(b)(1)(v)(B)(*1*)). The sectors pointed out that historical data indicate that little groundfish incidental catch has been observed in these areas, and monitoring of such trips is therefore not a beneficial use of financial resources. NMFS's VTR data indicate that 1,222 trips were taken within these areas during FY 2009, and 374 trips were taken, thus far, in these areas in FY 2010 (May 1, 2010–February 3, 2011). These data showed that none of the trips from FY 2009 or 2010 landed any groundfish. Many of the sectors' reasons for submitting this exemption request are addressed through the approval of Exemption 15, a similar exemption request from DSM requirements for vessels fishing west of 72°30′ W. long., which represents roughly the same area as described in this exemption. Because Exemption 15 was comparable, and would more easily facilitate enforcement efforts by setting a longitudinal line rather than a statistical area boundary, NMFS approved Exemption 15. Exemption 25 has been disapproved for FY 2011.

26. DSM, Roving Monitoring, and Hail Requirements for Vessels Using Demersal Longline Gear, Jig Gear, and Handgear While Targeting Spiny Dogfish in Massachusetts State Waters

Unless a vessel is fishing in an exempted fishery, directed spiny dogfish trips are considered sector trips. The GB Cod Fixed Gear Sector requested an exemption from DSM, roving monitoring, and hail requirements for vessels using demersal longline gear, jig gear, and handlines while targeting spiny dogfish in Massachusetts state waters (NMFS Statistical Area 521) (§ 648.87(b)(1)(v)(B)(*1*)), stating that its FY 2010 sector data indicate little groundfish incidental catch in this area and that deploying monitors on such trips would provide little value to a program designed to monitor landings of regulated groundfish.

Vessels fishing on a directed dogfish trip, outside of an exempted fishery, must declare a sector trip through the NE multispecies VMS or IVR declarations prior to starting their trip because the gear utilized on such trips have the ability to catch groundfish, and because groundfish retention is permitted. It is currently impossible to distinguish such a trip from a directed groundfish trip because the declaration is a requirement of the NE Multispecies FMP and because the Spiny Dogfish FMP does not currently require VMS. Granting this exemption would therefore pose operational issues that would be difficult to resolve. Regulations require catch of all stocks on sector trips be monitored, to help ensure the accuracy of the total catch being documented by dealers, which is used to calculate sector discard ratios. Additionally, as previously stated, sectors are prohibited from being exempted from hail requirements, which are considered to be reporting requirement. For these reasons, NMFS has disapproved an exemption from DSM, roving monitoring, and hail requirements for vessels using demersal longline Gear, jig gear, and handgear while targeting spiny dogfish in Massachusetts state waters.

27. DSM Requirements When a Trip Has Been Monitored by Either an At-Sea Monitor or Fishery Observer

The Northeast Coastal Communities Sector requested an exemption from DSM requirements (§ 648.87(b)(1)(v)(B)(*1*)) when a trip has been monitored by either an at-sea monitor or fishery observer, stating that

requiring both at-sea monitoring and DSM is redundant, as the goal of both programs is catch verification.

At its November 18, 2010, meeting, the Council asked NMFS to prioritize DSM for trips that did not receive an at-sea monitor (if 100-percent DSM was not possible), and included this provision in FW 45. The final rule implementing FW 45, which is being implemented concurrently with this action, implements prioritization of dockside/roving monitor coverage for trips that do not have an observer, at-sea monitor, or approved electronic monitoring equipment. Because NMFS is addressing this exemption through alternate rulemaking, it is not being approved through this rule.

28. The Requirement To Delay Offloading Due to the Late Arrival of an Assigned Dockside Monitor

The regulations at § 648.87(b)(5)(i)(C) specify that a vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor assigned to that trip is present. The regulations implementing Amendment 16 require each sector to develop, implement, and fund a DSM program, including the selection and hiring of approved monitoring provider(s). The GB Cod Fixed Gear Sector requested a partial exemption from the above regulation, allowing vessels to begin offloading catch if a dockside or roving monitor is late, arguing that it is the responsibility of the monitor to ensure timely arrival at monitoring events.

In the proposed rule for this action, NMFS highlighted several operational concerns with this exemption request. Because each sector contracts directly with a monitoring provider(s), the sector has the ability and responsibility to resolve the late arrival of an assigned monitor directly with its contracted provider(s). For these reasons, this exemption has been disapproved for FY 2011.

29. Prohibition of Offloading Non-Allocated Species Prior to the Arrival of the Monitor

When selected to be observed by a dockside/roving monitor, a vessel may not offload any fish from a trip until the dockside/roving monitor assigned to that trip is present (§ 648.87)(b)(5)(i)(C)). Sustainable Harvest Sectors 1 and 3 requested an exemption from the prohibition of offloading non-allocated species prior to the arrival of the monitor. The sectors contend that, on occasion, dealers request vessels to offload non-allocated stocks, such as lobster, prior to the offload of groundfish and that this exemption would give additional flexibility to sector members and dealers for the processing of catch.

The Amendment 16 DSM standards require catch of all stocks to be monitored, to help ensure the accuracy of the total catch being documented by dealers. Additionally, NMFS remains concerned that granting an exemption for components of a vessel's catch could create a loophole in the existing regulations. Therefore, for compliance purposes, NMFS has disapproved this exemption request, and retains the Amendment 16 requirement to observe the offload of the entire catch from sector trips.

30. Requirement To Provide a Sector Roster to NMFS by the Specified Deadline

The regulations implementing Amendment 16 require that sector operations plan submissions must be submitted to NMFS by September 1 of each year (unless the operations plan is for multiple years), to ensure that the operations plans and associated analyses are reviewed in time to implement such operations by the start of the next FY (§ 648.87(b)(2)). Several administrative roster deadline extensions were provided by NMFS for FY 2011. Setting the deadline for submitting sector rosters is an administrative matter. Therefore, this exemption request was highlighted in the proposed rule, but not proposed because NMFS was able to administratively accommodate these submission deadline extensions. Therefore, this exemption has not been approved for FY 2011.

Requested Exemptions Not Considered in This Action Because They Are Prohibited or Were Previously Rejected

Exemptions requested by several sectors, ranging from at-sea monitoring provisions, discard rate calculation methods, Eastern U.S./Canada Area requirements, VTR requirements, and NMFS's Office of Law Enforcement (OLE) confidentiality requirements, are either specifically prohibited, or fall outside the NE multispecies regulations. For a more detailed discussion, see the proposed rule for this action.

Comments

Nine letters, each containing several comments, were submitted from several entities: An attorney on behalf of an undisclosed number of individuals, three sectors, one sector support organization, one industry organization, one non-governmental organization, the New England Fishery Management Council (Council), and the Massachusetts Division of Marine Fisheries (DMF). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are responded to below.

General Sector Issues

Comment 1: Three comments were received supporting NMFS's proposal to relax the 14-day deadline for the submission of ACE transfer requests after the end of the FY.

Response: NMFS acknowledges that the current regulatory text requiring ACE transfers to be completed within 14 days of the end of the FY is insufficient; therefore, an extension will be granted for FY 2010, allowing sector managers additional time to submit ACE transfers.

Comment 2: Two comments were received pertaining to the costs associated with the implementation of sector management. The Northeast Coastal Communities Sector asserted that monitoring costs are excessive, especially for small vessels and vessels operating out of remote ports. An individual noted that the cost of sectors is high in comparison to the gross value of landings.

Response: For FY 2010, NMFS provided funding to sectors for hiring a manager, the writing of an operations plan, reimbursement of DSM costs, and for the costs of a contractor to prepare the sector EAs. NMFS anticipates that funding will be available to provide similar reimbursement in FY 2011. Additionally, NMFS is granting exemptions from DSM requirements to certain gear and permitted vessels, as well as for vessels fishing exclusively west of 72°30′ W. long. NMFS acknowledges that there are additional costs for sector vessels under this co-management system. The costs associated with sector management and the responsibility of sector managers monitoring their own allocation are exchanged for the ability to fish with exemptions from certain NE multispecies regulations. As outlined above, joining a sector is voluntary. Given that 57% of permits have joined a sector in FY 2011, it appears that sectors remain a better choice for many NE multispecies limited access permit holders over the alternative of fishing in the common pool fishery. As we move forward, NMFS will continue to work with the sectors to evaluate and reduce costs associated with sector management, where it can.

Comment 3: The Northeast Sector Service Network, Inc. (NESSN), representing Northeast Fishery Sectors II through XIII noted, and the Northeast

Seafood Coalition (NSC) concurred, that sectors, in general, are constrained by their allocated ACE, as adjusted by transfers, and assert previous effort control management measures should no longer be applicable.

Response: NMFS acknowledges that many effort control measures are not applicable when vessels are constrained by ACE. The regulations implementing Amendment 16 relieved sectors of some of these effort control measures through universal exemptions, e.g., DAS requirements. In addition, sectors have the opportunity to request exemptions from additional specific NE multispecies management measures through their operations plan, subject to NMFS's approval. For FY 2010, and again for FY 2011 through this rule, sectors are exempt from the following requirements: 120-day block out of the fishery required for Day gillnet vessels; 20-day spawning block out of the fishery required for all vessels; limitation on the number of gillnets imposed on Day gillnet vessels; prohibition on a vessel hauling another vessel's gillnet gear; limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; limits on the number of hooks that may be fished; DAS Leasing Program length and horsepower restrictions; GOM Sink Gillnet Mesh Exemption; and bait restrictions in the CA I Hook Gear Haddock SAP. However, some effort control measures remain necessary, because an overall mortality limit, such as an ACE, does not by itself prevent some other negative impacts, such as disruption of spawning aggregations or overharvest of juveniles. Accordingly, NMFS has disapproved several exemption requests, including: Access to GOM Rolling Closure Areas, minimum hook size requirements, and trawl size and trawl mesh size requirements.

Comment 4: An attorney, commenting on behalf of an unspecified number of individuals, raised concern that the operations plans do not contain specific strategies for the management of inter-related groundfish stocks.

Response: Current regulations require sector operations plans to include specific management rules that the sector participants agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations in an area once the ACE(s) of one or more stocks in that area are harvested. Each sector operations plan includes a set of harvest rules and specifies actions to be taken as thresholds of ACE are achieved. Each sector is allocated ACE for NE multispecies stocks and determines how the sector members will sub-allocate the ACE among themselves. Details of this distribution are prescribed in the operations plan. It is the responsibility of each sector to successfully manage these inter-related stocks. Sector management provides industry the opportunity to determine how best to harvest allocated fish, and provides flexibility for industry to balance allocations of inter-related stocks. Further, current regulations specify that vessels in a sector may only fish in particular stock areas if the sector has been allocated or acquires sufficient ACE for all stocks caught in that stock area. NMFS believes these provisions of the regulations adequately address the management of inter-related stocks in the NE multispecies fishery.

Comment 5: DMF commented that the process established to annually review and approve sector operations plans and the associated exemption requests lacks Council input and involvement. DMF questioned at what point approval of exemptions would be incorporated into the FMP, especially considering the costs to both NMFS and individual sectors to request and analyze each exemption annually.

Response: Regulations implementing Amendment 16 require sectors to submit to NMFS a list of existing regulations that the sector is requesting exemption from, as part of the operations plan. In order for a sector to be implemented, approved to fish, and allocated ACEs, it must first submit a preliminary operations plan to the Council 1 year prior to the year in which it wants to fish and request implementation in a FW or FMP amendment. Thus, the Council determines whether and when to implement additional sectors. If the Council decides to authorize a new sector, it begins the development of an appropriate action to do so. In anticipation of approval of such action by the Council and NMFS, the sector submits its operations plan and contract to NMFS by the required deadlines. NMFS then reviews the final operations plan and solicits comment through a proposed rule. The Council can, and has, commented on sector operations plans and proposed exemptions at that time. Therefore, the Council has input and involvement both at the initial stage of considering a new sector and annually when operations plans are proposed. Amendment 16 is silent on how NMFS-approved exemptions could be incorporated into the suite of Council-issued universal exemptions granted to sector vessels. It is up to the Council to evaluate the feasibility and desirability of incorporating approved exemptions into the FMP.

Allocation Issues

Comment 6: The Council commented on the proposed rule language that stated: "As required by Amendment 16, each sector contract submitted for FY 2011 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE." The Council wanted to clarify that Amendment 16 does not require the withholding of ACE from individual sector members, but rather that a portion of the sector's overall ACE must be withheld.

Response: NMFS agrees that the regulations implementing Amendment 16 require NMFS to withhold a percentage of each sectors ACE at the start of a FY to account for any ACE overages. However, each sector, through its operations plan, has allocated an amount of fish to each vessel equal to what the vessel contributed to the sector's ACE. Because the sector has the flexibility to fish its quota however it wishes to, their method of allocation is strictly voluntary.

Comment 7: An attorney estimated that one sector will be allocated approximately 32 percent of the combined NE multispecies ACLs in FY 2011, and raised the concern that one party is controlling an excessive share of the NE multispecies fishery.

Response: Several comments were received as part of the Amendment 16 rulemaking process regarding capping the amount of ACE that can be allocated to an individual sector, stated that the absence of an allocation cap could compromise small vessel operations due to consolidation. NMFS recognizes that the fact that one sector may have a significant percentage of the total ACE for one fishing season may raise potential concerns for incidental allocative or market effects, and that such possibilities should be closely monitored. However, analysis by the PDT during the development of Amendment 16 suggested it is unlikely that any one sector could accumulate a large enough share of a stock to exercise market power over the rest of the fishery. Because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector would be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Amendment 16 allowed sectors to transfer ACE for use during FY in which it is allocated. This will

minimize the influence of the initial sector allocation, including any cap on initial allocations, on market control, as a sector could acquire an unlimited amount of ACE from another sector through ACE transfers. Based on those comments, NMFS in a January 21, 2010, letter to the Council, recommended that the Council consider addressing potential problems of the incidental allocative effects of the sector program as well as individual permit holders acquiring excessive control of fishing privileges through an allocation cap. In response to these concerns, the Council has begun development of Amendment 18, and NMFS has published an Advanced Notice of Public Rulemaking (76 FR 19305, April 7, 2011) that puts into place a control date that the Council may use in setting future allocation measures. Given that concerns about consolidation are part of the overall sector program adopted and addressed in Amendment 16, such concerns are beyond the scope of this rule.

Sector Operations Plans and Contracts

Comment 8: The Council noted that the Maine Permit Bank Sector, and its prospective permits, was provided a February 1, 2011, deadline to submit a finalized sector roster. The Council agreed that it was reasonable for NMFS to extend the roster submission deadline to December 1, 2010, but suggested that the final roster submission date of February 1, 2011, provided to permit holders wanting to sell permits to the Maine Permit Bank Sector could complicate the analyses and was not consistent across all sectors.

Response: NMFS accepted a preliminary list of permits from the Maine Permit Bank Sector on December 1, 2010, which included permits that the State of Maine anticipated purchasing, with the stipulation that these permits were the only permits that could be included in the final roster. Because of the unique nature of the Maine Permit Bank Sector, NMFS allowed these permit holders additional time, through February 1, 2011, to finalize agreements with the State of Maine. This was handled administratively to provide additional flexibility to individual permit holders who were considering selling their permits to the State of Maine. Without this flexibility, permit holders selling to the State of Maine would have been required to drop out of the sector that they previously signed into by the December 1, 2010, deadline. Had the sale not occurred, the permit holder would have had to drop out of the Maine Permit Bank for FY 2011. Since approximately 99 percent of the historical landings are associated with those vessels that had elected to sign up to participate in sectors in FY 2011, the impacts associated with the harvest of the ACE allocated to the Maine Permit Bank Sector is sufficiently analyzed in the final EA.

Comment 9: DMF commented that the ability of the public to comment on the proposed action was hindered by incomplete access to data, including the redaction of roster information and inconsistencies between the information presented in the rule, the EA, and the operations plans.

Response: NMFS acknowledges minor inconsistencies between the data presented in these documents. During FY 2011, sector rosters were reopened following the initial September 10, 2010, deadline, allowing additional permit holders to enroll in sectors up to December 1, 2010. Permit holders negotiating permit sales with the Maine Permit Bank Sector were allowed through February 1, 2011, to either sell permits to the Maine Permit Bank Sector, or to enroll permits in that sector. Due to evolving roster deadlines, and the time required to draft these documents, slightly different information was used. NMFS has elected not to publish rosters or roster-specific information contained elsewhere in the operations plans because final sector membership is subject to change, as permit holders have until April 30, 2011, to withdraw from a sector. NMFS published the rosters associated with the final approved operations plans in this final rule. Any further changes to rosters made through April 30, 2011, will be acknowledged through amendments to the operations plan. NMFS will accept comment on final sector membership. Amendments are posted to: *http://www.nero.noaa.gov/sfd/sfdmultisector.html.*

Proposed Exemptions

Comment 10: DMF stated that the list of proposed exemptions is extensive and difficult to properly evaluate.

Response: NMFS acknowledges the extensiveness of the proposed exemptions and the difficulty in evaluating them. This is an unavoidable problem, however, given the nature of the sector management program and the number of sectors involved. NMFS also attempts to summarize, as concisely as possible, all exemption requests and justifications in the proposed rule for this action, excluding exemptions that were specifically prohibited. Further, all proposed exemptions were analyzed in the EA, and the final determination on the approval of the exemption requests and supporting reasons are summarized in this final rule.

Several FY 2010 Exemptions Requested Again in FY 2011

Comment 11: Four individuals commented on the exemption from the 120-day block requirement for gillnet vessels, the exemption from the prohibition on a vessel hauling another vessel's gillnet gear, the exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS, the exemption from the limitation on the number of hooks that may be fished, and the limitation on the number of gillnets imposed on Day gillnet vessels. NESSN and the NSC supported the reauthorization of these exemption requests. The Northeast Coastal Communities Sector raised concern that the scarcity of available space to set this extra gear could potentially lead to safety hazards on the water as gear density and fishing pressure increases. The Northeast Coastal Communities Sector also asserted that granting this exemption could increase the potential for sector ACE overages as gillnets can be left in the water for long periods of time, increasing catch and mortality on some stocks. DMF offered the same comments on these exemptions that they submitted in FY 2010 for the same exemption request, *i.e.,* supporting requests for exemption from the 120-day block requirement for gillnet vessels, the exemption from the prohibition on a vessel hauling another vessel's gillnet gear, the exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS, the exemption from the limitation on the number of hooks that may be fished; and opposing the requests for exemption from the limitation on the number of gillnets imposed on Day gillnet vessels.

Response: NMFS approved these gillnet and hook gear exemption requests for FY 2010 because these measures were designed to control fishing effort and are no longer necessary for sectors because sectors' overall fishing mortality is limited by an ACE. While RMA-specific limits on the number of nets have been exempted, NMFS has retained the overall 150-net cap on the amount of gear that may be deployed, as specified in the regulations, because an increase in catch per unit effort could result in the rapid acquisition of the sectors' ACEs, at which point the sectors would remove their fishing gear. The EA indicates that this measure could result in longer soak

times or gear left untended to hold fishing ground, which could increase inter-vessel conflicts. However, NMFS has not received any reports of such incidents occurring during FY 2010. NMFS maintains that sectors are responsible for managing the harvest of ACE by its members, and sector members remain jointly and severally liable for any misreporting of catch.

NMFS has again approved these exemptions for FY 2011, based on the same rationale. Comments and responses on the FY 2010 exemption request can be found in the FY 2010 sector final rule.

20-Day Spawning Block

Comment 12: Two industry groups and DMF commented on the exemption from the 20-day spawning block requirement. NESSN and NSC supported this exemption request. DMF offered the same comments on these exemptions that they submitted in FY 2010 for the same exemption request, i.e., supporting the exemption from the 20-day spawning block, but raised an additional concern about the potential impacts to spawning aggregations of GOM cod.

Response: The regulations specify that the 20-day spawning block may be taken anywhere in a span of 92 days (March 1 to May 31) and, therefore, it is expected that some amount fishing effort would be present during this entire time period. While NMFS supports the protection of spawning stocks, prohibiting vessels from fishing 20 days within a 3-month spawning period will likely provide minimal benefit to the stocks, and thus NMFS has approved this exemption for FY 2011.

DAS Leasing Program Length and Horsepower Restrictions

Comment 13: Two industry support groups, one sector, and DMF commented on the exemption from the DAS leasing program length and horsepower restrictions. NESSN and the NSC supported this exemption request. The Northeast Coastal Communities Sector raised concern that the unrestricted free market has led to the price of DAS leases rising above a level which small-scale fishermen can afford. DMF offered the same comments on these exemptions that they submitted in FY 2010 for the same exemption request, i.e., questioned whether DAS that otherwise would have been used by sector vessels for groundfish fishing could not be leased to sector vessels targeting monkfish, but raised concern that granting this exemption could undermine the original intent of this regulation, which was implemented to preserve the character of the fleet. DMF also commented that similar baseline restrictions should be implemented for ACE transfers. Finally, DMF claimed that unrestricted leasing could increase mortality on monkfish and skates through redirection of effort.

Response: NMFS approved this exemption for FY 2010 because it will help ease the transition into sector management for limited access NE multispecies permitted vessels also issued a limited access monkfish permit by allowing vessels to retain more monkfish on a sector trip, resulting in increased vessel profits and reduced regulatory discards. NMFS maintains its support for this exemption in FY 2011 for providing this additional flexibility to sectors. This exemption is not expected to change the character of the fleet, because vessel replacements will continue to be limited by length overall, tonnage, and horsepower limits. Regulations implementing Amendment 16 allow a sector to transfer ACE to another sector in a given FY. ACE transfers take place at the sector level, not the vessel level. Although the Council did not choose to implement restrictions on ACE transfers in Amendment 16, the Council has begun development of Amendment 18 to address ACE accumulation limits and could consider restrictions on ACE transfers at that time. Through the FY 2011 operations plans, sectors summarized anticipated redirection of effort to other species based on information available to them from FY 2010. Most sectors stated that current fishing behaviors and patterns were not anticipated to change as a result of operating under sector management.

Sink Gillnet Mesh Size Restriction in the GOM

Comment 14: Three comments were received on the exemption from the sink gillnet mesh size restriction in the GOM from January through April and the extension through May. NESSN and the NSC supported the reauthorization of this exemption request. The Northeast Coastal Communities Sector raised concern that scarcity of available space to set this extra gear could potentially lead to safety hazards on the water as gear density and fishing pressure increases. The sector also asserted that granting this exemption could increase the potential for sector ACE overages as gillnets can be left in the water for long periods of time, increasing catch and mortality on some stocks.

Response: NMFS approved this exemption request for FY 2010, stating that the impacts to target allocated would be minimal because fishing mortality by sector vessels is restricted by an ACE for allocated stocks, which caps overall mortality. While RMA-specific limits on the number of nets have been exempted, NMFS has retained the overall 150-net cap on the amount of gear that may be deployed as specified in the regulations because an increase in catch per unit effort could result in the rapid acquisition of the ACE by sectors, at which point they would remove their fishing gear. The EA indicates that this measure could result in longer soak times or gear left untended to hold fishing ground, which could increase inter-vessel conflicts. However, NMFS has not received any reports of such incidents occurring during FY 2010. NMFS maintains that sectors are responsible for managing the harvest of ACE by their members, and sector members remain jointly and severally liable for any misreporting of catch. NMFS has approved this exemption for FY 2011, based on the same rationale.

Discarding Exemption

Comment 15: Four comments were received on the exemption from the regulations prohibiting discarding of unmarketable fish. NESSN and the NSC supported the reauthorization of this exemption request. The Sustainable Harvest Sector commented that it wished to withdraw its request for the discarding exemption. The Sustainable Harvest Sector was concerned about the effect this exemption would have on discard rates and stated that it has been able to operate effectively under the existing requirement to retain all legal-sized fish for landing. The Sustainable Harvest Sector does not object to the exemption being granted to other sectors that have requested it. The Council commented that, if this exemption is granted, it should be done in a way that allows for the most accurate discard estimates. The Council also commented that the proposed rule does not define the term "unmarketable" with regard to the discarding of legal-sized unmarketable fish. Further, the Council asserted that "unmarketable" should refer specifically to "fish that are damaged and not to fish that are deemed 'unmarketable' for reasons such as little demand, low price, etc."

Response: NMFS agrees that this exemption must be implemented in a way to most accurately capture discard estimates. Under this exemption, sector vessels are required to discard all legal-sized fish at sea. This will ensure that the discards observed by NEFOP observers or at-sea monitors will accurately represent the activities on

unobserved trips. The final rule implementing amendments to FY 2010 sector operations plans initially defined unmarketable fish as "any legal-sized fish the vessel owner/captain elects not to retain because of condition or marketability problems." The intent of this exemption is to permit the discarding of fish that are depredated or otherwise damaged. NMFS agrees with the Council that this definition should be clarified and therefore, has revised the definition of "unmarketable" fish to be any legal-sized fish the vessel owner/captain elects not to retain because of poor quality as a result of damage prior to, or from, harvest. For example, fish may be damaged from sandfleas, seals, cetaceans, or fishing gear. The definition of unmarketable fish will be included in the sector's LOA. This exemption does not authorize captains to discard legal-sized allocated fish based on marketability or availability of market if the fish are not damaged. NMFS is requesting additional comments on this definition of "unmarketable" fish under this interim final rule and, depending on comments provided by the public, may further revise the definition in a future action. This exemption is not authorized for members of the Sustainable Harvest Sector, based on that sector's request.

Daily Catch Reporting by Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP

Comment 16: The GB Cod Fixed Gear Sector, which requested an exemption from daily catch reporting by sector managers for vessels participating in the CA I Hook Gear Haddock SAP, raised a concern regarding the alternative reporting method highlighted in the proposed rule, stating that modifications to the sector manager weekly report are expensive to implement. The sector requested that, should this exemption be approved, modifications should be made to VMS software allowing for the reports to be submitted to NMFS without the extra cost of software changes to the sector. The sector asserted that sector monitoring would not be impacted, as the sector maintains the requirement to receive trip catch data within 24 hr of landings. DMF supported this exemption, as it only changes the mechanism for the submission of the reports.

Response: NMFS agrees with the GB Cod Fixed Gear Sector that modifications to existing databases and systems could be costly to sectors. Additionally, if NMFS required the submission of CA I Hook Gear Haddock SAP information through the sector manager weekly report, and only a subset of sectors elected this exemption, an unnecessary burden would be placed on sectors not granted this exemption. Due to these concerns, NMFS did not pursue modifications to the sector manager weekly report to collect this information. NMFS has approved this exemption, but will require that vessels submit this information on a daily basis to NMFS via VMS, which are the same reporting requirements as common pool vessels participating in the SAP. NMFS believes that sectors will be able to monitor landings appropriately and take any necessary action through the requirement for vessels to submit catch data within 24 hr of landing.

Gear Requirements in the U.S./Canada Management Area

Comment 17: DMF supported the request for an exemption from gear requirements when fishing in the U.S./Canada Management Area, commenting that they do not believe the current flatfish net restriction in this area has been effective.

Response: NMFS implemented restrictions on trawl gear that could be utilized in the U.S./Canada Management Area to ensure that TACs are not exceeded. These net restrictions were implemented under DAS management and were designed to control fishing effort on certain stocks. The exemption from these gear requirements has been approved for sectors in FY 2011, given that they are no longer necessary because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality.

Requirement to Power a VMS While at the Dock

Comment 18: The Council commented on the exemption from the requirement to power a VMS while at the dock, stating that this requirement may be considered a reporting requirement, from which sectors are prohibited from exemption. However, the Council believes that this request does not conflict with the intent of management measures.

Response: Current NE VMS regulations allow vessels to sign out of the VMS program for a minimum of 30 consecutive days, through the request and issuance of an LOA. NMFS believes that the request of sectors to power down VMS units while at the dock is an extension of the current regulatory exemption, and would grant sector vessels additional flexibility by reducing costs. Further, because sector managers are responsible for ensuring that vessels comply fully with the regulations, issues of potential enforcement concerns due to this exemption are mitigated. NMFS has approved this exemption for FY 2011, but will revoke the exemption if it undermines enforcement.

DSM Requirements for Handgear A-Permitted Sector Vessels

Comment 19: Two comments were received on the requests for an exemption from DSM requirements for jig vessels and for DSM requirements, roving monitoring, and hail requirements for hook-only or handgear vessels. The Northeast Coastal Communities Sector commented in support of gear-specific exemption requests, citing the similarity of the DSM exemption in FW 45 for handgear-permitted common pool vessels. The Council commented that an exemption request similar to the exemption for common pool handgear vessels in FW 45 seemed sensible.

Response: NMFS has approved a request for an exemption from DSM for Handgear A-permitted sector vessels, similar to the exemption in FW 45 for handgear-permitted common pool vessels, acknowledging that these vessels land only small amounts of groundfish. Without this exemption, these vessels would likely pay disproportionately higher DSM costs per monitoring event.

DSM Requirements for Vessels Fishing West of 72°30′ W. long.

Comment 20: Two comments were received on the request for an exemption from DSM requirements for vessels fishing west of 72°30′ W. long. NSC expressed support for this exemption in comments on FW 45. The Council commented that it supported requests specifying geographic boundaries or requests for particular gear types that catch small amounts of groundfish bycatch.

Response: In a September 1, 2010, letter, NMFS requested that the Council consider establishing a geographic boundary to prescribe where the dockside monitoring requirements apply, citing that having each sector develops a dockside monitoring program with different geographic boundaries would be problematic. The Council addressed this issue by removing DSM from the list of prohibited exemptions, thereby allowing sectors to request such exemptions. Amendment 16 specifies that sectors must develop and implement a dockside monitoring system that is "satisfactory to NMFS for monitoring landings and utilization of ACE." NMFS has approved this exemption, given that few groundfish were caught from the area. This

exemption will more efficiently utilize the financial resources dedicated to the DSM program.

DSM Requirements for Directed Monkfish, Skate, and Dogfish Trips

Comment 21: Five comments were received on the requested exemption from DSM requirements for directed monkfish, skate, and dogfish trips. The Council stated that its support for exemption requests specifying geographic boundaries and particular gear types that catch small amounts of groundfish bycatch should not be inferred to mean that it supports general exemptions from DSM for trips targeting other species such as monkfish or skates. The Northeast Coastal Communities Sector and NSC supported this exemption request. The GB Cod Fixed Gear Sector disagreed with the proposed rule statement that it is impossible to distinguish directed dogfish trips from groundfish trips. NESSN opposed, and NSC concurred with, NMFS's assertion that granting this exemption would decrease oversight and confidence in discard rates, because NMFS does not use the data generated from DSM to establish discard rates.

Response: NMFS agrees that some relief from DSM requirements can be offered through exemptions, and has therefore approved three requests for exemption from DSM requirements for FY 2011, for: Handgear A-permitted vessels, consistent with a measure included in FW 45 exempting handgear-permitted common pool vessels from DSM; for vessels fishing exclusively west of 72°30′ W. long; and for monkfish Category C- and D-permitted vessels fishing on a monkfish trip in the monkfish SFMA when such vessels are required to fish with nets containing 10-inch (25.4-cm) mesh codends or gillnets. The exemption from DSM for these particular monkfish trips specifically addresses identifiable trips with low groundfish catch, since information in NMFS databases show that catch of NE multispecies on such trips is minimal (11,345 lb (5,145.01 kg) in FY 2009 and approximately 1,500 lb (680.39 kg) thusfar in FY 2010). This approach is consistent with the Council's comment about allowing sectors to request exemptions from DSM requirements. While the Council may not have intended to allow for exemptions for directed monkfish trips, NMFS believes that the data show that groundfish catch on this subset of monkfish trips is low, and warrants an exemption.

NMFS will be able to identify such trips through the required VMS declaration, which specifies the area fished. Granting additional exemptions specific to directed skate and dogfish trips is currently not possible because these trips cannot be clearly identified. Such trips utilize gear capable of catching groundfish, and groundfish retention is permitted, which therefore requires vessels to declare into the NE multispecies fishery.

Exemption Requests That Were Not Approved

Access to GOM Rolling Closure Areas in May and June

Comment 22: Three comments were received supporting the granting of additional access to GOM rolling closure areas in May and June. The Council commented that, contrary to the justification provided by the Port Clyde Community Groundfish Sector, NEFOP does not collect information pertaining to the amount of spawning fish, and therefore observer data would not be adequate to measure the impacts of granting this exemption. The Northeast Coastal Communities Sector asserted that, if evidence supports the presence of spawning activity in these areas during May and June, the areas should remain closed. DMF raised concerns about the potential impacts to spawning aggregations of GOM cod, stating that these areas were originally intended to protect spawning aggregations of fish, and requested specific information on sectors' strategies for avoiding these aggregations.

Response: NMFS agrees that the GOM Rolling Closure Areas were initially established to protect spawning fish, specifically GOM cod. Table 177 in Amendment 16 indicates that cod spawn during the months of January through May. Although this table does not indicate cod spawning in June, the scientific paper written by Wirgin et al, 2007 (referenced above in Exemption 18) indicates that there are some cod spawning in the GOM in June. Other groundfish of importance also spawn during this timeframe. While previous actions specifically addressed the protection of spawning cod, NMFS believes that the protection of spawning stocks of all species managed under the NE Multispecies FMP is relevant, and necessary to the rebuilding and maintaining of rebuilt stocks. NMFS agrees with the Council that NEFOP data cannot be relied upon by a sector utilizing this exemption to measure the impacts on spawning fish because NEFOP observers to not collect information pertaining to the amount of spawning fish. Based on this information, NMFS has disapproved all GOM Rolling Closure Area exemption requests for FY 2011.

Prohibition on Pair Trawling

Comment 23: Four comments were received on the exemption from the prohibition on pair-trawling. The Northeast Coastal Communities Sector raised concern with this exemption request, stating that pair-trawling was prohibited to protect rebuilding stocks and that many of the NE multispecies stocks are still undergoing rebuilding. The Council also raised concerns, suggesting that this configuration should first be subject to an experimental fishery to verify performance. The Council also provided comment on potential implementation concerns. Finally, NESSN and NSC supported the exemption request by reiterating the justifications provided by the sectors originally requesting the exemption, *e.g.,* that, because sectors are managed under an ACE they should be exempt from effort control measures.

Response: NMFS is concerned that when fishing with a pair-trawl, selectivity may be decreased, which could result in increased catch of prohibited stocks for which sectors have no ACE. Without an ACE for these stocks, sectors would have little incentive to alter fishing behaviors. Further, the overall impacts of the Ruhle trawl when fished in a pair trawl configuration are unknown. For these reasons and others discussed in Exemption 19 above, NMFS has disapproved this exemption request.

Minimum Hook Size Requirements for Demersal Longline Gear

Comment 24: Two comments were received on the exemption from minimum hook size requirements for demersal longline gear. DMF commented that the sector would unlikely to be successful at targeting flatfish with this exemption and the exemption would likely have increased catch of sub-legal-sized fish. The Council provided comment on the implementation of discard rates, should this exemption be approved.

Response: NMFS agrees that granting this exemption could impact sub-legal fish, which could result in recruitment overfishing, despite sectors' overall impact on mortality being constrained by ACE. For this reason, NMFS disapproved this exemption request.

Minimum Mesh Size Requirements on Targeted Redfish Trips

Comment 25: Four comments were received on the exemption request from minimum mesh size requirements on targeted redfish trips. NESSN and NSC

supported the exemption request by reiterating the justifications originally submitted by the sectors requesting this exemption. The Council supported granting sectors flexibility to target healthy stocks, but commented that the Council's established scientific research study process should consider the proposed gear, which may lead to better understanding of the impacts on non-target species. DMF cited its participation in the ongoing NMFS-funded redfish study to investigate strategies and methods to sustainably harvest the redfish resource, and believe that, upon completion of the study, additional data will be available to more accurately evaluate the impacts of this exemption.

Response: NMFS agrees that the established Council process for review and incorporation of scientific research is the appropriate mechanism to determine if this exemption request has merit. Therefore, approval of this exemption request is premature at this time and, it was not approved.

Ruhle and Haddock Separator Requirements To Utilize the 98.4 in x 15.7 in (250 cm x 40 cm) Eliminator Trawl

Comment 26: NMFS received four comments on the exemption request from Ruhle and Haddock Separator trawl requirements when fishing in certain fishery management programs and requested the use of a smaller trawl size, the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl. The Council expressed concern that the process for incorporating modifications to this trawl gear should be evaluated using the Council's established research process. However, the Council noted it may support approval if the net design is similar to previously approved gear. DMF expressed general concern about the enforceability of trawl gear requirements and cautioned against assuming that the impacts of this gear would be the same as larger-scale nets of similar design. DMF concluded by recommending that approval of this exemption should be conditional, based on results of RSC review. NESSN reiterated, and NSC concurred, with the justification originally submitted by the sectors requesting this exemption.

Response: NMFS agrees that the Council's established mechanism for the review and incorporation of scientific research is appropriate for such changes to this gear. The RSC, which met on March 16, 2011, to discuss this issue, rejected the initial analysis of this gear and requested additional analysis for further review. NMFS awaits the recommendation of the RSC and Council on the future approval of this gear type for vessels fishing in the NE multispecies fishery before approving this exemption.

All DSM and Roving Monitoring Requirements

Comment 27: Four comments were received on the requested exemption from all DSM and roving monitoring requirements. NESSN and NSC supported the exemption requests. The Northeast Coastal Communities Sector supported an exemption from all DSM requirements, reiterating their concern about the costs of DSM for vessels landing small amounts of fish and operating out of remote ports, stating that these vessels are disproportionately impacted by the costs of DSM. The Council summarized the decision-making process behind allowing sectors to request exemptions from DSM requirements and stated its intent was to allow, or support, requests specifying geographic boundaries or for particular gear types which catch small amount of groundfish bycatch, similar to the Handgear A exemption in FW 45 for common pool vessels.

Response: NMFS agrees that some relief from DSM requirements can be offered through exemptions, and has therefore approved three DSM exemptions for FY 2011, for: Handgear A-permitted vessels, consistent with a measure included in FW 45 exempting Handgear A-permitted common pool vessels from DSM, for vessels fishing west of 72°30′ W. long, and for monkfish trips in the monkfish SFMA. The exemption from DSM for trips exclusively fishing west of 72°30′ W. long., and for certain monkfish trips (see above), specifically address identifiable trips with low groundfish catch. This approach is consistent with the Council's comment about allowing sectors to request exemptions from DSM requirements. Thus, although NMFS has disapproved an exemption to all DSM requirements, some exemptions to area- and gear-specific DSM requirements have been approved, DSM Requirements for Hook Vessels when the Sector has Caught less than 10,000 lb (4,535.9 kg) of Groundfish per Year.

Comment 28: Two comments were received pertaining to the request for an exemption from DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4,535.9 kg) of groundfish per year. The Council supported exemption requests specific to geographic boundaries or for particular gear types that catch small amounts of groundfish bycatch. The Northeast Coastal Communities Sector strongly urged consideration of this request, believing the economic burden outweighs compliance concerns, and offered to work with NMFS to establish a suitable threshold.

Response: NMFS agrees with the Council that an exemption from DSM requirements for certain vessels that catch small amounts of groundfish is appropriate. Therefore, NMFS approved an exemption from DSM requirements for Handgear A-permitted sector vessels, consistent with a measure included in FW 45 exempting handgear permitted common pool vessels from DSM. NMFS believes that this permit-based gear exemption will help to address the Northeast Coastal Communities Sector's concerns for some of its members, and minimizes enforceability concerns by having multiple gear exemptions. NMFS, however, does not support exempting all hook vessels from DSM when catching less than a specific amount of groundfish, and has therefore disapproved this exemption. To do so would be inequitable to other gear types, as well as administratively very difficult to do. NMFS will continue to reimburse DSM costs for FY 2011 through a grant to GMRI.

DSM Requirements in May When Fishing in Certain MA Areas

Comment 29: Three comments were received on the requested exemption from DSM requirements for vessels when fishing in certain MA areas. The Council supported DSM exemption requests specifying specific geographic boundaries. NESSN and NSC supported this request stating that historic data show that little groundfish is caught in these areas.

Response: NMFS agrees that a geographic boundary for DSM should be established and has approved an exemption from DSM requirements for vessels fishing west of 72°30′ W. long. For a full response, please see Response to Comment 21. NMFS believes that establishing different boundaries within New England waters where DSM was exempt would be difficult from both an administrative and enforcement perspective, and therefore has not approved this exemption.

DSM, Roving Monitoring, and Hail Requirements for Vessels Using Demersal Longline Gear, Jig Gear, and Handgear While Targeting Spiny Dogfish in Massachusetts State Waters

Comment 30: Three comments were received on the exemption from DSM, roving monitoring, and hail requirements for vessels using demersal longline gear, jig gear, and handgear while targeting spiny dogfish in Massachusetts state waters. The

Northeast Coastal Communities Sector strongly supported consideration of this request. The Council did not support the exemption request. The GB Cod Fixed Gear Sector commented on NMFS's inability to distinguish directed dogfish trips from groundfish trips.

Response: NMFS agrees with the Council that an exemption from DSM requirements for vessels fishing in certain areas that catch small amounts of groundfish is appropriate, and approved exemptions from DSM requirements for vessels fishing exclusively west of 72°30′ W. long.; and for monkfish Category C- and D-permitted vessels fishing on a monkfish trip in the monkfish SFMA when such vessels are required to fish with nets containing 10-inch (25.4-cm) mesh codends or gillnets. Granting an additional exemption specific to directed dogfish trips is currently not possible because these trips cannot be clearly identified. Such trips utilize gear capable of catching groundfish, and groundfish retention is permitted, which therefore requires vessels to declare into the NE multispecies fishery. Due to these concerns, NMFS has disapproved this exemption request.

DSM Requirements When a Trip Has Been Monitored by Either an At-Sea Monitor or Fishery Observer

Comment 31: Two comments were received regarding the requested exemption from DSM requirements when a trip has been monitored by either an at-sea monitor or fishery observer. The Council commented on this exemption related to the Council's November 18, 2011, motion recommending that NMFS prioritize trips for DSM that have not received an at-sea monitor (including NEFOP observers). The Northeast Coastal Communities Sector strongly supported consideration of this exemption, commenting on the need to balance monitoring with costs.

Response: The final rule implementing FW 45 rectifies the DSM standards to prioritize trips that do not receive at-sea monitoring (including NEFOP observers) for DSM selection. Therefore, the request for an exemption is not approved under this action since it is being implemented under FW 45. For FY 2011, NMFS anticipates funding DSM coverage for all trips that do not receive at-sea monitoring (including NEFOP observers). The Requirement to Delay Offloading Due to the Late Arrival of an Assigned Dockside Monitor

Comment 32: The Council commented on the request for an exemption from the requirement to delay offloading due to the late arrival of an assigned dockside monitor, stating that it might be sensible to set a window establishing the timely arrival of a monitor. The Council suggested that after that window of time expires, a vessel be allowed to proceed with the offload of catch, assuming all hail requirements were fulfilled.

Response: The regulations implementing Amendment 16 prohibit a vessel from offloading any fish from a trip that was selected for DSM prior to the arrival of the monitor. NMFS believes that it is the responsibility of the sector to resolve the late arrival of a monitor with the sector's dockside monitoring provider(s) that the sector has contracted with to fulfill the DSM standards. Provisions to address monitor tardiness could be captured in individual contracts, therefore, NMFS has disapproved this request.

Prohibition on Offloading of Non-Allocated Species Prior to the Arrival of the Monitor

Comment 33: The Northeast Coastal Communities Sector commented on its opposition to granting an exemption from the prohibition on offloading non-allocated species prior to the arrival of a monitor, asserting that allowing partial offloading prior to the arrival of a monitor handicaps the monitoring process and decreases transparency.

Response: NMFS agrees and is concerned that granting exemptions to many components of DSM would create serious loopholes in the existing regulations. Allowing a portion of an offload to be unmonitored would undermine the value of the monitored portion. Therefore, for compliance purposes, NMFS has disapproved this exemption request.

Exemptions Not Considered in This Rulemaking

Delayed Opening of the Eastern U.S./Canada Area

Comment 34: The Sustainable Harvest Sector commented that NMFS did not adequately address in the proposed rule the request for its exemption from a delay in the opening of the Eastern U.S./Canada Area to trawl gear. The sector believes that being granted an exemption allowing vessels to fish in this area during the summer months is important for smaller vessels for safety reasons and would facilitate harvesting a higher percentage of the sector's ACE for stocks in that area.

Response: NMFS is not able to consider the request for an exemption from the delay in the opening of the Eastern U.S./Canada Area to trawl gear because a delay in opening the Eastern U.S./Canada Area to trawl gear is not a specific regulation to be exempted from, but rather an in season action to modify or close access to the U.S./Canada Management Area at any time during the FY, or prior to the start of the FY, pursuant to § 648.85(a)(3)(iv)(D), which governs the Regional Administrator's ability to implement such actions. NMFS directs the public to the final rule for FW 45, which announces that NMFS is postponing the opening of the Eastern U.S./Canada Area for common pool (non-sector) vessels fishing with trawl gear in FY 2011 from May 1, 2011, to August 1, 2011.

Hail Requirements

Comment 35: The Council commented that DSM trip-start and trip-end hail requirements could be considered a reporting requirement instead of a part of the DSM program and, therefore, cannot be exempted, because the regulations prohibit sectors from requesting exemptions from reporting requirements.

Response: At its November 18, 2010, meeting, the Council voted to remove DSM requirements from the list of reporting requirements, thereby allowing sectors to request exemptions from these requirements. The Council was silent as to whether hails, a component of DSM, should also be removed from the list of reporting requirements. Since the inception of the DSM program, NMFS has interpreted hail requirements to be reporting requirements and believes hails to be integral to successful compliance monitoring of vessels participating in NE multispecies sectors. Hails are used by DSM providers to effectively deploy resources, and by NMFS to assist in the coordination of enforcement efforts. Therefore, this exemption request has been disapproved and the partial exemptions from DSM provisions granted in FY 2011 have retained hail requirements for vessels utilizing the exemptions.

Other Comments

Comment 36: One attorney, submitting comments on behalf of an unspecified number of individuals, raised concerns with the implementation of catch shares in the NE multispecies fishery through Amendment 16. The individual submitted Amendment 16 litigation materials as an attachment to the formal comments.

Response: Concerns regarding implementation of Amendment 16 sector provisions should more appropriately be raised to the Council. Any issues or concerns raised in the

ongoing litigation regarding Amendment 16 is being decided by the court in the litigation, and, therefore, it is not appropriate to respond to them here; nor are such issues and concerns directly related to this action.

Sector EA

Comment 37: The CBD commented that the EAs prepared in support of both FW 45 and the FY 2011 sector operations plans do not adequately evaluate the impacts on a number of species proposed for listing under the Endangered Species Act (ESA), particularly Atlantic sturgeon and loggerhead sea turtles. The CBD noted that three distinct population segments (DPS) of Atlantic sturgeon were proposed to be listed under the ESA by NMFS's Northeast Regional Office on October 6, 2010 (75 FR 61872), while the Northwest Atlantic loggerhead sea turtle was proposed to be listed as endangered under the ESA on March 16, 2010 (75 FR 12598). They contended that the FW 45 and FY 2011 sector operations plans EAs rely upon previous assessments of impacts to protected species specified in the Amendment 16 EIS that was completed on October 16, 2009. Therefore, they claimed that the analysis for these actions is not appropriate, given the proposed listings of Atlantic sturgeon and loggerhead sea turtles occurred after this analysis was completed, and requested that the analysis be updated. Further, they questioned how the draft FY 2011 sector operations plans EA could conclude that the action would not result in jeopardy to listed species prior to completion of the ESA Section 7 informal consultation. The CBD also noted that the FY 2011 sector operations plans EA recommended conservation actions be considered to limit the potential for adverse effects to candidate species, such as Atlantic bluefin tuna and cusk, but described no such measures under consideration.

Response: NMFS agrees that the analysis originally included in the FY 2011 sector operations plans EA did not adequately describe the impacts to DPS of Atlantic sturgeon and loggerhead sea turtles. In response to this comment, NMFS has updated the analysis supporting this action in the FY 2011 sector operations plans EA to include analysis of measures on the DPS for these species, and has concluded that there will be no significant impact on Atlantic sturgeon or loggerhead sea turtles for the expected duration of this regulation. NMFS is also addressing this concern in connection with the approval and implementation of FW 45. The revised analysis concluded that the measures implemented under this final rule are not likely to jeopardize the continued existence of Atlantic sturgeon between now and the time when a final listing determination will be made, and that a conference for the proposed loggerhead sea turtle DPS is not required based on determinations and the incidental take statement in the 2010 Biological Opinion for the Multispecies FMP. For Atlantic sturgeon, NMFS Sustainable Fisheries Division engaged in an informal conference with NMFS Protected Resources Division per the ESA regulations and no additional measures were recommended by NMFS Protected Resources. While it is possible that there may be interactions between Atlantic sturgeon and gear used in the NE multispecies fishery, the number of interactions that will occur between now and the time a final listing determination will be made is not likely to cause an appreciable reduction in survival and recovery. A final listing determination for the Atlantic sturgeon DPS is expected by October 6, 2011. With the publication of a final listing rule, the Section 7 consultation for the NE multispecies fishery would need to be reinitiated, consistent with the requirement to reinitiate formal consultation where discretionary Federal agency involvement or control of the action has been retained and a new species is listed that may be affected by the action. During the reinitiation, the effects of the NE multispecies fishery on the five DPS for Atlantic sturgeon would be fully examined.

Furthermore, the draft EA included a determination with respect to the ESA, because the regulations at § 402.12(a) governing the preparation and submission of a Biological Assessment (BA) specify that a BA shall include a determination as to whether any listed and proposed species and designated and proposed critical habitat are likely to be adversely affected by the proposed action, for review and concurrence by NMFS. Thus, the draft EA included draft analysis and findings for review by NMFS, and for use in the ESA Section 7 informal consultation on the proposed FY 2011 sector operations plans.

The FY 2011 sector operations plans EA has also been modified to clarify that NMFS has initiated review of recent stock assessments, bycatch information, and other information for candidate and proposed species, including Atlantic bluefin tuna and cusk, which must be completed to accurately characterize recent interactions between fisheries and the candidate/proposed species in the context of stock sizes. Any conservation measures deemed appropriate for these species will follow the information reviews.

Comment 38: One comment was received stating that the term "sector" has several uses in the draft EA (*e.g.,* "sector" as a segment of the fishery vs. "sector" as an entity), and requested that NMFS develop different terms to distinguish between these different meanings.

Response: NMFS acknowledges that the term "sector" has multiple uses in the draft EA. However, "sector" as an entity was the term adopted by the Council for groups of NE multispecies permit holders in Amendment 13 and is defined in the regulations at § 648.2. Therefore, this term will continue to be used by NMFS for NE multispecies unless a future Council action renames these entities.

Comment 39: The DMF supported NMFS's decision to consolidate analyses of the 19 FY 2011 sector operations plans into one EA, noting this greatly simplified review.

Response: NMFS agrees that consolidating the analysis of the 19 operations plans, based on their general uniformity, rendered the EA more user friendly, and will continue to try to identify approaches to further simplify the review process for future fishing years.

Comment 40: DMF commented that no analysis of FY 2010 sector operations plans' performance was included in the draft EA, specifically commenting on a lack of analysis regarding whether the impacts of approved exemptions were as predicted and whether there was any consolidation and or redirection of effort that occurred. They further commented that the information that was provided was general in nature and mainly used to predict interactions for FY 2011. DMF noted that, given the timing of submission of annual reports and sector operations plans, it appeared that the analyses of proposed sector operations plans would always use 2-yr old datasets.

Response: As noted by DMF and in section 1.2.2 of the draft EA, a complete dataset from the first year of expanded sector operations in FY 2010 was not yet available to use in the analysis of proposed FY 2011 sector operations plans. NMFS acknowledges that the concurrent operation of approved sectors in a given FY, and development of proposed sectors operations plan for the following FY, creates a lag in the data and analysis of actual sector fishing activities and associated impacts. However, NMFS uses the most complete information available in the analysis of sector operations plans each FY,

including predictions provided by the sectors about the expected fishing activities of their members in the upcoming FY. As noted in section 1.2.2 of the Final EA, in future FYs, beginning with FY 2012, NMFS will have sector annual reports and complete datasets from prior FYs, under sector management, excluding the FY underway during operations plan review. This will include certain sector-specific exemptions to use in the analysis of newly proposed sector operations plans for those specific sectors.

Comment 41: DMF commented that the data in the draft EA and in Table 4 of the proposed rule were inconsistent, though they cited the same roster date of September 10, 2010, and stated that the proposed rule and all associated documents should be based on the same roster information.

Response: NMFS acknowledges DMF's concerns, but disagrees that all associated documents need to be based on the same roster information. Table 4 of the proposed rule summarized the roster information that was submitted by FY 2011 sectors on September 10, 2010, and that was used in preparation of the IRFA. The roster information contained in the draft EA was also based on rosters submitted by September 10, 2010, but which had been updated as a result of NMFS's iterative review of sector operations plans and contracts. While the commenter might prefer that all associated analyses be based on the same roster information, September roster submissions are only preliminary estimates provided by sectors and are used by NMFS to establish a basis and scope for the analysis of proposed sector operations plans, including a relative maximum number of participants, ports, and ACE. However, the September roster information is not final, as permit holders may withdraw and join the common pool up through April 30 of the following calendar year, and NMFS may provide additional opportunities for permit holders to join a sector prior to the start of the FY, as it did this year by extending the roster deadline to December 1, 2010, which may lead to a modification of sector membership. Based on industry request, NMFS again reopened the rosters for certain permit holders who acquired permits after the December 1, 2010, roster deadline. As noted in section 1.0 of the Final EA, such changes are minimal and do not substantively affect the analyses. The proposed rule contained the most up-to-date information regarding sector membership and proposed ACEs available at the time of publication, based on updates by sector managers or additions/changes as a result of extensions to the roster deadline. Because of this roster flexibility, NMFS requested that the Council revise the Amendment 16 roster deadline to December 1 and the Council incorporated that change into FW 45. In future rulemakings, NMFS will endeavor to note any consistencies in roster information within the appropriate documents.

Comment 42: DMF commented that the Maine Permit Bank should be referred to as a federally funded, state-operated permit bank in section 3.2.2 of the draft EA.

Response: NMFS agrees that section 3.2.2 of the draft EA incorrectly referred to the Maine Permit Bank as a state-funded permit bank. NMFS has since revised this and other sections to reflect this correction.

Comment 43: A comment from DMF noted that the Port Clyde Community Groundfish Sector proposed a strategy in its FY 2011 operations plan (whereby the sector would cap the percentage of ACE that could be harvested from the rolling closure areas and institute a closure of the area if NEFOP data indicated a significant amount of spawning fish were being harvested) to minimize its impact on spawning fish as part of its rationale for a request for exemption from portions of the GOM Rolling Closure Areas in May and June, which was described in the proposed rule but not discussed in the draft EA.

Response: The Port Clyde Community Groundfish Sector did propose such a strategy; however, this strategy was not analyzed in the EA because not all sectors requesting exemptions from GOM rolling closure areas put forward this strategy. For the purposes of the analysis, sector exemptions that were similar were aggregated and the broadest or "worst-case" scenario was analyzed. NMFS reviewed the strategy proposed by the Port Clyde Community Groundfish Sector and determined it is not conservation equivalent to the Rolling Closure Areas, because the impacts discussed in the EA could result from the exemption, regardless of whether this mitigation strategy was adopted by all sectors.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under Executive Order (E.O.) 12866.

The Assistant Administration for Fisheries (AA), NOAA, finds good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after the date of publication for the measures implemented by this final rule. Aspects of this rule are conditional upon approval and publication of the final rule for FW 45. These rules must be in effect at the beginning of FY 2011, which begins on May 1, 2011, to fully realize the environmental and economic benefits. However, the time available for this rulemaking and for the final rule for FW 45 was constrained by multiple factors, including the development of FW 45, data availability, and the scheduling of U.S. and international management bodies. Due to these constraints, the rulemaking could not be completed further in advance of May 1, 2011, and in order to have this action effective at the beginning of FY 2011, it is necessary to waive the 30-day delay period for this rule.

In addition, the AA finds that this rule relieves several restrictions under 5 U.S.C. 553(d)(1), because this rule helps the NE multispecies fishery mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks, and increases the economic efficiency of vessel operations through the authorization of 19 sector operations plans for FY 2011. As explained in detail above, 17 exemptions have been approved for FY 2011, which provide increased flexibility to sectors by exempting them from effort control restrictions that would be onerous for fishing vessels whose fishing activity is constrained by a hard quota.

Failure to waive the 30-day delay in effectiveness could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities, as well as to the fish stocks subject to this rule. Without this rule, vessels that have signed up to join a sector in FY 2011 (836 vessels, 57 percent of eligible groundfish vessels) would not be able to take advantage of the flexibility in vessel operations this rule implements. For example, sector vessels would receive exemptions from trip limits, DAS, and seasonal closure areas that this rule allows. Moreover, because vessels committed to a sector may not fish in both the common pool and a sector in the same FY, vessels currently signed into a sector would be forced to cease fishing operations entirely during the delay in effectiveness, or forego sector membership for the entire FY, thereby losing the mitigating economic

efficiencies of the restrictions relieved for sector vessels. This would also reduce the economic efficiency of the majority of the fleet until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels. For the reasons above, the requirement to delay implementation of this rule for a period of 30 days is hereby waived.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA consists of and incorporates the Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the preamble of the proposed rule, the relevant portions of the proposed rule describing sector operations plans and requested exemptions, the corresponding analysis in the EA prepared for this action, the discussions, including responses to public comments included in this rule, and this summary of the FRFA.

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

This action will affect regulated entities engaged in commercial fishing for groundfish that have elected to join any one of the 19 proposed sectors that have submitted operations plans for FY 2011. Any limited access Federal permit issued under the NE Multispecies FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Although we acknowledge there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data, NMFS cannot apply the business size standard at this time. Data are currently being compiled on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities in the groundfish fishery for future actions. However, for this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of February 1, 2011, 836 of 1,475 eligible permits had elected to join a sector. Table 4 summarizes the number and percent of individual permits currently enrolled in a sector for FY 2011, as well as those predicted to be active. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2011, the number of permits participating in sectors on May 1, 2011, and the resulting sector ACE allocations, are likely to change. Additionally, NMFS is allowing for a limited reopening of the roster, through April 30, 2011, for new permit holders who acquired their permits through an ownership change that occurred after December 1, 2010.

Over the past decade, there has been a significant amount of consolidation in this fishery in response to management measures to end overfishing of, and to rebuild, groundfish stocks. The recent implementation of ACLs and AMs, and the expanded use of sectors under Amendment 16, has affected fishing patterns in ways that cannot yet be quantified and analyzed. Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. The reasons why fewer vessels have fished thus far in FY 2010, in comparison to FY 2009, may be related to owners with multiple vessels fishing fewer vessels, or vessel owners or sectors using quota differently and waiting to fish later in the FY to maximize revenue in response to some of the efficiencies gained through the implementation of sector measures in 2010. It is also likely that some vessels that have not landed groundfish have received revenue from leasing the groundfish allocated to them by their sector or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for and landing regulated species and ocean pout stocks, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, as alluded to above, this trend began before the implementation and expansion of the sector program and, based on limited data available to date, the trend is not significantly out of proportion to FYs prior to the implementation of Amendment 16. Further, most proposed FY 2011 sectors are anticipating no further consolidation than previously occurred through FY 2010. Five sectors have reported that they anticipate a smaller percentage of permits to harvest groundfish for FY 2011 as compared to FY 2010. Based upon concerns over consolidation raised by the public during the development of Amendment 16, the Council is currently working on a white paper regarding fleet diversity and accumulation limits, and has begun development of an amendment to the FMP to address concerns identified (i.e., Amendment 18).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be based upon which option—joining a sector or fishing under effort controls in the common pool—offers the greater economic advantage. Since sectors would be granted certain universal exemptions, and may request and be granted additional exemptions from regulatory measures that will apply to common pool vessels, sector vessels would be afforded greater flexibility. Sector members would no longer have groundfish catch limited by DAS allocations and would, instead, be limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, DSM, and at-sea monitoring. However, FW 45 changes the required coverage level for DSM to the level NMFS is able to fund, up to 100-percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from $60,000 to $150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from $13,500 to $17,800 per vessel. These estimates serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. The

majority of these administrative costs was subsidized by NMFS in FY 2010 and will continue to be subsidized in FY 2011. Whether these subsidies, which include providing financial support for preparation of sector EAs, DSM, and at-sea monitoring, will continue beyond FY 2011 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2011.

The capability to form a sector in the groundfish fishery was first implemented in 2004 through Amendment 13. Prior to FY 2010, there were only two sectors operating and only one sector had been operating continuously from FY 2004 to FY 2010. Available data (Table 5) suggest that the economic performance of the two sectors that had been operating prior to FY 2010 was positive. Whether improved profitability experienced by these two sectors will translate into improved performance for all 17 sectors that were implemented during FY 2010 is not known since the FY is incomplete. Amendment 16 revised and expanded sector management and was analyzed in an environmental impact statement. The analysis conducted for Amendment 16 posited that the combination of relief from specific regulations and the incentives to change fishing practices would result in improved ACL utilization compared to TAC use rates while the majority of the groundfish fleet was still operating under DAS controls. Using a straight-line projection approach suggests that for most stocks the use rates for aggregate sector ACLs will be higher than the average observed TAC use rates compared to FY 2007 and FY 2008. This assumes that the average weekly catch rates by sector vessels will remain constant for the remainder of the FY. Further, given substantial differences in ACE across sectors and among members within sectors, economic performance may be expected to vary considerably.

Small entity impacts may differ depending on sector-specific operations plans. The number of permits that have enrolled in each sector, as well as the operating characteristics of the sector, may have an economic affect on sector members (Table 1). The number of permits enrolled in a sector ranges from 7 to 105. The allocation to any given sector is based on the combined sum of the PSC for each stock associated with all permits enrolled in that sector. All sector operations plans convert the total ACE into an individual share proportional to the PSC that each member brings to the sector. This share is then allocated to the member to be fished by that member or traded to another sector member.

Sector operations plans include a number of harvesting rules designed to track catches, as required, but also contain provisions that require advance notification of when the sector or sector member may be approaching a harvest share limit or the sector's ACE for a given stock. This system may provide the information needed to allow sector members to more fully utilize their harvest share.

TABLE 4—SUMMARY OF THE NUMBER AND PERCENT OF INDIVIDUAL PERMITS AND LIKELY ACTIVE PERMITS CURRENTLY ENROLLED IN A SECTOR FOR FY 2011

Sector	Number of individual permits *	Percent of individual permits	Number of active permits *	Percent of active permits **
Northeast Fishery Sector II	85	5.76	42	49.41
Northeast Fishery Sector III	95	6.44	47	49.47
Northeast Fishery Sector IV	43	2.92	0	0.00
Northeast Fishery Sector V	34	2.31	27	79.41
Northeast Fishery Sector VI	19	1.29	5	26.32
Northeast Fishery Sector VII	20	1.36	13	65.00
Northeast Fishery Sector VIII	20	1.36	16	80.00
Northeast Fishery Sector IX	60	4.07	25	41.67
Northeast Fishery Sector X	51	3.46	21	41.18
Northeast Fishery Sector XI	46	3.12	21	45.65
Northeast Fishery Sector XII	11	0.75	6	54.55
Northeast Fishery Sector XIII	35	2.37	29	82.86
Fixed Gear Sector	100	6.78	40	40.00
Sustainable Harvest Sector 1	105	7.12	38	36.19
Sustainable Harvest Sector 3	18	1.22	0	0.00
Port Clyde Sector	39	2.64	24	61.54
Tri-State Sector	19	1.29	6	31.58
Northeast Coastal Community Sector	30	2.03	10	33.33
Maine Permit Bank Sector	7	0.47	0	0.00
All Sectors	837	56.75	370	44.21

* Number of permits in each sector is from sector operation plans and EAs submitted as of February 1, 2011. These numbers may increase due to changes in permit ownership or decrease due to a permit holder dropping out of a sector prior to the beginning of FY 2011.

** In 2010, 453 sector vessels were reported to be active vessels.

TABLE 5—SECTOR CATCHES AND PROJECTED ACL USE RATES FOR FY 2010

[May 1, 2010–March 26, 2010]

Stock	Percent sector catch	Sector weekly catch rate (%/week)	Projected FY10 sector ACL utilization	2007–2008 Average utilization rate
GB Cod	69.3	1.4	75.1	44
GOM Cod	81.0	1.7	87.7	69
GB Haddock	16.1	0.3	17.4	17
GOM Haddock	41.8	0.9	45.3	51
GB Yellowtail Flounder	63.6	1.3	68.9	117

TABLE 5—SECTOR CATCHES AND PROJECTED ACL USE RATES FOR FY 2010—Continued

[May 1, 2010–March 26, 2010]

Stock	Percent sector catch	Sector weekly catch rate (%/week)	Projected FY10 sector ACL utilization	2007–2008 Average utilization rate
SNE/MA Yellowtail Flounder	50.3	1.0	54.5	174
CC/GOM Yellowtail Flounder	75.9	1.6	82.2	55
Plaice	52.0	1.1	56.4	28
Witch Flounder	77.7	1.6	84.2	24
GB Winter Flounder	70.0	1.5	75.8	48
GOM Winter Flounder	57.4	1.2	62.2	NA
Redfish	27.8	0.6	30.1	46
White Hake	75.6	1.6	81.9	114
Pollock [1]	29.9	0.6	32.4	82

[1] The 2010 projection of the pollock sector use rate is significantly lower than that of the 2008–2009 average. This is because the revised pollock reference points raised the ACL substantially above the TAC-levels set for either 2007 or 2008.

This action will provide relief from having to comply with specified regulations. These regulatory exemptions include a set of universal exemptions in Amendment 16, as well as the additional exemptions requested by individual sectors. During FY 2010, a number of exemptions were requested by individual sectors. To provide maximum regulatory relief, as well as to reduce the cost of administering, monitoring, and enforcing a unique set of exemptions for each sector, these sector-requested exemptions were extended to additional sectors for the remainder of FY 2010 through supplemental rulemaking. The exemptions in this rule were analyzed as though they were approved for all sectors, whether it had been requested or not. However, unlike the universal exemptions, any of the sector exemptions approved during FY 2010 must be requested again for FY 2011. All exemptions requested by the sectors were intended to provide positive social and economic effects to sector members and ports.

The objective of sector management, as originally developed and implemented under Amendment 13 and expanded under Amendment 16, is to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. Sectors developed the proposed operations plans and prospective members signed binding sector contracts to abide by the measures specified in the proposed operations plan. NMFS is unable to develop additional alternatives because this would require NMFS to develop sector operations plans, which is counter to the intent of sectors, as outlined in Amendment 16. Accordingly, the proposed operations plans reflect the management measures preferred by participating vessels. Therefore, no other alternatives in addition to the No Action and the preferred alternative were considered. Under the No Action alternative, none of the FY 2011 sector operations plans would be approved, none would be approved to operate, none would receive an authorization to fish, and no exemptions would be granted in FY 2011. Therefore, no sector would receive a LOA to fish or an allocation to fish. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations. Because of effort control changes made by both Amendment 16 and Framework 44, it is likely that vessels enrolled in a sector for FY 2011 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Below is the analysis for the preferred alternative, which is being implemented in this final rule. An exemption for the following requirements has been granted to the requesting sectors because each sector's ACE reduces the need for effort controls, and there are perceived economic benefits from such exemptions: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) prohibition on a vessel hauling another vessel's gillnet gear; (3) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (4) limitation on the number of gillnets imposed on Day gillnet vessels; (5) 20-day spawning block out of the fishery required for all vessels; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions; (8) prohibition on the possession or use of squid or mackerel in the CA I Hook Gear Haddock SAP; (9) sink gillnet mesh size restrictions on the GOM from January through April; (10) extension of the sink gillnet mesh size restrictions on the GOM through the month of May; (11) prohibition on discarding; (12) daily catch reporting by Sector Managers for vessels participating in the CA I Hook Gear Haddock SAP; (13) trawl gear restrictions in the U.S./Canada Management Area; and (14) the requirement to power a VMS while at the dock; (16) DSM requirements for Handgear A permitted sector vessels; (16) DSM requirements for vessels fishing west of 72°30′ W. long.; and (17) DSM Requirements for monkfish trips when fishing in the monkfish SFMA.

Exemption from the Day gillnet 120-day block out of the fishery requirement was requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block allows sector members to realize the cost savings associated with retiring the redundant vessel. Furthermore, this exemption provides additional flexibility to sector vessels to maximize the utility of other sector-specific and universal exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed-gear exemption allows sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision reduces the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector was requested to be exempt from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Approving this exemption increases operational flexibility and provide an opportunity for a substantial portion of the fleet to improve vessel profitability.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This exemption provides greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested an exemption from the 20-day spawning block out of the fishery requirement. Exemption from the 20-day spawning block improves flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs (within a 3-month window) and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested exemption from the number of hooks that may be fished. These exemptions provide vessel owners in these sectors with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption also provides an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since FY 2004, and was granted to the GB Cod Fixed Gear Sector for FY 2010. Approving this exemption for these additional sectors extends the potential economic benefits to more vessels in other sectors.

The GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; all 12 Northeast Fishery Sectors; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested an exemption from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions allows greater flexibility to lease DAS between vessels of different sizes and may be expected to expand the market of potential lessees for some vessels. The efficiency gains of this exemption for a requesting sector would be limited because the exemption would only apply to leases within and between sectors requesting this exemption. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption are associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

The GB Cod Fixed Gear Sector requested an exemption from the prohibition on the use of squid or mackerel as bait, or possessing squid or mackerel on board vessels, when participating in the CA I Hook Gear Haddock SAP. Providing relief from the bait restrictions provides participating sector vessels with greater operational flexibility to choose the bait that best meets fishing circumstances. Participating vessels are also able to use the bait of their choice, depending on expected catch, as well as the cost of bait.

The exemption from sink gillnet mesh size restriction in the GOM from January through April was requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The exemption allows the use of 6-inch (15.24-cm) mesh gillnets in the GOM RMA from January 1, 2012, through April 30, 2012. This exemption provides participating sector vessels an opportunity to potentially retain more GOM haddock, a healthy stock, and share in the benefits from the stock recovery. To utilize this exemption, it would be necessary for participating sector vessels to purchase 6-inch (15.24-cm) mesh gillnets. However, it would allow a greater catch of haddock, which may increase revenues for gillnet fishermen and the ports where they land their fish, particularly if participating vessels are able to change fishing behavior to selectively target this stock and minimize catch of other allocated target stocks.

The GB Cod Fixed Gear Sector, and Northeast Fishery Sectors III, VI–VIII, and X requested an exemption from the sink gillnet mesh size restriction in the GOM in May, thereby extending the sink gillnet mesh size exemption in the GOM. This ancillary exemption to the sink gillnet mesh size restriction in the GOM provides participating sector vessels an opportunity to achieve higher profitability. Preliminary estimates indicate that about half of the available GOM haddock ACE will not be taken during FY 2010. This does not necessarily mean, however, that a larger share of the GOM haddock ACE will not be taken, as the FY has another 5 months.

The GB Cod Fixed Gear Sector; and Northeast Fishery Sectors XI–XIII requested an exemption from the regulations that currently prohibit sector vessels from discarding any legal-size regulated species allocated to sectors. Sector vessels have had to retain legal-size unmarketable fish, which requires them to store this fish on the vessel while at sea, in some cases in large quantities in totes on deck, which creates potential unsafe work conditions. In addition, sector vessels have had to determine a method of disposal for any unmarketable fish landed. Anecdotal information indicates that some fish dealers dispose of unmarketable fish for sector vessels as a courtesy; however, the scope of this occurrence and any operational costs incurred by the dealer or vessels is unknown. A partial exemption from this regulation would allow sector vessels to

discard unmarketable fish, and would provide sector vessels more operational flexibility and improves safety conditions at sea. It also relieves the burden, if any, on sector vessels and their dealers to find a way to dispose of the unmarketable fish once landed.

The GB Cod Fixed Gear Sector and the Northeast Coastal Communities Sector requested an exemption from the requirement that the sector manager submit daily catch reports for the CA I Hook Gear Haddock SAP, proposing instead that members submit daily catch reports directly to NMFS. Eliminating the daily catch reporting by sector managers provides some administrative relief to the sector. Reporting burden of individual participating vessels remains unchanged, as they would merely change the recipient of their current daily report. This exemption may result in some cost savings to the operation of any given sector and therefore reduce the transactions costs to all sector members, not only to the individual vessels or sector members that participate in the SAP.

Northeast Fishery Sectors II and V, the Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector requested an exemption from the trawl gear requirements in the U.S./Canada Management Area. This exemption allows the use of any groundfish trawl gear, provided the gear conforms to regulatory requirements for using trawl gear to fish for groundfish in the GB RMA. This exemption results in greater operational flexibility to participating sector vessels, as these vessels would be able to better harvest allocation of ACE. Whether this would result in increased profitability depends on the ability to achieve cost efficiencies by reducing the amount and type of gear necessary to prosecute the groundfish fishery in the U.S./Canada Management Area and elsewhere, and/or the ability to reduce operating costs if the same amount of ACE can be taken with less fishing time.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors IV, VI, and X; the Port Clyde Community Groundfish Sector, and the Tri-State Sector requested an exemption from the requirement to power a VMS while at the dock. Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators at all times. These requirements increase the cost of operating a fishing vessel, whether the vessel is fishing or not. This exemption provides the opportunity to reduce the overhead costs of maintaining a fishing operation and would result in some improved profitability.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III and V–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested partial exemptions from DSM requirements. NMFS has approved exemptions to DSM requirements for Handgear A permitted sector vessels, for vessels fishing west of 72°30′ W. long., and an exemption from DSM requirements for gillnet and trawl vessels on concurrent multispecies and monkfish DAS when using 10-inch (24.4-cm) or greater mesh fishing in the monkfish SFMA. The cost of DSM for FY 2010 has been subsidized by NMFS. Based on preliminary data, the overall average cost associated with DSM averaged about $0.02 per landed pound of groundfish, but ranged from approximately $0.01 to $0.06 per pound of groundfish landed. The estimated cost per pound landed for monitored trips was based on invoices received by sectors from May–February 2010. However, not all sectors had sent in invoices as of the date the average cost reported herein were estimated, so the actual costs may differ by sector and may be substantially different once the FY has been completed. Sectors are reimbursed based upon an agreed-upon formula between the Gulf of Maine Research Institute and sector managers to calculate reimbursement for DSM services, which includes a per-pound rate of $0.015, $33 per trip monitored, and $27 per trip requiring a roving monitor. Using methods similar to that used to estimate expected revenues for the FY 2011 and FY 2012 ACLs (i.e., based on a linear projection of average ACL use rates and average discard rates), the total estimated cost for DSM for FY 2010 would be $616,000, or 0.8 percent of estimated FY 2010 revenues. Through Amendment 16, DSM was scheduled to be reduced to 20 percent during FY 2011, and the estimated monitoring cost would be $281,000, or 0.4 percent of the estimated FY 2011 groundfish revenues, however, FW 45 alters the coverage level. NMFS anticipated that 62 percent of trips will receive coverage in FY 2011. The actual overall average DSM cost per pound landed will be zero for any lease-only sectors, and may be higher for sectors with below average landings per trip, since the trip cost gets spread out over fewer pounds. Similarly, the average cost per pound may be lower for sectors with higher than average landings per trip. Granting these exemptions will alleviate all up-front costs associated with this program, as well as the unreimbursed costs for monitoring of other stocks, and therefore provide the opportunity to reduce the overhead costs of operating a fishing vessel, which may result in some improved profitability.

NMFS received several comments on those exemption requests that NMFS identified as requests of concern in the proposed rule; however, these comments did not provide any new or additional data to support approval of these exemptions. For FY 2011, NMFS did not approve requests for exemption from the following requirements: (18) Access to GOM Rolling Closure Areas in May and June; (19) prohibition on pair trawling; (20) minimum hook size requirements for demersal longline gear; (21) minimum mesh size requirement on targeted redfish trips; (22) Ruhle and Haddock Separator requirements to utilize the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl in areas where these gear types are approved; (23) all DSM and roving monitoring requirements; (24) DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4,535.9 kg) of groundfish per year; (5) DSM requirements in May when fishing in several Mid-Atlantic NMFS Statistical Areas; (26) DSM, roving monitoring, and hail requirements for vessels using demersal longline, jig, and handgear while targeting spiny dogfish in Massachusetts state waters of NMFS Statistical Area 521; (27) DSM requirements when at-sea monitoring has previously observed the trip; (28) the requirement to delay offloading due to the late arrival of the assigned monitor; (29) the prohibition on offloading of non-allocated stocks prior to the arrival of the monitor; and (30) the requirement to provide a sector roster to NMFS by the specified deadline.

The GB Cod Fixed Gear Sector, the Northeast Coastal Communities Sector, Northeast Fishery Sectors II and III, the Port Clyde Community Groundfish Sector, and Sustainable Harvest Sectors 1 and 3 requested access to specific blocks within the GOM Rolling Closure Areas (Exemption 18), specifically blocks 138 and 139 during May and/or access to blocks 139, 145, and 146 during June. These closure areas were selected primarily to reduce fishing mortality on GOM cod at a time of year where catch rates had been observed to be high. However, they also serve to protect spawning fish, as well as protected species and therefore this exemption request was not approved for FY 2011. Given higher catch per unit effort, sector vessels would have been able to harvest available ACE at a lower

cost, since less fishing time would be required to harvest the same amount of available ACE. Whether this would have resulted in higher profitability is uncertain, since prices during May and June tend to be lower due to larger supplies and somewhat lower fish quality. During FY 2010, average cod prices have been above their historic average. The price effect of increased supplies of cod entering the market early in the FY is uncertain, but could have offset some of the cost savings associated with being able to obtain higher catch rates.

Northeast Fishery Sectors V–X and XIII requested an exemption from the prohibition on pair trawling (Exemption 19). Pair trawling was originally prohibited because of its higher catch rates and impacts to then-declining cod and haddock stocks. Providing an exemption allowing for pair trawling would have provided participating sector vessels with greater operational flexibility. However, the high catch rates that resulted from this fishing practice while under DAS management may not have been as advantageous under sector management unless the practice could be used to selectively target stocks for which a sector has a comparatively large ACE. That is, characterizing the use of pair trawling as highly efficient may be accurate from a technical standpoint, but may not necessarily be economically efficient unless catch rates of stocks with limiting ACE can be reduced or eliminated. This exemption was disapproved in FY 2011 due to possible diminished selectivity of the gear and potential interactions between protected species.

The GB Cod Fixed Gear Sector and the Northeast Coastal Communities Sector requested an exemption from the minimum hook size (Exemption 20). This exemption may have improved operational flexibility for participating sector vessels, but it was uncertain whether the ability to use alternative hook sizes would translate into improved profitability, particularly if the larger hook does select for larger fish, which do tend to fetch a premium price. Nevertheless, the exemption would have improved flexibility and may have allowed delivery of a broader range of fish sizes to final markets.

The GB Cod Fixed Gear Sector and Northeast Fishery Sectors II, V–X, and XIII requested an exemption from the trawl minimum mesh size when targeting redfish, a healthy stock. The 6.5-inch (16.51-cm) mesh size has been argued to be too large to catch Acadian redfish in quantities that would have permitted development of a targeted fishery. The proposed exemption would have offered participating sector vessels greater operational flexibility. These sectors proposed that the fishery using this exemption would have been monitored using 100-percent observer coverage, and would have required daily catch reporting to the sector manager. Whether the potential improved catch rates would offset these added costs is uncertain. As long as the at-sea monitoring or observer costs are being subsidized, the only added cost may have been the requirement for daily reporting by the sector manager. The extent to which observer costs would continue to be subsidized is unknown, but may have been needed to be taken into account when assessing the potential profitability that developing a targeted redfish fishery may provide.

Northeast Fishery Sectors II, V–X, and XIII requested an exemption from gear restrictions in the U.S./Canada Management Area, and would have allowed for the use of the 98.4-inch x 15.7-inch (250-cm x 40-cm) Eliminator Trawl. This exemption would have allowed the use of a configuration of an eliminator trawl that differs from what is currently approved for specific areas, including the U.S./Canada Management Area. Allowing this exemption would have offered greater operational flexibility, but would still be limited to the areas and conditions under which the current eliminator or Ruhle trawl has already been approved. While this net may be used in open areas, the use of this net is prohibited in the Special Management Program, including the SAPs, and Gear Restricted Areas. This exemption was requested because the specification for approved gear types for these areas is too large to be utilized by some of the participating sector vessels. The extent to which this exemption may have improved economic profitability is uncertain, but would have been limited to vessels that have already purchased the gear, would have been able to re-rig existing gear at low cost, and would have accessed the areas where the Ruhle trawl is already approved.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested complete or additional partial exemptions from DSM requirements. As stated above, the cost of DSM for FY 2010 has been subsidized by NMFS. Based on preliminary data, the overall average cost associated with DSM averaged about $0.02 per landed pound of groundfish, but ranged from approximately $0.01 to $0.06 per pound of groundfish landed. The estimated cost per pound landed for monitored trips was based on invoices received by sectors from May–February 2010. However, not all sectors had sent in invoices as of the date the average cost reported herein were estimated, so the actual costs may differ by sector and may be substantially different once the FY has been completed. Sectors are reimbursed based upon an agreed formula between the Gulf of Maine Research Institute and sector managers to calculate reimbursement for DSM services, which includes a per-pound rate of $0.015, $33 per trip monitored, and $27 per trip requiring a roving monitor. Using methods similar to that used to estimate expected revenues for the FY 2011 and FY 2012 ACLs (i.e., based on a linear projection of average ACL use rates and average discard rates), the estimated cost for DSM for FY 2010 would be $616,000, or 0.8 percent of estimated FY 2010 revenues. Through Amendment 16, DSM was scheduled to be reduced to 20 percent during FY 2011, and the estimated monitoring cost would be $281,000, or 0.4 percent of the estimated FY 2011 groundfish revenues, however, FW 45 alters the coverage level. The actual overall average DSM cost per pound landed will be zero for any lease-only sectors, and may have been higher for sectors with below average landings per trip, since the trip cost gets spread out over fewer pounds. Similarly, the average cost per pound may be lower for sectors with higher than average landings per trip. Granting all or a portion of these exemptions would have alleviated additional up-front costs associated with this program, as well as the unreimbursed costs for monitoring of other stocks, and therefore would have provided additional opportunity to reduce the overhead costs of operating a fishing vessel, which may have resulted in some additional improved profitability.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1966 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to sector members that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: April 18, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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