

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 130319263–3577–01]

RIN 0648–BD09

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule To Allow Northeast Multispecies Sector Vessels Access to Year-Round Closed Areas**

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

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

**SUMMARY:** This rule proposes to partially reopen several groundfish closed areas in the 2013 fishing year. If implemented as proposed, this action would open portions of Closed Areas I and II to selective fishing gear for a limited time period. Two areas within the Nantucket Lightship Closed Area are also proposed to be opened to selective gear year-round. The Western Gulf of Maine and Cashes Ledge Closed Areas, both located in the Gulf of Maine, would not be opened.

**DATES:** Written comments must be received on or before July 26, 2013.

**ADDRESSES:** A copy of the accompanying environmental assessment is available from the NMFS Northeast Regional Office: John K. Bullard, 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>.

You may submit comments on this document, identified by NOAA–NMFS–2013–0084, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) / `#!/doctDetail;D=NOAA-NMFS-2013-0084`, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Fax:* (978) 281–9135, Attn: William Whitmore.

- *Mail:* Paper, disk, or CD–ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Closed Area Rule.”

*Instructions:* All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. No comments will be posted for public viewing until after the comment period has closed. 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.

Once submitted to NMFS, copies of addenda to fishing year 2013 sector operations plans detailing industry-funded monitoring plans, and the environmental assessment (EA), will be available from the NMFS NE Regional Office at the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:****Background**

Amendment 16 to the Northeast Multispecies Fisheries Management Plan (groundfish plan) includes several universal regulatory exemptions that apply to all groundfish sectors. Sectors can also request additional regulatory exemptions in their annual sector operations plans. These exemptions are reviewed and approved by the National Marine Fisheries Service (NMFS) on an annual basis. For additional information on sector exemptions, the process for approving sector exemptions, and a description of current sector exemptions, please see the final rule for fishing year 2013 sector operations plans (78 FR 25591, May 2, 2013).

Amendment 16 also prohibited sectors from requesting exemptions from certain regulations, including exemptions from year-round closed areas. Some year-round closed areas were established as effort controls to reduce fishing mortality. Other year-round closed areas were established to protect essential fish habitat. In an attempt to mitigate the impacts of the low catch limits for fishing year 2013, the New England Fishery Management Council (Council) included a measure in Framework Adjustment 48 that would allow sectors to request regulatory exemptions to the year-round closed areas that were established for mortality reductions.

On May 3, 2013, NMFS partially approved Framework 48 (78 FR 26118), including the Framework 48 provision allowing sectors to request access to year-round mortality closure areas. Anticipating that Framework 48 would be approved, sectors included exemption requests from year-round closure areas in their initial 2013 operations plan submissions. Exemption requests are only approved after we determine that the exemption is consistent with the groundfish plan’s goals and objectives. For additional information on which areas sectors can request exemptions from, please see the final rule implementing Framework 48 (78 FR 26118, see page 26131).

Anticipating that Framework 48 would be approved, sectors included exemption requests from year-round closure areas in their initial 2013 operations plan submissions. These exemption requests are being developed in a separate action from the final rule for fishing year 2013 sector operations plans to provide sufficient time for the extensive analyses needed for this action. Table 1 indicates which sectors requested access to particular closed areas in their initial fishing year 2013 operations plans.

These closed area exemption requests are being considered as amendments to the sector operations plans in this action. Because the environmental assessment analyzes the potential effort and associated environmental impacts from all sectors fishing in the proposed areas, any sector could request access to any of the areas, if approved.

Table 1 – Sector Exemption Requests from Year-Round Closed Area Restrictions in Fishing Year 2013

Area	FGS	NCCS	NFS 2	NFS 3	NFS 4	NFS 5	NFS 6	NFS 7	NFS 8	NFS 9	NFS 10	NFS 11	NFS 12	NFS 13	MCCS	SHS 1	SHS 3
Cashes Ledge			X	X		X	X	X	X	X	X	X	X	X		X	X
Western GOM			X	X		X	X	X	X	X	X	X	X	X		X	X
Closed Area I			X	X		X	X	X	X	X	X	X	X	X		X	X
Closed Area II			X	X		X	X	X	X	X	X	X	X	X		X	X
Nantucket Lightship			X	X		X	X	X	X	X	X	X	X	X		X	X

Fixed Gear Sector – FGS; Northeast Coastal Communities Sector – NCCS; Northeast Fishery Sector – NFS; Maine Coastal Communities Sector – MCCS; Sustainable Harvest Sector - SHS

The Council’s Closed Area Technical Team (CATT) was asked by the Council

to research and recommend potential changes to the groundfish mortality

closures for the upcoming Omnibus Essential Fish Habitat (EFH)

Amendment. The CATT conducted many analyses on the potential benefits derived from the current year-round groundfish closed areas, as well as how the area closures could be modified to improve protection of groundfish habitat or protection of groundfish during critical life stages. The group began by conducting a comprehensive literature and data review of groundfish closed areas—these data served as the basis for the analysis used in the Framework 48 environmental assessment.

The CATT then attempted to identify areas where groundfish spawn, as well as areas that are critical to juvenile habitat. Currently, the CATT is attempting to take those data and identify groundfish closure areas that would provide the greatest benefit to groundfish stocks in need of rebuilding. Much of the research by the CATT is incorporated into the environmental assessment for this action. We are considering recent scientific analyses, including work by the CATT, in determining whether or not allowing sector vessels some access to these year-round closure areas is consistent with the goals and objectives of the groundfish plan while still protecting essential fish habitat management areas. The analyses developed by the CATT were reviewed and endorsed by the Council's Scientific and Statistical Committee on May 16, 2013.

Using the CATT's analyses and other information, this proposed rule evaluates the impacts of any actual fishing effort in these mortality closure areas, including the concerns raised in public comments during the development of Framework 48. The Council believes, and we agree, that proposing access to the closed areas through a separate sector exemption review and approval process provides a better opportunity to address specific concerns with the potential impact of actual sector proposals. This is primarily because the NMFS Regional Administrator may include stipulations and constraints on specific exemptions to facilitate the monitoring and enforcement of sector operations or as mitigation measures to address specific potential impacts. In fact, the three measures proposed in this rule include additional constraints to mitigate impacts on groundfish stocks and protected resources. We want to ensure that any exemptions that are granted are consistent with the goals and objectives of the groundfish plan.

As previously mentioned, the Council is also in the process of preparing an Essential Fish Habitat (EFH) Omnibus Amendment to several fishery

management plans, including the groundfish plan. The Omnibus Amendment currently includes a review and update of EFH requirements and EFH management area designations, a review and update of Habitat Area of Particular Concern (HAPC) designations, a review of other EFH requirements of fishery management plans, including prey species information and non-fishing impacts, and alternatives to minimize the adverse effects of fisheries on EFH. Because there is considerable spatial overlap between the groundfish mortality closed areas and the current habitat areas that are closed to bottom tending mobile gears, a review of the groundfish mortality closures is also included in the Omnibus Amendment. Currently, it is anticipated that the Omnibus Amendment will be completed by May 2014, and potentially implemented by the end of 2014. While the measures proposed in this rule are only for the 2013 fishing year, it is likely that the current closed areas will be modified sometime during the 2014 fishing year as a result of the Omnibus Amendment. Additional information on the Habitat Omnibus Amendment, including a map and descriptions of the proposed closed area modification can be found on the Council's Web site at <http://nefmc.org/habitat/index.html>.

A variety of concerns about the impacts from opening these areas have been expressed by fishery managers, members of the fishing industry, and the public, including many environmental non-governmental organizations. Most of these comments were provided during the public comment periods for the fishing year 2013 sector operations plans and Framework 48 proposed rules. Many comments were also sent to us during the development of Framework 48. Concerns were raised about potential impacts to protected species, spawning groundfish, and to other commercial species, like lobsters, that may result from opening these areas to new fishing effort. Some commenters also were worried that allowing groundfish vessels into these areas, mainly Closed Area II, could increase gear conflicts between mobile and lobster gear. Other commenters expressed concern that opening the closed areas could undermine current rebuilding efforts for stocks that are overfished or undergoing overfishing. Some commenters stated that this measure could undermine measures under consideration in the Omnibus EFH Amendment, as described above. The Council attempted to mitigate these concerns by excluding existing and

potential habitat closed areas from consideration in Framework 48 to preserve the process under way to evaluate these areas in the Omnibus EFH Amendment. The Council also included seasonal restrictions on sector exemptions to reduce interactions with spawning stocks. We are attempting to further mitigate these concerns by only allowing seasonal access to specific areas with selective fishing gears. Selective fishing gear, such as a haddock separator trawl, allows a vessel to better target a specific species when compared to a standard bottom otter trawl. Selective fishing gear allows a vessel to reduce its catch of non-target species, which in turn reduces bycatch and lowers the sector's discard rate.

This action proposes granting seasonal access into portions of Closed Areas I and II to sector vessels fishing selective gears (see Figure A). This action also proposes granting access to portions of the Nantucket Lightship Closed Area for vessels fishing selective gears for the remainder of the 2013 fishing year. In addition, to prevent harbor porpoise takes, vessels fishing in the western portion of Nantucket Lightship Closed Area would be required to use pingers, as stipulated in the Harbor Porpoise Take Reduction Plan (which can be found online at <http://www.nero.noaa.gov/protected/porptrp/>). Each of the four areas proposed could be approved independently of the others. It is hoped that allowing carefully designed access to these areas will allow vessels to increase their catch of under-harvested groundfish stocks (such as Georges Bank haddock and pollock) and healthy non-groundfish stocks (such as monkfish, dogfish, and skates), while minimizing impacts to recovering groundfish stocks and protected resources.

We believe that this proposed rule is consistent with the goals and objective of Amendment 16 to the groundfish plan (for a complete list of the Amendment 16 goals and objectives, see page 67 of the Amendment 16 environmental impact statement). This proposed rule would provide reasonable and regulated access to regulated groundfish (Goal 5). This rule would allow sector vessels additional opportunities to increase their catch while constrained by an annual catch limit (Objectives 1 and 3). By restricting vessels to specific areas, gears, and seasons, this rule minimizes vessel bycatch. Habitat impacts from fishing would be minimized to the extent practicable because the areas were determined to have low vulnerability (Objectives 9 and 10). The considerations in this rule would allow

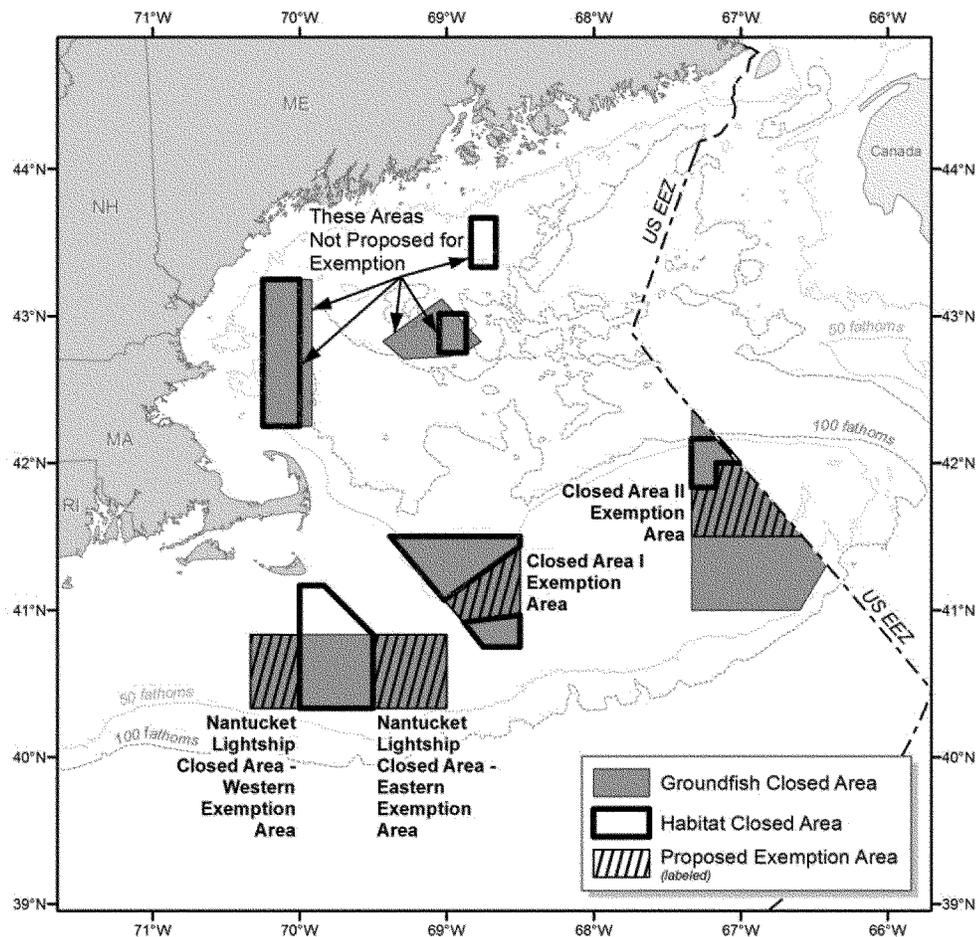
vessels increased opportunity to meet optimum yield while constraining fishing mortality. The increased profits would benefit fishermen and fishing communities while the gear restrictions would continue to allow overfished stocks to rebuild.

This action does not propose to grant sector vessels access to either the

Western Gulf of Maine or Cashes Ledge year-round closed areas. There has been little public or industry support for opening the Gulf of Maine areas, and analyses indicate that access to these areas would not provide greater opportunity to target healthy stocks than areas already open. Moreover,

preliminary analyses indicate that allowing access to Gulf of Maine non-habitat closed areas may have negative impacts on depleted and recovering stocks of groundfish, such as Gulf of Maine cod and haddock, and protected harbor porpoise.

Figure A – Closed Area Proposed for Openings through Sector Exemptions



### 1. Closed Area I Exemption Area

Closed Area I was closed year-round to groundfish fishing in 1994 to protect Georges Bank cod and haddock. If this proposed provision is implemented, the central portion of Closed Area I would be opened seasonally to selective gear only from the date the final rule is published through December. It is anticipated that, if this provision is implemented, the final rule would be published and effective in August. Trawl vessels would be restricted to selective trawl gear, including the

separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action. Hook gear would be permitted in this area as well. Because Georges Bank cod is considered overfished and subject to overfishing and gillnets cannot selectively capture haddock without catching cod, vessels would be prohibited from fishing with gillnets in this area. Flounder nets would be prohibited, as Georges Bank yellowtail flounder are considered overfished and subject to overfishing.

Allowing vessels into the Closed Area I Exemption Area would increase their opportunities to target healthy stocks of Georges Bank haddock. Since the closure, Georges Bank haddock have rebounded and are healthy. In fact, during fishing year 2012, less than 10 percent of the Georges Bank haddock quota was harvested. On the other hand, Georges Bank cod and Georges Bank yellowtail flounder are overfished and subject to overfishing. This proposed action would allow fishing for Georges Bank haddock and other healthy stocks

while selective gear will help minimize catch of Georges Bank cod and yellowtail flounder.

Selective gear is required to reduce bycatch of overfished stocks such as Georges Bank yellowtail flounder and cod. Although the Council specified that vessels could fish in the area until February 15, we are proposing to prohibit vessels from fishing in the Closed Area I Exemption Area after December 31 to avoid impacts to spawning stocks of Georges Bank cod.

Except for a special access program that allows hook vessels to fish in a portion of the area), the portion of Closed Area I proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004. As a result, the seabed in this area has been disturbed by scallop dredges and is not a preserved habitat area. Furthermore, analyses for the Habitat Omnibus Amendment did not identify this area as vulnerable to trawl gear. There are minimal concerns regarding impacts to protected species in this area. While there were initial concerns about effort shifts from lobster gear in the area, an analysis of lobster effort in the area indicates that there is very little lobster effort in this area. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species. More information on lobster effort in the proposed areas is available in the accompanying environmental assessment.

## 2. Closed Area II Exemption Area

Closed Area II was closed year-round to groundfish fishing in 1994 to protect Georges Bank cod and haddock. If approved, the central portion of Closed Area II would be opened seasonally to selective gear only through December 31, 2013. The gear restrictions in Closed Area II are the same as those proposed for Closed Area I—selective trawl and hook gear only. Trawl and hook vessels would be permitted in this area when specified (see below). Vessels would be prohibited from fishing with gillnets in Closed Area II. Flounder nets would be prohibited. As noted above, in the time since the closure, Georges Bank haddock has fully recovered, is rebuilt and is consistently under-harvested. Selective gear is proposed to minimize the catch of Georges Bank cod and yellowtail flounder, both of which are considered overfished and subject to overfishing.

Only the central portion of Closed Area II is proposed to be reopened because the northern portion represents a habitat area of particular concern

(HAPC) and the southern portion is the Closed Area II Yellowtail Flounder/Haddock Special Access Program area. There is no need to grant sector vessels access to the southern portion of Closed Area II through this rule because the fishing year 2013 sector rule already granted sector vessels an exemption to fish in this area through December 31, 2013. We also extended the Eastern United States/Canada Haddock SAP, which occurs in the northern tip of Closed Area II from May 1 through December 31, 2013 (see 78 FR 25599–25600; May 2, 2013).

The offshore lobster industry and sector trawl vessels proposed a rotational gear-use agreement for proposed the Closed Area II Exemption Area (a copy of the agreement is included as an appendix in the EA). The restrictions proposed in the rotational gear use agreement have been adopted by the Atlantic States Marine Fisheries Commission, who modified the Interstate Fisheries Management Plan for American Lobster through Addendum XX to the lobster plan. This rule incorporates most portions of that agreement, a more detailed explanation is below.

We remain concerned that fishing in Closed Area II could have negative impacts on spawning Georges Bank cod and dense concentrations of Georges Bank yellowtail flounder, both of which are considered overfished and subject to overfishing. The proposed seasons and gear requirements incorporate the rotational gear-use agreement and mitigate fishing effort on yellowtail flounder and spawning cod:

- June 16–October 31: Sector trawl vessels would be prohibited, lobster and sector hook gear vessels only.
- November 1–December 31: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.
- January 1–April 30: Lobster vessels permitted; sector groundfish vessels would be prohibited in Closed Area II during this time.
- May 1–June 15: Only sector trawl vessels could access the area; lobster and hook gear vessels prohibited.

The gears and seasons listed above match the agreement between the offshore lobster industry and sector trawl vessels, with the exception that groundfish vessels would be prohibited from fishing in Closed Area II after December 31. It should be noted that the sector exemptions proposed in this rule are only for fishing year 2013, which ends April 30, 2014. In contrast, the lobster regulations at § 697.7 are proposed to be modified for fishing years 2013 and 2014, through this rule

to prohibit lobster vessels from accessing the Closed Area II Exemption Area from November 1–December 31, 2013 and May 1–June 15 and November 1–December 31, 2014. The regulatory changes proposed for federally permitted lobster vessels would be effective through the end of fishing year 2014, the time frame established under the gear-use agreement and under Addendum XX. If sector vessels wish to request access to the Closed Area II Exemption Area from May 1–June 15 for fishing year 2014, that exemption request would be included in their 2014 sector operations plans and analyzed in the 2014 sector proposed rule and environmental assessment.

Like Closed Area I, allowing vessels into this area would increase their opportunities to target healthy stocks of Georges Bank haddock. Selective gear is required to reduce bycatch of overfished stocks such as Georges Bank yellowtail flounder and cod to the extent practicable. Although the Council specified in Framework 48 that vessels could fish in Closed Area I until February 15, we are proposing to prohibit vessels into Closed Area I after December 31 due to impacts to Georges Bank cod spawning. While this area has been closed year-round to groundfishing since 1994, the majority of the seabed in this area is sand and is impacted by strong currents. As a result, this area is not considered to be vulnerable to trawl gear. Some areas are shallow enough that the bottom is affected by wave action. As a result, bottom trawling in this area would likely have minimal impact on benthic habitats.

The agreement between the offshore lobster industry and sector vessels reduces concerns of gear conflicts in the area. Analyses for the environmental assessment indicate that only a small portion of the annual lobster catch from this portion of Closed Area II is gathered during November. No trips were reported in the proposed area during December of 2011 or 2012. As a result, the displacement of lobster effort into other areas is expected to be minimal. Because of this, it is not anticipated that lobster gear displaced from this area would result in increased interactions with protected species in other locations.

## 3. Nantucket Lightship Closed Area Exemption

The Nantucket Lightship Closed Area was established as a year-round groundfish closure in 1994 to protect yellowtail flounder. If approved, this measure would allow sector vessels to access the eastern and western portions of the Nantucket Lightship Closed Area.

The central area is essential fish habitat and not proposed to be re-opened. Trawl vessels would be restricted to selective trawl gear, including the separator trawl, the Ruhle trawl, the mini-Ruhle trawl, rope trawl, and any other gear authorized by the Council in a management action. Flounder nets would be prohibited because there is concern that the population of yellowtail flounder in the area represents a source population that is critical to the Southern New England/Mid-atlantic stock. Gillnet vessels would be restricted to fishing 10-inch (25.4-cm) diamond mesh or larger. This would allow gillnet vessels to target monkfish and skates while reducing catch of flatfish. Because the area lies within the Southern New England Management Area of the Harbor Porpoise Take Reduction Plan, gillnet vessels would be required to use pingers when fishing in the Nantucket Lightship Closed Area—Western Exemption Area between December 1 and May 31. These catches could also help mitigate the low fishing year 2013 allocations for several groundfish stocks.

Opening the eastern and western portions of the Nantucket Lightship Closed Area to selective gear is not expected to have any significant adverse habitat impacts. While this area has been closed year-round to groundfishing since 1994, the eastern portion proposed to be reopened in this rule has been a part of the Scallop Access Area Rotational Management Program since 2004—so it has been subject fishing. The western portion is referred to as the “mudhole” with a benthic habitat not vulnerable to bottom trawling. Therefore, bottom impacts from opening this area are anticipated to be minimal.

Requiring selective gear in this area will help minimize flounder bycatch and address concerns that vessels could harvest a large portion of Southern New England/Mid Atlantic yellowtail flounder allocation from this area, which is considered home to an important source population for yellowtail flounder. To reduce potential interactions with harbor porpoises, gillnet gear in the western exemption would need to be equipped with pingers between December 1 and May 31 as described in the Harbor Porpoise Take Reduction Plan.

#### 4. Industry-Funded At-Sea Monitoring

Sectors must have a NMFS-approved industry-funded at-sea monitoring program to receive the proposed exemptions from closed areas, and vessels that fish in these closed areas would be required to have an industry-funded at-sea monitor on board. A high

level of at-sea monitoring coverage is necessary to accurately monitor total catch from these areas. Without a high level of at-sea monitoring coverage, discard rates would be difficult to estimate (as we do with other sector fishing trips) because there is very little catch history or data from these areas. Requiring 100 percent at-sea monitoring coverage would also allow NMFS to monitor whether vessels are interacting with protected species. This level of monitoring would also provide an ancillary benefit of gaining additional fishery dependent data from the catch from these areas.

While NMFS has committed to pay for at-sea monitoring coverage for sector fishing trips during fishing year 2013, the agency does not have enough funding to also pay for additional trips utilizing regulatory exemptions that require 100-percent monitoring (such as trips targeting redfish and trips into closed areas). However, we are currently looking into possible ways to provide funding for these trips.

A sector vessel intending to fish in these closed access areas would be required to declare its intent through its Vessel Monitoring System prior to departing the dock. Catch from these trips would not be used for determining a sector's discard rate because these trips are different than standard groundfish trips.

#### 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 proposed rule is consistent with the Northeast Multispecies Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts

(gross revenues) of up to \$4 million. The Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared, as required by section 603 of the RFA. The Final Regulatory Flexibility Analysis (FRFA) will be prepared after the comment period for this proposed rule, and will be published with the final rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the SUMMARY section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action, and is not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

#### Description of the Reasons Why Action by Agency Is Being Considered

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members no longer have groundfish catch limited by days-at-sea (DAS) allocations and are instead limited by their allocations. In this manner, the economic incentive changes from a vessel maximizing its effective catch of all species on a DAS to maximizing the value of its allocation, which places a premium on timing landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Further description of the purpose and need for the proposed action is contained in Section 2.0 of the EA prepared for this action.

#### The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to grant sectors a regulatory exemption allowing sector vessels to fish in portions of several year-round groundfish closed areas. The legal basis for the proposed action is the NE Multispecies FMP and promulgating

regulations at § 648.87. Regulations adding increased restrictions on offshore lobster vessels will be added to § 697.7.

### **Estimate of the Number of Small Entities**

The SBA size standard for commercial fishing entities (North American Industry Classification System code 114111) is \$4 million in annual sales. We have recently worked to identify ownership affiliations, and incorporated those data into this analysis. Although work to more accurately identify ownership affiliations is ongoing, for the purposes of this analysis, ownership entities are defined as an association of fishing permits held by common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity.

The maximum number of entities that could be affected by the proposed exemptions is expected to be approximately 355 ownership entities (352 qualifying as small entities)—this includes 303 entities enrolled in sectors as well as 52 offshore lobster vessels, but many of the offshore lobster vessels do not fish in the areas discussed in this action. A total of 301 groundfish ownership entities and 51 offshore lobster ownership entities would be considered small entities, based on the definition as stated above. The economic impact resulting from this action on these small groundfish entities is positive, since the action, if implemented, would provide additional operational flexibility to vessels participating in NE multispecies sectors for FY 2013. In addition, this action would further mitigate negative impacts from the implementation of Amendment 16, Frameworks 44 and 45, which have placed additional restrictions on the NE multispecies fleet, as well as Frameworks 48 and 50. The economic impact resulting from this action on offshore lobster entities is expected to be negligible, since they historically have very little fishing effort in an area that they would be unable to fish during a specific portion of the year.

### **Reporting, Recordkeeping and Other Compliance Requirements**

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act. The proposed action provides additional flexibility to sector vessels in fishing year 2013 by allowing them to fish in areas that were previously closed. Sector vessels would be required to declare their intent to fish in these

areas prior to departure. As currently proposed, sectors interested in utilizing this exemption must have a NMFS-approved industry-funded at-sea monitoring program. Exemptions implemented through this action would be documented in a letter of authorization issued to each vessel participating in an approved sector.

### **Duplication, Overlap or Conflict With Other Federal Rules**

The proposed action is authorized by the regulations implementing the NE Multispecies FMP. It does not duplicate, overlap, or conflict with other Federal rules.

### **Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities**

NMFS considered two alternatives for the action proposed in this rule, the No Action Alternative and the Preferred Alternative. Under the No Action Alternative, sector vessels would not be able to fish in year-round closed areas unless fishing within an existing, approved Special Access Program. The No Action Alternative is the disapproval of the exemption and addendum to any sector's operations plan. The No Action Alternative would result in sector vessels operating under the operations plans as approved for the start of the 2013 FY on May 1, 2013. Approving the No Action Alternative would result in continued underharvesting of Georges Bank haddock and would eliminate the potential for groundfish to increase their profits.

The Preferred Alternative (the proposed action) would allow sector vessels to fish in portions of the Nantucket Lightship Closed Area, Closed Area I, and Closed Area II. The Preferred Alternative would create a positive economic impact for the participating ownership entities that include sector vessels because it would mitigate the impacts from restrictive management measures implemented under NE Multispecies FMP. Few quantitative data on the precise economic impacts to individual ownership entities are available. The *2011 Final Report on the Performance of the Northeast Multispecies (NE multispecies) Fishery (May 2010–April 2011)* (copies are available from NMFS, see **ADDRESSES**) documents that all measures of gross nominal revenue per trip and per day absent in 2011 were higher for the average sector vessel than in 2010, and lower for the average common pool vessel than in 2010, except for average revenue per day on a groundfish trip for vessels under 30 ft (9.14 m) in length and for vessels 75 ft

(22.86 m) and above. However, the report stipulates that this comparison is not useful for evaluating the relative performance of DAS and sector-based management because of fundamental differences between these groups of vessels, which were not accounted for in the analyses. Accordingly, quantitative analysis of the impacts of sector operations plans is still limited. NMFS anticipates that by switching from effort controls of the common pool regime to operating under a sector ACE, sector members will have a greater opportunity to remain economically viable while adjusting to changing economic and fishing conditions. Thus, the proposed action provides benefits to sector members that they would not have under the No Action Alternative.

### **Economic Impacts on Small Entities Resulting From Proposed Action**

The environmental impact statement for Amendment 16 compares economic impacts of sector vessels with common pool vessels and analyzes costs and benefits of the universal exemptions. The final rules for the approval of sector operations plans and contracts for fishing years 2010–2013 (75 FR 18113, April 9, 2010; 75 FR 80720, December 23, 2010; 76 FR 23076, April 25, 2011; 77 FR 26129, May 2, 2012; 78 FR 25591, May 2, 2013) and their accompanying EAs discussed the economic impacts of the exemptions requested by sectors in those years.

The EA prepared for this rule evaluates the impacts of each closed area alternative individually relative to the no-action alternative (i.e., no sectors are approved), and the alternatives may be approved or disapproved individually or as a group. The impacts associated with the implementation of each of the exemptions proposed in this rule are analyzed as if each exemption would be implemented for all sectors. The EA analyses includes all sectors because all sectors can request the exemption. Sectors can also add approved exemptions to the operations plans at any point during the fishing year. Further, attempting to limit the analyses to a specific number of sectors would be incorrect because any sector(s) could lease in all the remaining allocation and fish for that allocation under the exemption. Therefore, it is important to analyze the impacts as if the entire allocation could be harvested under the exemption. However, each exemption will only be implemented for the sector(s) that requested that exemption.

Approval of this rule, as proposed, would provide greater operational flexibility and increased fishing

opportunities to sector vessels. Increased “operational flexibility” generally has positive impacts on human communities as sectors and their associated exemptions grant fishermen some measure of increased operational flexibility. By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures), sectors help create a more simplified regulatory environment. This simplified regulatory environment grants fishers greater control over how, when, and where they fish, without working under increasingly complex fishing regulations with higher risk of inadvertently violating one of the many regulations. The increased control granted by the sectors and their associated exemptions may also allow fishermen to maximize the ex-vessel price of landings by timing them based on market prices and conditions. Generally, increased operational flexibility can result in reduced costs and/or increased revenues. All exemptions contained in the proposed fishing year 2013 sector operations plans are expected to generate positive social and economic effects for sector members and ports. In general, profits can be increased by increasing revenues or decreasing costs. Similarly, profits decrease when revenues decline or costs rise. The intent of this action is to allow fishermen to increase their revenues by increasing their catch, which would increase their revenue. Also, fishermen may potentially increase their catch per unit effort, which would also decrease their costs.

It is anticipated that any economic impacts on offshore lobster vessels would be negligible. Analyses in the accompanying EA indicates that very little lobster fishing occurs in the Closed Area II Exemption Area when lobster vessels would be prohibited from entering the area. In addition, the offshore lobster industry voluntarily signed a gear-use agreement with several groundfish sectors agreeing not to fish in the area during certain seasons. It is unlikely that the offshore lobster industry would have voluntarily entered an agreement that resulted in greatly disproportionate impacts. This rule incorporates that agreement in an effort to minimize any economic impacts on lobster vessels.

**List of Subjects in 50 CFR Part 697**

Fisheries, fishing.

Dated: July 8, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 697 is proposed to be amended as follows:

**PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

■ 1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.7, add paragraph (c)(1)(xxxi) to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(xxxi) *Closed Area II Exemption Area seasonal closure.* The Federal waters in a portion of Northeast Multispecies Closed Area II, referred to as the Closed Area II Exemption Area, shall be defined by straight lines connecting the following points in the order stated section here:

**CLOSED AREA II EXEMPTION AREA**

Point	N. lat.	W. long.
A .....	41°50'	67°20'
B .....	41°50'	67°10'
C .....	42°00'	67°10'
D .....	42°00'	<sup>1</sup> (67°00.5')
E <sup>2</sup> .....	41°30'	<sup>1</sup> (66°34.8')
F .....	41°30'	67°20'
A .....	41°50'	67°20'

<sup>1</sup>The U.S.-Canada Maritime Boundary, approximate longitude in parentheses.

<sup>2</sup>Points D and E are connected along the U.S.-Canada maritime boundary.

(A) *Seasonal closure.* Federal lobster permit holders fishing with traps from May 1 through June 15 and from November 1 through December 31 in NE multispecies fishing years 2013 and 2014. During this closure, Federally permitted trap fishers are prohibited from possessing or landing lobster taken from the Closed Area II Exemption Area.

(B) All lobster traps must be removed from Closed Area II Exemption Area waters before the start of the seasonal closure and may not be re-deployed into Closed Area II Exemption Area waters until after the seasonal closure ends.

Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Closed Area II Exemption Area waters during the seasonal closure of this section. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Closed Area II Exemption Area waters during the seasonal closure unless the vessel is transiting through the area pursuant to paragraph (c)(1)(xxxi)(E) of this section.

(C) The seasonal closure relates only to the Closed Area II Exemption Area. The restrictive provisions of §§ 697.3 and 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 3 designation and another Lobster Management Area designation on their Federal lobster permit would not have to similarly remove their lobster gear from the other designated management areas. This restriction does not apply to Federal non-trap lobster permit holders.

(D) The Regional Administrator may exempt Federal lobster permit holders from these closure provisions if no NE multispecies sector has been granted access into the Closed Area II Exemption Area. If the Regional Administrator decides to exempt Federal lobster permit holders from the seasonal closure, then the Regional Administrator must file notice of the exemption in the **Federal Register** setting forth the dates during which the exemption applies.

(E) *Transiting Closed Area II Exemption Area.* Federal lobster permit holders may possess lobster traps on their vessel in the Closed Area II Exemption Area during the seasonal closure only if:

(1) The trap gear is stowed; and

(2) The vessel is transiting the Closed Area II Exemption Area. For the purposes of this section, transiting shall mean passing through the Closed Area II Exemption Area without stopping to reach a destination outside the Closed Area II Exemption Area.

(F) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Closed Area II Exemption Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22 if the permit holder or vessel owner can establish the following:

(1) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(2) That all lobsters caught in the subject traps will be immediately returned to the sea.

(3) The Regional Administrator may condition this authorization as

appropriate in order to maintain the overall integrity of the closure.

\* \* \* \* \*

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