

least 50 percent of the total covered population, with provision for waivers as necessary to effectuate the goals of the Tribal Priority. This modification will now enable Tribes with small or irregularly shaped lands to qualify for the Tribal Priority.

The modifications to the Commission's allotment and assignment policies adopted in the Second R&O include a rebuttable "Urbanized Area service presumption" under Priority (3), whereby an application to locate or relocate a station as the first local transmission service at a community located within an Urbanized Area, that would place a daytime principal community signal over 50 percent or more of an Urbanized Area, or that could be modified to provide such coverage, will be presumed to be a proposal to serve the Urbanized Area rather than the proposed community. In the case of an AM station, the determination of whether a proposed facility "could be modified" to cover 50 percent or more of an Urbanized Area will be made based on the applicant's certification in the Section 307(b) showing that there could be no rule-compliant minor modifications to the proposal, based on the antenna configuration or site, and spectrum availability as of the filing date, that could cause the station to place a principal community contour over 50 percent or more of an Urbanized Area. To the extent the applicant wishes to rebut the Urbanized Area service presumption, the Section 307(b) showing must include a compelling showing (a) That the proposed community is truly independent from the Urbanized Area; (b) of the community's specific need for an outlet of local expression separate from the Urbanized Area; and (c) the ability of the proposed station to provide that outlet.

In the case of applicants for new AM stations making a showing under Priority (4), other public interest matters, an applicant that can demonstrate that its proposed station would provide third, fourth, or fifth reception service to at least 25 percent of the population in the proposed primary service area, where the proposed community of license has two or fewer transmission services, may receive a dispositive Section 307(b) preference under Priority (4). An applicant for a new AM station that cannot demonstrate that it would provide the third, fourth, or fifth reception service to the required population at a community with two or fewer transmission services may also, under Priority (4), calculate a "service

value index" as set forth in the case of Greenup, Kentucky and Athens, Ohio, Report and Order, 2 FCC Rcd 4319 (MMB 1987). If the applicant can demonstrate a 30 percent or greater difference in service value index between its proposal and the next highest ranking proposal, it can receive a dispositive Section 307(b) preference under Priority (4). Except under these circumstances, dispositive Section 307(b) preferences will not be granted under Priority (4) to applicants for new AM stations. The Commission specifically stated that these modified allotment and assignment procedures will not apply to pending applications for new AM stations and major modifications to AM facilities filed during the 2004 AM Auction 84 filing window.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011-18151 Filed 7-18-11; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100526226-1322-02]

RIN 0648-AY95

#### Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 16, Framework Adjustment 44, and Framework Adjustment 45

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

**ACTION:** Interim final rule; correcting amendment; request for comments.

**SUMMARY:** This action makes corrections, clarifications, and modifications to existing regulations to ensure consistency with measures adopted by the New England Fishery Management Council (Council) to regulate the Northeast (NE) multispecies fishery and to provide additional flexibility for some of the administrative regulatory requirements. The current regulations governing the NE multispecies fishery contain a number of inadvertent errors, omissions, and potential inconsistencies with measures adopted by the Council and approved by the Secretary of Commerce

(Secretary) in recent actions regarding the NE Multispecies Fishery Management Plan (FMP). This interim final rule is being taken by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); NMFS is implementing changes made to the dockside monitoring program (DSM), not included in the proposed rule, as an interim rule in order to seek public comments on the changes.

**DATES:** Effective on July 19, 2011.

Written comments must be received on or before August 18, 2011.

**ADDRESSES:** You may submit comments, identified by 0648-AY95, by any of the following methods:

- **Electronic submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Fax:** (978) 281-9135.

- **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. Mark the outside of the envelope, "Comments on the Interim Final Rule to Correct/Clarify the NE Multispecies Regulations."

**Instructions:** All comments received are a 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, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review (RIR) prepared for this rule are available from the Regional Administrator at the above address. Copies of previous management actions, including Amendment 16, Framework Adjustment 44 (FW 44), FW 45, and the respective Final Environmental Impact Statements (FEISs) and Environmental Assessments (EAs) prepared for each action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Brett Alger, Fishery Management Specialist, *phone:* 978-675-2153, *fax:* 978-281-9135.

**SUPPLEMENTARY INFORMATION:** A proposed rule soliciting public comment on making corrections and clarifications to the existing regulations and to ensure the regulations are consistent with the measures adopted by the Council was published in the **Federal Register** on May 2, 2011 (76 FR 24444) with public comments accepted through May 17, 2011. One comment was received, but it was not relevant to this action. NMFS has approved the corrections, clarifications, and modifications to ensure consistency with the goals of the NE Multispecies FMP, as described in Amendment 16, FW 44, and FW 45 to the FMP, and other applicable laws. For a complete description of each measure, see the preamble text from the proposed rule.

## Background

The most recent management actions in the NE multispecies fishery (Amendment 16 and FW 44) were both implemented by final rules that published in the **Federal Register** on April 9, 2010 (75 FR 18262 and 75 FR 18356, respectively), and became effective on May 1, 2010. FW 45 was implemented by a final rule that published in the **Federal Register** on April 25, 2011 (76 FR 23042), and became effective on May 1, 2011. Amendment 16 and FW 44 implemented measures necessary to end overfishing and rebuild overfished stocks based on new or existing rebuilding programs and to comply with annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Act. Amendment 16 also substantially revised existing sector management measures and established new sectors. Amendment 16 superseded measures implemented by an emergency final rule (74 FR 17030, April 13, 2009) to immediately reduce overfishing on certain groundfish stocks managed by the FMP until long-term measures could be implemented by the Amendment 16 final rule. FW 45 implemented a measure to require dockside monitors to

inspect fish holds as part of the DSM program.

The final rules implementing Amendment 16, FW 44, and FW 45, as well as other previous actions, contained several inadvertent errors, omissions, and potential inconsistencies with the intent of these actions, as identified below. This rule corrects these errors, and clarifies or modifies the current regulations to ensure consistency with their original intent. Also, changes are made to some of the regulations to provide additional flexibility for some of the administrative requirements, such as allowing sector managers more time to complete their weekly reports. NMFS is taking these actions under authority in section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may, on his/her own, promulgate regulations necessary to ensure that an FMP or its amendments are carried out in accordance with the provisions of the Magnuson-Stevens Act.

## Changes From the Proposed Rule

### 1. Set-Only Vessel Trip Report (VTR) Exemption

After further consideration, NMFS is not implementing one measure that was in the proposed rule. It was proposed that vessels attempting to only set gear on a trip, and not retrieve any gear or land any fish, be given an exemption from VTR requirements. However, due to monitoring, compliance, and consistency concerns, NMFS no longer believes that this measure is appropriate. The definition of a set-only trip at § 648.2 as defined in the proposed rule will remain in place, as well as the prohibition to possess or land fish while on a set-only trip at § 648.14.

### 2. DSM Operations Standards

The final rule implementing FW 45 included a new requirement for dockside monitors to board vessels and inspect the fish hold for any trip that is assigned a dockside/roving monitor. NMFS implemented this change to the DSM operations standards to enhance the enforceability of existing provisions and minimize the incentives to underreport/misreport the amount of regulated species landed, after consideration of concerns expressed by the public and enforcement personnel.

This rule modifies the DSM operations standards by removing the requirement for dockside monitors to board each vessel at the conclusion of each offload for the purpose of fish hold inspection, and replacing it with a

provision that makes such inspection discretionary, unless it is required in the future by the Regional Administrator. The addition of the requirement to inspect the hold was met with strong opposition from industry members, who cited concerns about privacy, additional time associated with the inspection, the increased potential for accidents, and the adequacy of insurance for coverage of the activity. Upon further review, NMFS has determined that retaining the vessel trip-end (pre-landing) hail requirement currently provides an efficient and effective means for observation and enforcement of vessel landing requirements through unannounced observation of vessel offloads at the discretion of law enforcement, which could include inspection of the hold. The hail requirement and spot inspections allow for deployment of limited monitoring and enforcement resources to the greatest effect. The possibility of such inspection is believed to be a sufficient deterrent at this time. Under the new provision, onboard inspections by dockside monitors will not be required unless the Regional Administrator determines that dockside monitoring of holds will improve the efficiency and effectiveness of monitoring landings. If the Regional Administrator makes such a determination, affected permit holders and monitoring providers will be informed through a letter or other appropriate means. Instructions and guidelines deemed necessary for carrying out such inspections will also be provided. In addition, a sector may also independently authorize dockside/roving monitors to inspect any area of the vessel in which fish are stored. Because this provision was not specified in the proposed rule, it is being implemented as an interim final rule for purposes of seeking additional public comment.

## Final Measures

In addition to the "Changes from the Proposed Rule" discussed above, this action makes several other modifications and corrections stated below, which are listed in the order in which they appear in the regulations; the last section of corrections are found throughout the regulations.

### 1. VTR Requirements

The current VTR regulations require that a VTR be submitted by a vessel operator upon entering port with fish. This suggests that vessels that may have conducted fishing activity, but that did not catch any fish, do not have to submit a VTR for that trip. However, the Council in Amendment 5 to NE

multispecies FMP stated: “logbooks are required of all vessels with a multispecies permit and must be completed for all trips rather than for only trips on which groundfish were landed.” Additionally, due to monitoring, compliance, and consistency concerns, NMFS no longer believes that this measure is appropriate for trips that are only setting gear and not intending to catch fish. To ensure that vessels submit a VTR for all trips that conduct fishing activity, this rule revises the VTR submission regulations to remove the language that states that only trips that land fish must submit a VTR.

## 2. Dealer Prohibitions

Current regulations at § 648.14(k)(3)(i) are not explicit as to whether they apply to the importation of foreign-caught NE multispecies. Amendment 16 implement zero-retention of certain fish stocks, therefore, the current dealer provisions in this section could allow the importation of the zero-retention species specified in Amendment 16 that would otherwise be prohibited. This creates an unnecessary enforcement burden for NMFS in cases where a dealer lawfully may be in possession of prohibited species that were obtained from sources other than U.S. fishing vessels. In addition, the regulations do not currently prohibit the export of these zero-retention species. This rule revises the regulatory text for the purposes of eliminating any uncertainty whether zero-retention species can be imported or exported.

## 3. Regulated Mesh Area (RMA)

The regulations at § 648.80(a)(3)(vi) state that a vessel may not fish in either the Gulf of Maine (GOM) or Georges Bank (GB) Exemption Area unless fishing under certain restrictions, including the provisions of an exempted fishery. This paragraph references some, but inadvertently, not all of the exempted fisheries, specifically the exempted fisheries outlined at § 648.80(a)(15), (a)(16), and (a)(18). Therefore, this rule revises the regulations at § 648.80(a)(3)(vi) to reference all applicable exempted fisheries through § 648.80(a)(18) and update other references within § 648.80 to be more consistent with current regulations.

## 4. Applicability of Restricted Gear Areas (RGA)

Amendment 16 adopted RGAs that require a common pool vessel, fishing any part of a trip within a RGA under a NE multispecies day-at-sea (DAS), to use selective gear (*i.e.*, a haddock

separator trawl, a Ruhle trawl, a rope separator trawl, hook gear, or flatfish or roundfish gillnets with mesh size greater than or equal to 10 inches (25.4 cm)) to reduce the catch of species requiring substantial reductions in fishing mortality. The current regulations implementing this provision at § 648.81(n) require that these gear restrictions apply to all NE multispecies limited access vessels fishing any part of a trip within a RGA. This rule clarifies that the RGAs only apply to vessels fishing under a NE multispecies DAS, to maintain consistency with the original intent of Amendment 16.

## 5. Small Vessel Category Possession Limits

Regulations at § 648.82(b)(5)(i) specify that a vessel electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder trip limit restrictions specified under § 648.86(g). Additionally, this paragraph currently states that vessels with a Small Vessel category permit are not subject to trip limits for other NE multispecies. Amendment 16 prohibited the possession of four species in any fishery (windowpane flounder, ocean pout, Atlantic wolffish, and SNE/MA winter flounder). The current Small Vessel category regulations could be interpreted to mean that Small Vessel category permits may possess these prohibited species, which undermines the purpose for the prohibition on possessing these species. Therefore, this rule changes the reference to “§ 648.86(g)” in § 648.82(b)(5)(i) to read “§ 648.86,” and removes the sentence “Such vessel is not subject to a possession limit for other NE multispecies” to more accurately reflect the trip limits revised by Amendment 16 and FW 44.

## 6. Default AM for Stocks Not Allocated to Sectors

This rule revises the common pool differential DAS counting AM regulations at § 648.82(n)(1), the ACL distribution regulations at § 648.90(a)(4)(iii)(E)(2), and the overall AM regulations at § 648.90(a)(5) to clarify that sector vessel catch of stocks not allocated to sectors (*i.e.*, Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during FYs 2010 and 2011 will be added to the catch of such stocks by common pool vessels during those FYs to determine if the common pool differential DAS counting AM will

be triggered. This would ensure that the regulations implementing Amendment 16 correctly reflect the Council’s intent and NMFS’s understanding that the AMs applicable to the NE multispecies fishery must be sufficient to prevent overfishing on the stock as a whole for FYs 2010 and 2011.

## 7. Multispecies Minimum Fish Sizes and Fillet Provisions

The current regulations at § 648.83(a) includes two separate lists specifying minimum fish sizes. This rule corrects this error by removing paragraph § 648.83(a)(3) in its entirety. This rule will have no effect on legal fish sizes apart from what is in the current regulations and analyzed in Amendment 16.

This rule expands the existing fillet exemption to all vessels issued a limited access NE multispecies DAS permit, including those that are fishing in a sector and exempt from fishing under a DAS. Consistent with the intent of Amendment 16 and the associated regulation at § 648.87(b)(1)(v), all catch by a sector vessel, including fillets retained by crew for personal use, count against the applicable annual catch entitlement (ACE) for the sector in which that vessel participates.

Currently, fillets and parts of fish as referenced at § 648.83(b) are counted at a rate of 3:1 solely for compliance purposes with DAS possession limits. That is, the regulations require the weight of fillets or parts of fish to be multiplied by 3 and added to the weight of whole fish on board. The total weight of whole fish and fillets combined, must comply with trip limits. However, the current system does not accurately account for the fish landed for at-home consumption under sector and common pool sub-ACLs. This rule replaces the current 1:1 counting method with 3:1 counting for quota monitoring purposes to ensure that all fish being landed for at-home consumption would be accounted for. This is consistent with the intentions of the FMP that all catch by common pool and sector vessels be accounted for, and will prevent a sector from unknowingly fishing over its respective ACE.

## 8. Adjustments to U.S./Canada Management Area TAC

Amendment 16 states that the catch of stocks of yellowtail flounder by the scallop fishery will be treated as an “other sub-component” of the ACL until AMs for the catch of yellowtail flounder in the scallop fishery can be developed in an amendment to the Atlantic Sea Scallop FMP (*i.e.*, Amendment 15). Amendment 15 proposes specific AMs

for the scallop fishery's yellowtail flounder sub-ACL in FY 2011 and beyond, and also proposes retroactive AMs for the FY 2010 yellowtail sub-component allocated to the scallop fishery in FY 2010. Therefore, this rule removes the regulatory reference to the scallop fishery in § 648.85(a)(2)(ii) and replaces it with a reference to the overall groundfish AM provisions in § 648.90(a)(5)(ii). The final rule implementing Scallop Amendment 15, if approved, would likely be implemented in early July 2011. Because the Amendment 15 ACL and AM measures applicable to the scallop fishery were not implemented at the start of the NE multispecies 2011 FY on May 1, 2011, this correction ensures that any overage of the overall GB yellowtail flounder ACL caused by another fishery will be divided between the common pool and sector sub-components to determine if the respective AMs will be triggered.

#### 9. Eastern U.S./Canada Landing Limit Restrictions

Amendment 16 revised the existing closure provisions for the Eastern U.S./Canada Area when 100 percent of the TAC is reached for GB cod. Amendment 16 revised the regulation at § 648.85(a)(3)(iv)(A)(2) to require that when 100 percent of the TAC is reached for GB cod, the Eastern U.S./Canada Area will be closed to all NE multispecies DAS vessels. This regulation mistakenly maintains outdated language that fails to recognize the specific allocation of a portion of the Eastern U.S./Canada TACs for this stock to sectors. To maintain consistency with Amendment 16 and ensure that NMFS has the authority to close the Eastern U.S./Canada Area to each component of the NE multispecies commercial fishery that exceeded its allocation of the Eastern U.S./Canada Area GB cod TAC, this rule clarifies the regulations at § 648.85(a)(3)(iv)(A)(2) by closing the area to all limited access NE multispecies vessels subject to a particular TAC allocation, once that segment's allocation of the Eastern U.S./Canada Area GB cod TAC is projected to be caught.

#### 10. Special Management Programs

The current regulations at § 648.85(b)(3)(x)(A) restrict the gear that may be used in the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to only trawl gear when the SAP is open to targeting yellowtail flounder. This is not consistent with the measure originally implemented in the Amendment 13 final rule (69 FR 22906, April 27, 2004).

This rule revises these regulations to clarify that vessels also may use hook gear or gillnet gear in this SAP when it is open to the targeting of yellowtail flounder by revising the text to state that NE multispecies vessels "fishing with trawl gear" must use a haddock separator trawl, flounder net, or Rühle trawl.

Amendment 16 revised the Regular B DAS Program to require vessels fishing under the Regular B DAS Program in the GB cod stock area with trawl gear to use a haddock separator trawl, a Rühle trawl, or other approved trawl gear with a codend composed of at least 6-inch (15.24-cm) diamond or square mesh. However, the regulations implementing Amendment 16 did not specify an area where the 6-inch (15.24-cm) mesh codends could be used. Therefore, this rule clarifies the regulations at § 648.85(b)(6)(iv)(J)(4) by specifying that the use of a 6-inch (15.24-cm) codend is only permitted within the GB cod stock area.

In 2005, FW 41 revised the Closed Area I Hook Gear Haddock SAP measures affecting common pool vessels to address concerns identified by NMFS in the original submission of this SAP as part of FW 40-A. The final rule implementing FW 41 inadvertently did not include a provision restricting the bait that may be used by common pool vessels. The final rule implementing Amendment 16 rectified this oversight but inadvertently imposed the bait requirements on sector vessels. This rule revises the bait restrictions for this SAP specified at § 648.85(b)(7)(iv)(E) and (vi) to only apply to common pool vessels.

#### 11. Daily Landing Restrictions

Current landing limit regulations at § 648.86(m) prohibit NE multispecies permitted vessels from landing regulated NE multispecies or ocean pout more than once in any 24-hr period. These regulations provide an example that indicates that this period of time begins when a vessel departs port, rather than when the vessel returns to port and lands groundfish. Amendment 16 states that the intent was to be based upon time of landing. Therefore, this rule changes the regulations at § 648.86(m) by modifying the example to reflect the current regulations, which are correctly based upon time of landing.

#### 12. Sector ACE Allocation

The current regulations at § 648.87(b)(1)(ii) state that a sector may only fish in a particular stock area if it has been allocated or acquires ACE for all stocks caught in that stock area. This

text could be interpreted to mean that a sector would have to be allocated or acquire ACE for a stock that sectors are not allocated, such as SNE/MA winter flounder, to be able to fish, for example, in the SNE/MA yellowtail flounder stock area. To clarify that sectors have the ability to fish in a particular stock area for a stock allocated to sectors, the text at § 648.87(b)(1)(ii) will be revised to state that sectors may fish in each stock area provided it has been allocated or acquires ACE for those stocks "allocated" to sectors that are caught within that stock area.

#### 13. Sector Monitoring

The DSM program requires all NE multispecies sector vessels (and common pool vessels on a NE multispecies DAS trip starting in FY 2012) in which the NE multispecies catch applies against the sector ACE to submit a trip-start hail (TSH) report to the DSM provider. If the vessel operator does not receive a confirmation that the TSH report has been received within 10 min of sending the report, the current regulations at § 648.87(b)(5)(i)(A)(1) require the vessel operator to contact the DSM service provider to confirm the receipt of the TSH report via a back-up system specified by the DSM service provider. The delivery of such reports via VMS often takes more than 10 min because the 10-min response requirement has proven to be impractical. Therefore, this rule eliminates the 10-min requirement currently specified in § 648.87(b)(5)(i)(A)(1), but still require the vessel operator to contact the DSM service provider via a back-up system, after a time determined by the DSM provider, to confirm the receipt of the TSH report.

The DSM provisions require that, for a trip that is selected to be monitored, all offload events must be monitored, including offloads occurring at more than one location, offloads to a truck, and offloads at remote locations. The regulations at § 648.87(b)(5)(ii)(B)(2) specify that the roving monitor (RM) must "record all offloaded catch by species and market class" for offloads to a truck. Based upon input from the fishing industry, NMFS has determined that the regulation requiring that species be sorted by market class is impractical, as sorting does not generally occur at offloads to trucks and in remote locations. Additionally, NMFS has determined that this information is unnecessary to accurately monitor landings data, as catch is monitored at the species/stock level and not at the level of market class. This rule changes the data collection requirement for

offloads to a truck by a RM to not require the species be sorted by market class, by removing the language “and market class” from regulations at § 648.87(b)(5)(ii)(B)(2).

The regulations at § 648.87(b)(5)(ii)(B)(2) require offloads to trucks to specify the number of totes of each species offloaded, the weight of fish in each tote, and that each tote is properly labeled with information that identifies the trip to which the tote is associated. The tote-tagging requirement is intended to ensure that all catch offloaded from a vessel to a truck can be tracked from the offload site to the dealer, where it will be accurately weighed and reported. To minimize the burden on RMs and the cost associated with such monitoring activities, this rule exempts the tote-tagging requirement only if the following three conditions are met: (1) The RM that observed the offload at the dock will also serve as the DSM when the truck is offloaded at the dealer; (2) the RM will follow the truck, in line of sight, from the remote offload location to the dealer where the actual weighing of the fish occurs; and (3) the truck is loaded with only the catch from the one trip being monitored.

#### 14. Sector Reporting Requirements

Amendment 16 implemented a number of sector reporting requirements, including weekly catch reports to be submitted to NMFS by each sector. The regulations at § 648.87(b)(1)(vi)(B) specify that each sector must submit a weekly catch report by 2359 hr on Thursday of the week following the reporting week, however, dealer data are not available until Wednesday. Based on sector manager input, 1 day has not been a sufficient amount of time to accurately complete the weekly sector catch reports. This rule provides additional flexibility by extending the sector deadline submission for the weekly catch report from 2359 hr on Thursday, to 0700 hr on the second Monday for the same reporting week in question.

#### 15. Recreational and Charter/Party Vessel Restrictions

Exemptions allow NE multispecies charter/party permitted vessels to fish in the GOM Closed Areas provided such vessels first obtain a letter of authorization (LOA) from NMFS. The regulations at § 648.89(e)(3)(iv) implementing this provision state that a vessel may not use any NE multispecies DAS during the period of participation to ensure that vessels operating under the charter/party provisions cannot fish commercially within these closed areas.

However, not all commercial NE multispecies vessels fish under a DAS. This rule clarifies the regulations by including language that states that vessels possessing an LOA to fish as a charter/party vessel in the GOM Closed Areas cannot fish on a sector trip, under a NE multispecies DAS, or under the provisions of the Small Vessel, Handgear A, and Handgear B categories during the period of participation.

The regulations at § 648.89(d) will also be corrected to state that charter/party vessels cannot sell, barter, trade, or otherwise transfer for a commercial purpose, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed while fishing in the U.S. Exclusive Economic Zone (EEZ) unless they are fishing under a NE multispecies “sector trip,” or fishing under a NE multispecies Handgear A, Handgear B, or Small Vessel Category C permit.

#### 16. Applicability of Possession Prohibition for Certain Stocks

The final rule implementing Amendment 16 measures did not clearly prohibit recreational and charter/party vessels from possessing ocean pout and windowpane flounder. However, Section 4.3.2.1 of Amendment 16 indicates that possession of these stocks is prohibited by all fisheries. Although this section is specific to the effort control measures adopted for NE multispecies common pool vessels, based on further consultation with Council staff, it was determined that the intent of Amendment 16 was to prohibit the retention of these species by all vessels. Therefore, this rule restricts the possession of windowpane flounder and ocean pout in all fisheries, including catch by recreational anglers, charter/party vessels, and other fisheries such as the scallop fishery. The possession of Atlantic wolffish and SNE winter flounder is already correctly prohibited by recreational anglers and charter/party vessels as specified at § 648.89(c)(6) and (7), respectively.

#### 17. Monkfish Declarations

The regulations at § 648.92(b)(1)(iii) allow a vessel fishing in the NE multispecies fishery to change its fishing activity declaration after leaving port to reflect the vessel operator's intention to also fish in the monkfish fishery on the same trip. The applicability of the monkfish option is for a vessel fishing under a NE multispecies Category A DAS, which was the universal effort control in the NE multispecies fishing prior to the implementation of substantial revisions to sector measures under Amendment

16. However, NMFS believes that the Council's intent in Amendment 16 was not to exclude vessels from this option when fishing on a sector trip. Therefore, this rule inserts a reference to vessels fishing on a NE multispecies sector trip to enable such vessels to also take advantage of the monkfish option.

#### 18. Additional Corrections

In addition to the changes specified above, the following changes are being made to the regulations to correct inaccurate references and to further clarify the intent of the Council.

In § 648.10(k)(3)(ii), N. latitude, Point G9 will be corrected to read “The intersection of the Cape Cod, MA, coastline and 70°00' W. long.” This current point incorrectly references the “South-facing shoreline of Cape Cod, MA.”

Section § 648.14(k)(6)(ii)(B) will be corrected to reference the special management programs at “§ 648.85(b)(7)(iv)(E)” to replace the current inaccurate reference to “§ 648.85(b)(7)(iv)(F).”

In § 648.80(a)(2)(ii) and (a)(17)(ii), the “Approximate loran C bearings” portion of the table will be removed. The U.S. Coast Guard ceased operations of Loran-C, on February 10, 2010, which renders these coordinates useless. This will have minimum impact, as the same information is displayed in the regulations using latitude and longitude coordinates.

In § 648.80(a)(3)(v), a reference to “§ 648.87(c)” will be added to the beginning of the section, to include sector vessels.

In § 648.80(b)(3)(i), the phrase “unless otherwise restricted in § 648.86” will be added. This paragraph includes ocean pout as one of the list of species exemptions for the SNE RMA; however, Amendment 16 listed ocean pout as a zero-retention species. The Amendment 16 final rule inadvertently failed to cross-reference this prohibition in § 648.86.

In § 648.80(c)(2)(i), the reference to § 648.104(a) will be revised to read “shall be that specified by § 648.104(a).” This was the original regulatory text used to cite the regulations and was inadvertently changed in the final rule implementing Amendment 16.

In § 648.85(a)(1)(ii), this rule corrects the Eastern U.S./Canada Area, N. latitude coordinates for Points USCA 7 and USCA 6 to 40°50' N. latitude, and Points USCA 5 and 4 to 40°40' N. latitude. Amendment 13 defined the Eastern U.S./Canada Area as being composed of statistical areas 561 and 562. The coordinates for statistical area 562 used to define the Eastern U.S./

Canada Area were incorrectly transposed in the Amendment 13 final rule and will be rectified by this action.

Section § 648.87(b)(1)(ix) will be corrected to reference the prohibited species regulations at “§ 648.86(l),” instead of the inaccurate reference to “§ 648.87(1).” In addition, a reference to “§ 648.86(c)” will be inserted at § 648.87(b)(1)(ix) to clarify that sector vessels are held to the one-fish per trip possession limit of Atlantic halibut, as intended in Amendment 16.

In § 648.87(c)(2), a reference to “fishing regulations within the groundfish Fishery Management Plan (FMP)” will be inserted to clarify that a NE multispecies sector operations plan can only include exemptions from regulations within the groundfish FMP, as intended in Amendment 16.

In § 648.89(c)(2)(i), the reference to “private recreational vessel” will be corrected to read “charter/party vessel.”

In § 648.90(a)(4), the reference to “(a)(5)” will be corrected to read “(a)(6).”

Section § 648.90(a)(4)(iii)(E) will be revised to include a reference to the recreational fishery. A reference to the recreational fishery was made in the title of this paragraph, but was not included in the regulations.

#### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, I have determined that this interim 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 interim final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This interim final rule contains reporting and recordkeeping requirements and associated information collections subject to the Paperwork Reduction Act (PRA), which have been previously approved by OMB under control numbers 0648-0202, 0648-0212, and 0648-0229. Measures in this rule include provisions that require

revised collection-of-information requirements. Public reporting burden for these collections of information are estimated to average as follows:

1. VMS area and DAS declaration, OMB# 0648-0202, (5 min/response);
2. VMS trip-level catch reports, OMB# 0648-0212, (15 min/response);
3. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648-0202, (5 min/response);
4. VMS declaration to fish in a NE multispecies RGA, OMB# 0648-0202, (5 min/response);
5. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648-0202, (2 min/response);
6. Trip-end hail report to a dockside monitoring service provider, OMB# 0648-0202, (15 min/response);
7. Confirmation of dockside monitoring trip-end hail report, OMB# 0648-0202, (2 min/response);
8. Dockside/roving service provider data entry, OMB# 0648-0202, (3 min/response);
9. Daily VMS catch reports when fishing in the U.S./Canada Management Area and Closed Area II SAPs, OMB# 0648-0212, (15 min/response);
10. Daily VMS catch reports when fishing in the Closed Area I Hook Gear Haddock SAP, OMB# 0648-0212, (15 min/response);
11. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648-0212, (15 min/response); and
12. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648-0212 (2 min/response).
13. Letter of authorization for charter/party vessels to access the Western GOM Closure Area and the GOM Rolling Closure Areas, OMB# 0648-0202, (5 min/response);
14. Declaration of the monkfish DAS option via VMS, OMB# 0648-0202, (5 min/response);
15. Sector weekly catch report, OMB# 0648-0212, (4 hr/response);
16. VTR requirement, OMB# 0648-0212, (5 min/response); and
17. Dealer report, OMB# 0648-0229, (4 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see

ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

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

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping.

Dated: July 13, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reason set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

- 2. In § 648.2, add in alphabetical order the new definition for “set-only trip” to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Set-only trip* means a fishing trip on which any federally permitted vessel deploys gear with the intention of retrieving it on a separate trip and does not haul-back or retrieve any gear capable of catching fish on the set-only trip.

\* \* \* \* \*

- 3. In § 648.7, revise paragraph (c) to read as follows:

#### § 648.7 Recordkeeping and reporting requirements.

\* \* \* \* \*

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

\* \* \* \* \*

- 4. In § 648.10, revise paragraph (k)(3)(ii) to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(ii) *Inshore GB Stock Area 2.* The inshore GB Stock Area is defined by straight lines connecting the following points in the order stated:

**INSHORE GB STOCK AREA 2**

Point	N. latitude	W. longitude
G9 .....	(1)	70°00'
G10 .....	42°20'	70°00'
IGB1 .....	42°20'	68°50'
IGB2 .....	41°00'	68°50'
IGB3 .....	41°00'	69°30'
IGB4 .....	41°10'	69°30'
IGB5 .....	41°10'	69°50'
IGB6 .....	41°20'	69°50'
IGB7 .....	41°20'	70°00'
G12 .....	(2)	70°00'

<sup>1</sup> The intersection of the Cape Cod, MA, coastline and 70°00' W. long.

<sup>2</sup> South-facing shoreline of Cape Cod, MA.

\* \* \* \* \*

■ 5. In § 648.14, add paragraph (k)(2)(iv); and revise paragraphs (k)(3)(i) and (k)(6)(ii)(B) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(iv) Possess or land fish while setting fixed gear on a set-only trip as declared through the pre-trip notification system pursuant to § 648.11(k).

(3) \* \* \*

(i) It is unlawful to purchase, possess, import, export, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

\* \* \* \* \*

(6) \* \* \*

(ii) \* \* \*

(B) *Hook gear.* Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c),

unless allowed under

§ 648.85(b)(7)(iv)(E).

\* \* \* \* \*

■ 6. In § 648.80, revise paragraphs (a)(2)(ii), (a)(3)(v), (a)(3)(vi), (a)(17)(ii), (b)(3)(i), and (c)(2)(i) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

**GB REGULATED MESH AREA**

Point	N. latitude	W. longitude
CI13 .....	42°22'	67°20' <sup>1</sup>
SNE1 .....	40°24'	65°43' <sup>2</sup>

<sup>1</sup> The U.S.-Canada Maritime Boundary.

<sup>2</sup> The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

\* \* \* \* \*

(3) \* \* \*

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(3)(v) or § 648.87(c), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS or on a sector trip, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel during the fishing trip is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited during the fishing trip. The use of de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS or on a sector trip in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit, and persons on such vessels, are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl

gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (a)(16) and (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(17) \* \* \*

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

**GULF OF MAINE/GEORGES BANK EXEMPTION AREA**

Point	N. latitude	W. longitude
G6 .....	40°55.5'	66°38'
G7 .....	40°45'	68°00'
G8 .....	40°37'	68°00'
G9 .....	40°30'	69°00'
NL3 .....	40°22.7'	69°00'
NL2 .....	40°18.7'	69°40'
NL1 .....	40°50'	69°40'
G11 .....	40°50'	70°00'
G12 .....	(1)	70°00'

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) *Species exemption.* Unless otherwise restricted in § 648.86, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section may fish for, harvest,

possess, or land butterfish, dogfish (caught by trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(i) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

■ 7. In § 648.81, revise the introductory text of paragraph (n) to read as follows:

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

\* \* \* \* \*

(n) *NE Multispecies Restricted Gear Areas.* With the exception of a vessel on a sector trip, any vessel issued a limited access NE multispecies permit fishing under a NE multispecies DAS that is fishing any part of a trip in one or both of the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section must comply with all applicable restrictions specified in this paragraph (n). If such a vessel fishes inside/outside of these areas on the same trip, the most restrictive measures for the areas fished apply, including, but not limited to, gear restrictions and trip limits.

\* \* \* \* \*

■ 8. In § 648.82, revise the introductory text of paragraphs (b)(5)(i), and (n)(1) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified at § 648.86(g). Such a vessel is subject to the possession limits specified for other regulated species and ocean pout, as specified at § 648.86. Any vessel may elect to switch into the Small Vessel category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

\* \* \* \* \*

(n) \* \* \*

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(E)(2). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the

2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only

within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded up to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

\* \* \* \* \*

■ 9. In § 648.83, remove paragraph (a)(3), and revise paragraph (b)(1) to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

\* \* \* \* \*

(b) \* \* \*  
 (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the NE multispecies DAS program or on a sector trip may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. The weight of fillets and parts of fish, other than whole-gutted or gilled fish, shall be multiplied by 3. For the purposes of accounting for all catch by sector vessels as specified at § 648.87(b)(1)(v), the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption shall be multiplied by a factor of 3.

\* \* \* \* \*

■ 10. In § 648.85, revise paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(iv)(A)(2), (b)(3)(x)(A), (b)(6)(iv)(J)(4), (b)(7)(iv)(E), and (b)(7)(vi)(B) to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(a) \* \* \*  
 (1) \* \* \*  
 (ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

EASTERN U.S./CANADA AREA

Point	N. latitude	W. longitude
USCA 12 .....	42°20'	67°40'
USCA 11 .....	41°10'	67°40'
USCA 10 .....	41°10'	67°20'
USCA 9 .....	41°00'	67°20'
USCA 8 .....	41°00'	67°00'
USCA 7 .....	40°50'	67°00'
USCA 6 .....	40°50'	66°50'
USCA 5 .....	40°40'	66°50'
USCA 4 .....	40°40'	66°40'
USCA 15 .....	40°30'	66°40'
USCA 14 .....	40°30'	65°44.3'
USCA 13 .....	42°20'	67°18.4'
USCA 12 .....	42°20'	67°40'

\* \* \* \* \*

(2) \* \* \*  
 (ii) *Adjustments to TACs.* Any overages of the GB cod, GB haddock, and GB yellowtail flounder TACs specified for either the common pool or individual sectors pursuant to this paragraph (a)(2) that occur in a given fishing year shall be subtracted from the respective TAC in the following fishing year and may be subject to the overall groundfish AM provisions as specified

in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

\* \* \* \* \*

(3) \* \* \*  
 (iv) \* \* \*  
 (A) \* \* \*

(2) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies DAS and sector vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, by prohibiting such vessels and all other vessels not issued a limited access NE multispecies permit from entering or being in this area and from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area during the closure period.

\* \* \* \* \*

(b) \* \* \*  
 (3) \* \* \*  
 (x) \* \* \*

(A) *Approved gear.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels fishing with trawl gear must use a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(3) of this section (all three nets may be onboard the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed according to the regulations at § 648.23(b).

\* \* \* \* \*

(6) \* \* \*  
 (iv) \* \* \*  
 (J) \* \* \*

(4) *Mesh size.* An eligible vessel fishing in the Regular B DAS Program within the GB Cod Stock Area as defined in paragraph (b)(6)(v)(B) of this section pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-

inch (15.24-cm) square or diamond mesh.

- \* \* \* \* \*
- (7) \* \* \*
- (iv) \* \* \*

(E) *Gear restrictions.* A vessel declared into, and fishing in, the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraphs (b)(7)(v)(A) and (vi)(B) of this section.

- \* \* \* \* \*
- (vi) \* \* \*

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

\* \* \* \* \*

■ 11. In § 648.86, revise paragraph (m)(1) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

- \* \* \* \* \*
- (m) \* \* \*

(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period, based upon the time the vessel lands following the end of the previous trip. For example, if a vessel lands 1,600 lb (725.7 kg) of GOM cod at 6 p.m. on Tuesday, that vessel cannot land any more regulated species or ocean pout until at least 6 p.m. on the following Wednesday.

\* \* \* \* \*

■ 12. In § 648.87, revise paragraphs (b)(1)(ii), (b)(1)(vi)(B), (b)(1)(ix), (b)(5)(i)(A)(1), (b)(5)(ii)(B)(2) (b)(5)(ii)(E), and revise the introductory text to paragraph (c)(2) to read as follows:

**§ 648.87 Sector allocation.**

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

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires, pursuant to

paragraph (b)(1)(viii) of this section, ACE for all stocks allocated to sectors pursuant to paragraph (b)(1)(i)(A) of this section that are caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceeds the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

- \* \* \* \* \*
- (vi) \* \* \*

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as

specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

\* \* \* \* \*

(ix) *Trip limits.* With the exception of stocks listed in § 648.86(1) and the Atlantic halibut trip limit at § 648.86(c), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

- \* \* \* \* \*
- (5) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(1) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor provider, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

- \* \* \* \* \*
- (ii) \* \* \*
- (B) \* \* \*

(2) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (i.e., no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by

species in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate. The tote tagging requirements specified in this paragraph (b)(5)(ii)(B)(2), are not required, provided the following three requirements are met: The roving monitor that observed the offload at the dock will also be the dockside monitor at the truck offload to the dealer; the roving monitor will follow the truck, in line of sight, from the remote offload to the dealer offload where the weighing occurs; and, the truck is loaded with only the catch from the one trip being monitored.

(E) *Inspection of fish holds and other areas of a vessel.* Except to the extent authorized by a sector to inspect fish holds and other areas of such sector's members' vessels in which fish are stored, dockside/roving monitors assigned to observe the offloading of fish shall not inspect fish holds or any other areas of a vessel in which fish are stored unless first required by the Regional Administrator. Prior to any such requirement becoming effective, the Regional Administrator shall notify affected permit holders and monitoring providers by letter or other appropriate means, and shall provide instructions and guidelines deemed necessary to carry out such inspections.

(c) \* \* \*  
 (2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels

from any Federal fishing regulation applicable to NE multispecies vessels, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

\* \* \* \* \*

■ 13. In § 648.89, revise paragraphs (c)(2)(i), (c)(6), (c)(7), (d), and (e)(3)(iv), and add paragraphs (c)(8) and (c)(9) to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

\* \* \* \* \*

(c) \* \* \*  
 (2) \* \* \*  
 (i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified in paragraph (c)(2)(v) of this section, each person on a charter/party vessel may possess no more than 10 cod per day.

\* \* \* \* \*

(6) *Atlantic wolffish.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess Atlantic wolffish.

(7) *SNE/MA winter flounder.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels fishing in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F), may not fish for, possess, or land winter flounder. Private recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

(8) *Windowpane flounder.* Persons aboard charter/party vessels permitted under this part and not fishing under

the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ, may not possess windowpane flounder.

(9) *Ocean pout.* Persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program, on a sector trip, under a Handgear A permit, under a Handgear B permit, or under a Small Vessel Category C permit, and private recreational fishing vessels in or possessing fish from the EEZ may not possess ocean pout.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught in or landed from the EEZ by recreational, charter, or party vessels permitted under this part not fishing under a DAS, on a sector trip, or under a Handgear A permit, Handgear B permit, or Small Vessel Category C permit.

(e) \* \* \*  
 (3) \* \* \*  
 (iv) For the GOM charter/party closed area exemption only, the vessel may not fish on a sector trip, under a NE multispecies DAS, or under the provisions of the NE multispecies Small Vessel Category or Handgear A or Handgear B permit categories, as specified at § 648.82, during the period of participation.

\* \* \* \* \*

■ 14. In § 648.90, revise the introductory text to paragraph (a)(4)(iii)(E), and revise paragraphs (a)(4)(i), (a)(4)(iii)(E)(2), (a)(5)(i)(A) and (a)(5)(ii) to read as follows:

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

\* \* \* \* \*

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

stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

\* \* \* \* \*

(iii) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(5) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part; or the catch of yellowtail flounder by the Atlantic sea scallop fishery exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant

to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

\* \* \* \* \*

15. In § 648.92, revise the introductory text of paragraph (b)(1)(iii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) *DAS declaration provision for vessels fishing in the NFMA with a VMS unit.* Any limited access NE multispecies vessel fishing on a sector trip or under a NE multispecies Category A DAS in the NFMA, and issued an LOA as specified in § 648.94(f), may change its DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip after leaving port, but prior to crossing the VMS demarcation line upon its return to port or leaving the NFMA, if the vessel exceeds the incidental catch limit specified under § 648.94(c).

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**RIN 0648-BA40**

[Docket No. 101221628-0628-01]

**Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program; Pacific Halibut Bycatch Quota for the Remainder of the 2011 Fishery**

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

**ACTION:** Agency determination.