AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL REGISTER

Vol. 79 Monday,
No. 51 March 17, 2014

Part V

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648 and 697

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 51; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648 and 697**

**[Docket No. 140106011–4215–01]**

**RIN 0648–BD88**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 51

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

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

**SUMMARY:** This action proposes approval of, and regulations to implement, Framework Adjustment 51 to the Northeast Multispecies (Groundfish) Fishery Management Plan. This rule would set catch limits for groundfish stocks, revise the rebuilding programs for Gulf of Maine cod and American plaice, modify management measures for yellowtail flounder, and revise management measures for the U.S./Canada Management Area. Although not part of Framework 51, this action also proposes fishing year 2014 trip limits for the common pool fishery and announces 2014 accountability measures for windowpane flounder. This action is necessary to respond to updated scientific information and achieve the goals and objectives of the Groundfish Plan. The proposed measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

**DATES:** Comments must be received by April 1, 2014.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2014–0003, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docket Detail;D=NOAA-NMFS-2014-0003,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments 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 the Proposed Rule for Groundfish Framework Adjustment 51.''

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Framework 51, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the New England Fishery Management Council are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assesses the impacts of the proposed measures on small entities, and describes steps taken to minimize any significant economic impact on these entities. A summary of the IRFA is included in the Classification section of this proposed rule. The Framework 51 EA, RIR, and IRFA are also accessible via the Internet at *www.nefmc.org/nemulti/index.html* or *www.nero.noaa.gov/sfd/sfdmulti.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 by email at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257.

**SUPPLEMENTARY INFORMATION:**

### Background

The Groundfish Fishery Management Plan (Groundfish Plan) specifies management measures for 16 groundfish species in Federal waters off the New England and Mid-Atlantic coasts. Based on fish size, and the type of gear used to catch the fish, some of these species are managed as ''small-mesh species,'' and others are managed as ''large-mesh species.'' Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout. Of these species, silver hake (whiting), red hake, and offshore hake are managed under a separate small-mesh multispecies program. Large-mesh species include Atlantic cod, haddock, yellowtail flounder, American plaice, witch flounder, winter flounder, Acadian redfish, white hake, pollock, windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish. These large-mesh species are divided into 19 fish stocks based on their geographic distribution, and, along with ocean pout, are managed under the groundfish program.

The New England Fishery Management Council (Council) is required to set annual catch limits for each groundfish stock, along with accountability measures that help ensure the catch limits are not exceeded and, if they are, that help mitigate the overage. The Council develops annual or biennial management actions to set catch limits based on the best scientific information available and adjust management measures for the groundfish fishery that will help prevent overfishing, rebuild overfished stocks, and achieve optimum yield. For most groundfish stocks, the Council typically adopts catch limits for 3 years at a time. Although it is expected that the Council will adopt new catch limits every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. The Council sets catch limits annually for transboundary Georges Bank (GB) stocks that are jointly managed with Canada (GB yellowtail flounder, eastern GB cod, and eastern GB haddock), as described in more detail later in this rule.

Last year, the Council adopted, and we partially approved, Framework 50, which set fishing year (FY) 2013–2015 catch limits for all groundfish stocks, except for white hake and the U.S./Canada stocks. The Council has now developed and adopted Framework 51 in order to respond to new stock assessment information for white hake and the three U.S./Canada stocks. Based on updated information for other groundfish stocks, the Council has also adopted revised rebuilding programs for Gulf of Maine (GOM) cod and American plaice, as well as other changes to groundfish management measures that better meet the goals and objectives of the groundfish program.

### Proposed Measures

This action proposes regulations to implement the measures in Framework

51. The Council deemed the proposed regulations consistent with, and necessary to implement, Framework 51, in a March 10, 2014, letter from Council Vice Chairman John F. Quinn to Regional Administrator John Bullard. Framework 51 proposes to:

1. Revise the rebuilding programs for GOM cod and American plaice;
2. Set FY 2014 catch limits for the three U.S./Canada stocks;
3. Set FY 2014–2016 catch limits for white hake;
4. Adopt accountability measures for GB yellowtail flounder for the small-mesh fisheries;
5. Establish a U.S./Canada quota trading mechanism for FY 2014;
6. Modify the administration of eastern and western GB haddock sector allocations;
7. Revise the stratification used to estimate GB yellowtail flounder discards for monitoring sector catches; and
8. Prohibit possession of yellowtail flounder by limited access scallop vessels.

This action also proposes a number of other measures that are not part of Framework 51, but that may be considered under NMFS Regional Administrator authority provided by the Groundfish Plan. We are including these additional measures in conjunction with the Framework 51 proposed measures for expediency purposes. The additional measures proposed in this action are listed below.

• *FY 2014 management measures for the common pool fishery*—This action proposes FY 2014 trip limits for the common pool fishery. The Regional Administrator has the authority to set management measures for the common pool fishery that will help ensure the fishery catches, but does not exceed, its catch limits.

• *FY 2014 accountability measures for windowpane flounder*—This action announces accountability measures for northern and southern windowpane flounder that are being implemented due to overages of the FY 2012 catch limits for both stocks. We announced these accountability measures at the Council's Groundfish Oversight Committee meeting on November 19, 2013, and in our January 17, 2014, letter to Council Executive Director Thomas A. Nies, but are providing additional notice and opportunity for public comment through this proposed rule.

• *Other regulatory corrections*—We propose several corrections to the regulations to correct references, replace inadvertent deletions, and make other minor edits. Each proposed correction is described in detail in Item 11 of this preamble.

**1. Gulf of Maine Cod and American Plaice Rebuilding Programs**

*Revised Rebuilding Strategies*

The current rebuilding strategies for GOM cod and American plaice were adopted in 2004. The rebuilding program for GOM cod was scheduled to rebuild the stock by 2014, and the American plaice rebuilding program was scheduled to rebuild the stock by 2017. In 2012, updated scientific information indicated that neither stock could rebuild by its rebuilding end date, even in the absence of all fishing. As a result, we notified the Council that the stocks were not making adequate rebuilding progress, and that the Council was required to revise the rebuilding programs for both stocks within 2 years, or by May 1, 2014, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires that overfished stocks be rebuilt as quickly as possible, not to exceed 10 years, while accounting for the needs to fishing communities.

In response to this requirement, this rule proposes to revise the rebuilding plans for GOM cod and American plaice. The minimum rebuilding time ($T_{min}$) is the amount of time a stock is expected to take to rebuild to its maximum sustainable yield biomass level ($SSB_{MSY}$) in the absence of any fishing mortality. $T_{min}$ for a stock is typically used for informational purposes when developing rebuilding programs, and it is important to note that $T_{min}$ does not necessarily account for the needs of fishing communities, or scientific uncertainties in rebuilding projections. For GOM cod, $T_{min}$ is 6 years, or 2020, and $T_{min}$ for American plaice is 4 years, or 2018. The rebuilding programs proposed in this action would rebuild the stocks within 10 years, or by 2024, which is the maximum time period allowed by the Magnuson-Stevens Act. Both rebuilding programs have a median probability of rebuilding by the target dates. As explained in more detail below, the proposed rebuilding programs intend to address the needs of fishing communities as much as practicable, as well as factor in past performance of groundfish catch projections in order to increase the likelihood of rebuilding success.

Long-term catch projections for groundfish stocks tend to underestimate fishing mortality and overestimate stock biomass (see Appendix 5 to the 2012 groundfish assessment updates for more information: *http://nefsc.noaa.gov/publications/crd/crd1206/*). The inherent uncertainty surrounding long-term projections makes it difficult to estimate the fishing mortality rate that is required to rebuild the stock within the specified time frame, or $F_{rebuild}$. This uncertainty is due, in part, to the estimate's dependence on future stock recruitment (the amount of fish added to the stock each year), which is often difficult to predict. If stock recruitment does not occur as projected, then progress towards rebuilding can occur much slower than expected.

The Council's default control rule for setting catch limits requires that catches be set based on 75% $F_{MSY}$ (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield) or $F_{rebuild}$, whichever is lower. Typically, when a stock is in a rebuilding program, $F_{rebuild}$ is less than 75% $F_{MSY}$, and, thus, the annual catch limits are usually set based on $F_{rebuild}$. Rebuilding progress for many groundfish stocks has often occurred slower than expected due to the uncertainties in long-term catch projections, which leads to dramatic reductions in catch limits as the rebuilding end date gets closer. As $F_{rebuild}$ approaches zero, it is less likely to be used for setting catch limits, which can undermine rebuilding objectives.

To help avoid this problem, the revised rebuilding end dates proposed in this action were calculated using an $F_{rebuild}$ that was greater than 75% $F_{MSY}$. During the rebuilding time period, catches would continue to be set consistent with the Council's default control rule (75% $F_{MSY}$ or $F_{rebuild}$, whichever is lower). Thus, under this approach, catches would be set more conservatively than $F_{rebuild}$ (based on 75% $F_{MSY}$), at least initially in the proposed rebuilding programs. This strategy is intended to accelerate the rebuilding timeline and increase the likelihood of success. In the future, if information shows that GOM cod and American plaice stock sizes have not increased as projected, it is possible that $F_{rebuild}$ could become less than 75% $F_{MSY}$. Under this scenario, catches would then be set based on the lower rate, or $F_{rebuild}$, consistent with the Council's default control rule.

The proposed 10-year rebuilding strategy for GOM cod also accounts for additional uncertainty that results from the two different stock assessment models, which make it difficult to project how quickly the stock will rebuild. The most recent stock assessment for GOM cod, completed in December 2012, approved two different

assessment models and, as a result, both assessment models are used to provide catch advice. One assessment model (base case model) assumes the natural mortality rate (M) is 0.2. The second assessment model ($M_{ramp}$ model) assumes that M has increased from 0.2 to 0.4 in recent years. The assessment concluded that M would return to 0.2 at some point though, in the short-term, M would remain 0.4. As a result, fishing mortality targets used in the catch projections from both models are based on biological reference points that assume M=0.2. A detailed summary of the benchmark assessment is available from the NMFS Northeast Fisheries Science Center at: *http://www.nefsc.noaa.gov/saw/saw55/crd1301.pdf.* There is little difference in the time period needed to rebuild GOM cod based on the two assessment models. However, the catches estimated in the out years (closer to the rebuilding end date) differ between the two assessment models, and so do the estimates of $SSB_{MSY}$.

Interpreting and developing a rebuilding program under the $M_{ramp}$ model is difficult because it is not known when M would return to 0.2. However, a change in M (from 0.4 to 0.2) is required to rebuild the GOM cod stock, and if this reduction does not occur, then GOM cod may be unable to rebuild based on the proposed rebuilding strategy. For this reason, the 10-year rebuilding program proposed in this action is expected to better account for these uncertainties compared to a shorter rebuilding time period.

The rebuilding strategies proposed in Framework 51 would use the full 10 years, as allowed by the Magnuson-Stevens Act, even though rebuilding might be able to occur sooner. These strategies are intended to account for the uncertainties noted above, as well as to account for the needs of fishing communities. As noted above, the approach used for developing the proposed rebuilding strategies is intended to accelerate the rebuilding timeline because catches would be set more conservatively than $F_{rebuild}$, at least initially. This approach increases the likelihood of success for rebuilding GOM cod and American plaice, and in the long-term, provides greater net benefits that would occur from rebuilt stocks. The proposed 10-year rebuilding programs for GOM cod and American plaice would also provide some flexibility and better address the needs of fishing communities compared to rebuilding programs that target an earlier end date. This is particularly important for GOM cod, which is a key groundfish stock, because constrained catch limits for GOM cod also impede the harvest of other groundfish stocks in the GOM. In addition, American plaice is a ''unit stock,'' meaning that there are not multiple stocks within the management unit. As a result, severely constrained catch limits for American plaice could result in lost groundfish fishing opportunities across the entire groundfish management area (GB, GOM, and Southern New England). Analysis completed for various rebuilding scenarios indicates that the proposed rebuilding programs would maximize the net present value (i.e., potential landings streams and future revenues) compared to other rebuilding scenarios that would target earlier end dates (see Section 7.4 of the Framework 51 Environmental Assessment). Thus, the proposed rebuilding strategies take into account, and address, the needs of fishing communities, while rebuilding the stocks as quickly as possible, and will increase the likelihood of achieving optimum yield in the fishery.

*Rebuilding Plan Review Analysis*

This rule also proposes to establish a rebuilding plan review analysis for both GOM cod and American plaice, in conjunction with the proposed revisions to the rebuilding programs. The proposed rebuilding plan review would occur for the respective stock if all three of the following conditions are met:

- The total catch limit has not been exceeded during the rebuilding program;
- New scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and
- $F_{rebuild}$ becomes less than 75% $F_{MSY}$.

If all three of the criteria described above are met, then the Council would task its appropriate body (e.g., Groundfish Plan Development Team or Scientific and Statistical Committee) to complete a rebuilding plan review that would provide the Council with new catch advice for GOM cod and/or American plaice. In priority order, the rebuilding plan review would:

1. Consider extending the rebuilding program to the maximum 10 years if a shorter time frame was initially adopted;
2. Review the biomass reference points; and
3. Provide catch limits based on $F_{rebuild}$ for these scenarios:

a. Under a 10-year rebuilding program (Item 1 above);

b. Under a review of the biomass reference points (Item 2 above); and

c. Under the existing rebuilding program.

The proposed rebuilding plan review analysis is intended to investigate why rebuilding has not occurred as expected. These types of analyses are typically already done as part of the current biennial review process for the groundfish program, or during a stock assessment, regardless of whether the above criteria are met for initiating the review. The proposed rebuilding plan review would not replace the current biennial review process; rather it would modify it in order to explicitly identify the criteria for initiating a review, or the specific analyses that should result from the review.

As noted during the development of Framework 51, we are concerned with the administrative burden of this measure, and whether there are any measurable benefits of the proposed rebuilding plan review analysis. The only basis for initiating the rebuilding plan review analysis, as proposed, would be a stock assessment that provided information to show that a stock was not on its rebuilding trajectory. As noted above, if a stock falls below its rebuilding trajectory, an investigation of why rebuilding has not occurred as expected would already occur during the stock assessment, or as part of the existing biennial review process.

In addition, the rebuilding programs adopted by Framework 51, and proposed in this rule, would also already use the maximum 10-year rebuilding period allowed. Thus, the first step in the rebuilding plan review (Item 1) is obsolete, and so is the task of providing $F_{rebuild}$-catch limits under an extended rebuilding program (Item 3a). Moreover, the only analyses that would be sufficient to provide revised biomass reference points, or provide new catch advice options based on revised biomass reference points (Item 3b) would be another stock assessment. The review of biomass reference points that is proposed in the rebuilding plan review (Item 2), in particular, may set unrealistic expectations for stakeholders. Since the proposed rebuilding plan review would *review* biomass reference points, but not necessarily *change* biomass reference points, the catch limits based on $F_{rebuild}$ (described by Item 3b) would also likely remain unchanged. By undertaking the rebuilding plan review, many stakeholders would likely expect that changes to the biomass reference points might occur as a result, which is not the case.

We are concerned about the approvability of this measure due to all of the issues noted above. As a result, we are requesting specific comments on

our concerns for this measure, including how the proposed analysis differs from the existing biennial review process for the groundfish program, or the existing stock assessment process, and what, if any, measurable benefit would be achieved through this administrative measure.

**2. U.S./Canada Quotas**

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are jointly managed with Canada. Each year, the Transboundary Management Guidance Committee (TMGC), which is a government-industry committee made up of representatives from the United States and Canada, recommends a shared quota for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral risk (less than 50 percent) of exceeding the fishing mortality limit for each stock. The TMGC's harvest strategy also specifies that when stock conditions are poor, fishing mortality should be further reduced to promote stock rebuilding. The shared quotas are allocated between the United States and Canada based on a formula that considers historical catch (10-percent weighting) and the current resource distribution (90-percent weighting).

Assessments for the three transboundary stocks were completed in June 2013 by the Transboundary Resources Assessment Committee (TRAC). A detailed summary of the 2013 TRAC assessment can be found at: *http://www.nefsc.noaa.gov/saw/trac/.* The TMGC met in September 2013 to recommend shared quotas for 2014 based on the updated assessments, and the Council adopted the TMGC's recommendations in Framework 51. The proposed 2014 shared U.S./Canada quotas, and each country's allocation, are listed in Table 1. For a detailed discussion of the TMGC's 2014 catch advice, see the TMGC's guidance document at: *http://www2.mar.dfo-mpo.gc.ca/science/tmgc/tgd.html.*

Although the proposed 2014 shared quota for GB yellowtail flounder would be a 20-percent decrease from 2013, the U.S. quota for GB yellowtail flounder would increase by 53 percent in 2014 compared to 2013. This increase is due to the large increase of the U.S. share of the quota in 2014 (from 43 percent to 82 percent) due to higher distribution of this stock in U.S. waters compared to past years. The proposed 2014 shared U.S./Canada quotas for eastern GB cod and haddock are higher compared to 2013. The resulting U.S. quotas would increase by 60 percent for eastern GB cod and 166 percent for eastern GB haddock compared to 2013. The proposed 2014 catch limit for GB yellowtail flounder is also discussed in more detail in Item 3 of this preamble.

The U.S./Canada Resource Sharing Understanding requires that any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. quotas be deducted from the U.S. quota in the following fishing year. If FY 2013 catch information indicates that the U.S. fishery exceeded its quota for any of the shared stocks, we must reduce the FY 2014 U.S. quota for that stock in a future management action, as close to May 1, 2014, as possible. If any fishery that is allocated a portion of the U.S. quota exceeds its allocation, and causes an overage of the overall U.S. quota, the overage reduction would be applied to that fishery's allocation in the following fishing year. For example, if the scallop fishery exceeded its allocation of GB yellowtail flounder, which caused the overall U.S. quota to be exceeded, then the pound-for-pound reduction would be applied to the scallop fishery's allocation for the next fishing year. This ensures that catch by one component of the fishery does not negatively affect another component of the fishery.

Table 1—Proposed 2014 U.S./Canada Quotas (mt, live weight) and Percent of Quota Allocated to Each Country

| Quota | Eastern GB Cod | Eastern GB Haddock | GB Yellowtail Flounder |
|---|---|---|---|
| Total Shared Quota | 700 | 27,000 | 400 |
| U.S. Quota | 154 (22%) | 10,530 (39%) | 328 (82%) |
| Canada Quota | 546 (78%) | 16,470 (61%) | 72 (18%) |

**3. Catch Limits**

The catch limits proposed in this action can be found in Tables 2 through 8. A brief summary of how these catch limits were developed is provided below. More detail on the proposed catch limits for each groundfish stock can be found in Appendix III to the Framework 51 EA (see **ADDRESSES** for information on how to get this document).

Last year, Framework 50 adopted FY 2013–2015 catch limits for all groundfish stocks, except for the U.S./Canada stocks, which must be set every year, and white hake. A benchmark stock assessment for white hake was completed in February 2013, and the results of this assessment became available after the Council took final action on Framework 50. As a result, the Council was not able to incorporate the new benchmark results in time for setting FY 2013–2015 catch limits. Instead, we implemented an emergency action for FY 2013 to increase the white hake catch limit based on the February 2013 assessment, and give the Council time to respond to the new assessment. As described in Framework 51, this rule now proposes to implement FY 2014–2016 catch limits for white hake based on the recent stock assessment, and consistent with the recommendation of the Council's Scientific and Statistical Committee (SSC). This rule also proposes to incorporate the FY 2014 shared U.S./Canada quotas (see Item 2 in this preamble), which are discussed in more detail below. For all stocks, except GB cod, GB haddock, GB yellowtail flounder, and white hake, the

catch limits included in this action are identical to those previously adopted in Framework 50. There is no catch limit proposed for FY 2015 or FY 2016 for many groundfish stocks. These catch limits will be specified in a future management action once updated scientific information becomes available.

*Overfishing Limits and Acceptable Biological Catches*

The overfishing limit (OFL) serves as the maximum amount of fish that can be caught in a year without harming the stock. The OFL for each stock is calculated using the estimated stock size and $F_{MSY}$ (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). The OFL does not account for scientific uncertainty, so the Council's SSC typically recommends an acceptable biological catch (ABC) that is lower than the OFL in order to account for scientific uncertainty. Usually, the greater the amount of scientific uncertainty, the lower the ABC is set compared to the OFL. For GB cod, haddock, and yellowtail flounder, the total ABC is further reduced by the amount of the Canadian quota (see Table 1 for the Canadian share of these stocks). The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

*GB Yellowtail Flounder*

Both the 2013 TRAC assessment and the SSC noted concerns for the poor performance of the stock assessment model for GB yellowtail flounder. The assessment model has a strong retrospective pattern, which causes stock size to be overestimated and fishing mortality to be underestimated. Despite concerns for the uncertainties in the assessment, and the performance of the assessment model, however, both the TRAC and the SSC concluded that stock conditions are poor. Recruitment for the stock remains low, and although the quota has been reduced in recent years due to continually declining stock conditions, all of the available information indicates that the stock has not responded to these reductions. In addition, although the assessment is highly uncertain, it was not rejected by either the TRAC or SSC.

The 2013 TRAC assessment concluded that 2014 catches well below 500 mt are likely needed to achieve the TMGC's harvest strategy for GB yellowtail flounder, and that catch should be reduced as much as possible from the 2013 quota of 500 mt. Consistent with the TRAC assessment, the SSC recommended that catches not exceed 500 mt in FY 2014, and strongly recommended that catch be reduced as much as practicable in light of concerns about the status of the stock. The SSC also concluded that the OFL for GB yellowtail flounder cannot be reliably estimated due to poor performance of the assessment model, and as a result determined that the OFL is unknown.

When reviewing and approving any quota, the Magnuson-Stevens Act requires us to determine that the proposed quota has a sufficient probability of preventing overfishing. To do this, we build off of the SSC's recommendation of an OFL and ABC. When absolute values for the OFL are not readily available, any quota recommendation must still meet the necessary requirements, and have at least a 50-percent probability of preventing overfishing. Both the TRAC results and the SSC's recommendation provide the necessary directionality of the 2014 quota compared to 2013 as well as information that can be used to determine the appropriate 2014 catch limit that would have a sufficient probability of preventing overfishing.

The results of the assessment model that are not adjusted for the retrospective pattern indicate that 2014 catches at the fishing mortality limit would be 562 mt. However, given the poor performance of the assessment model, and because these results are not adjusted for the retrospective pattern in the assessment, it is reasonable to conclude that these results may be biased high. Because the unadjusted model results from the assessment are likely biased high, the 2014 quota should have a greater uncertainty buffer than the Council's standard default control rule (75% $F_{MSY}$). A 2014 catch limit of 400 mt is the maximum catch that would provide an additional uncertainty buffer from the unadjusted model results to further account for the uncertainties in the assessment. On the other hand, when the model results are adjusted for the retrospective pattern, 2014 catches at the fishing mortality limit would be 123 mt. In discussing the poor performance of the assessment model, though, the SSC questioned the magnitude of stock depletion, and noted that catch and survey trends may suggest less concern is warranted than indicated by the assessment model. As a result, the model results adjusted for the retrospective pattern may be biased low.

Recent catches can also be used to evaluate what 2014 catch level would be consistent with the TRAC and SSC's recommendations to reduce catches as much as possible/practicable. Catches in 2012, which is the most recent fishing year in which final catch information is available, were approximately 480 mt, of which the United States caught 385 mt. The U.S. share of the quota increases in 2014 from 43 percent in 2013 to 82 percent in 2014, and as a result, the 2014 TMGC recommendation of 400 mt would result in a U.S. quota of 328 mt, which is nearly equal to the FY 2012 total U.S. catch. Similarly, although final 2013 catch estimates will not be available until September 2014, if total 2013 catches are between 300–400 mt, a quota above 400 mt in 2014 would likely allow catches to increase compared to recent years, which would not be consistent with the TRAC and SSC's recommendation that catches be reduced.

The FY 2013 catch limit for GB yellowtail flounder was 500 mt. Because the stock has declined further this past year, a status quo catch limit in FY 2014 would not appropriately account for this stock decline. The quota was reduced by more than 40 percent from 2011 to 2012, and again from 2012 to 2013, yet the 2013 TRAC assessment indicates that the stock has not responded to these reductions. This suggests that the 2014 quota should be further reduced from 2013 to increase the likelihood that stock conditions will improve.

Based on all of these factors, we determined that 400 mt was the total ABC for GB yellowtail flounder that would have a sufficient probability of preventing overfishing, reduce catch consistent with the TRAC and SSC advice, and provide for some stock growth. This determination was provided to the TMGC in September 2013, and served as the basis for the TMGC recommending 400 mt as the 2014 shared quota. Despite alternative catch limits put forward by the Council's Groundfish Oversight Committee, the Council ultimately adopted the TMGC's recommendation in Framework 51, and this action proposes a FY 2014 catch limit of 400 mt for GB yellowtail flounder. Based on the best scientific information available, a quota of 400 mt would have at least a median probability of preventing overfishing, and would also increase the likelihood that stock conditions will improve. The proposed quota of 400 mt would be a 20-percent reduction compared to the 2013 quota, which is consistent with the TRAC and SSC's recommendation to reduce catches as much as practicable.

In response to concerns for the poor performance of the GB yellowtail flounder stock assessment model, the TRAC will conduct a benchmark assessment April 14–18, 2014, to examine an alternative method for

estimating abundance and setting catch limits. The results of the benchmark assessment will be incorporated for setting 2015 catches for GB yellowtail flounder. More information on the 2014 benchmark assessment can be found here: *http://www.nefsc.noaa.gov/saw/trac/.*

*Annual Catch Limits*

The U.S. ABC for each stock (for each fishing year) is divided among the various fishery components to account for all sources of fishing mortality. First, expected catch from state waters and the ''other'' sub-component is deducted from the U.S. ABC. These sub-components are not subject to specific catch controls by the Groundfish Plan. As a result, the state waters and ''other'' sub-components are not allocations, and these components of the fishery are not subject to accountability measures if the catch limits are exceeded. After the state and other sub-components are deducted, the remaining portion of the U.S. ABC is the amount available to the fishery components that receive an allocation for the stock. Components of the fishery that receive an allocation are subject to catch controls by the Groundfish Plan, including accountability measures that are triggered if they exceed their respective catch limit during the fishing year.

Once the U.S. ABC is divided, sub-annual catch limits (sub-ACLs) are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability and precision of management measures, adequacy of catch monitoring, latent effort, and catch of groundfish in non-groundfish fisheries. The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fisheries, state waters, and non-groundfish fisheries) are counted against the ACL for each stock.

For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in sectors and the cumulative PSCs associated with those sectors. The preliminary sector and common pool sub-ACLs proposed in this action are based on FY 2014 PSCs and FY 2013 sector rosters. FY 2014 sector rosters will not be finalized until May 1, 2014, because individual permit holders have until the end of FY 2013 to drop out of a sector and fish in the common pool fishery for FY 2014. Therefore, it is possible that the sector and common pool catch limits proposed in this action may change due to changes in the sector rosters. If changes to the sector rosters occur, updated catch limits will be published as soon as possible in FY 2014 to reflect the final FY 2014 sector rosters as of May 1, 2014.

*Common Pool Total Allowable Catches*

The common pool sub-ACL for each stock (except for Southern New England/Mid-Atlantic (SNE/MA) winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) is further divided into trimester total allowable catches (TACs). The distribution of the common pool sub-ACLs into trimesters was adopted by Amendment 16 and is based on recent landing patterns. Once we project that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock is closed for the remainder of the trimester to all common pool vessels fishing with gear capable of catching the pertinent stock. Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester. Overages of the Trimester 1 or Trimester 2 TAC will be deducted from the Trimester 3 TAC. Any overages of the total common pool sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC may not be carried over into the following fishing year. Table 5 summarizes the common pool trimester TACs proposed in this action.

Incidental catch TACs are also specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B Days-at-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Tables 6 through 8 summarize the distribution of the common pool sub-ACLs to each special management program, and the Incidental Catch TACs for each stock that are proposed in this action.

BILLING CODE 3510–22–P

Table 2 — Proposed FY 2014 Catch Limits (mt, live weight)

| Stock | OFL | U.S. ABC | Total ACL | Groundfish Fishery | Preliminary Sector | Preliminary Common Pool | Recreational Groundfish | Midwater Trawl Fishery | Scallop Fishery | Small-Mesh Fisheries | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | A to H | A+B+C | A | B | C | D | E | F | G | H |
| GB Cod | 3,570 | 2,506 | 1,867 | 1,769 | 1,738 | 31 | | | | | 20 | 78 |
| GOM Cod | 1,917 | 1,550 | 1,470 | 1,316 | 812 | 18 | 486 | | | | 103 | 51 |
| GB Haddock | 46,268 | 35,699 | 18,312 | 17,171 | 17,116 | 56 | | 179 | | | 192 | 769 |
| GOM Haddock | 440 | 341 | 323 | 307 | 218 | 2 | 87 | 3 | | | 5 | 7 |
| GB Yellowtail Flounder | unknown | 400 | 318.1 | 254.5 | 251.5 | 3.1 | | | 50.9 | 6.1 | 0.0 | 6.6 |
| SNE/MA Yellowtail Flounder | 1,042 | 700 | 665 | 564 | 469 | 95 | | | 66 | | 7 | 28 |
| CC/GOM Yellowtail Flounder | 936 | 548 | 523 | 479 | 466 | 13 | | | | | 33 | 11 |
| American Plaice | 1,981 | 1,515 | 1,442 | 1,382 | 1,357 | 24 | | | | | 30 | 30 |
| Witch Flounder | 1,512 | 783 | 751 | 610 | 599 | 11 | | | | | 23 | 117 |
| GB Winter Flounder | 4,626 | 3,598 | 3,493 | 3,385 | 3,364 | 21 | | | | | 0 | 108 |
| GOM Winter Flounder | 1,458 | 1,078 | 1,040 | 715 | 688 | 26 | | | | | 272 | 54 |
| SNE/MA Winter Flounder | 3,372 | 1,676 | 1,612 | 1,210 | 1,074 | 136 | | | | | 235 | 168 |
| Redfish | 16,130 | 11,465 | 10,909 | 10,565 | 10,523 | 42 | | | | | 115 | 229 |
| White Hake | 6,082 | 4,642 | 4,417 | 4,278 | 4,247 | 30 | | | | | 46 | 93 |
| Pollock | 20,554 | 16,000 | 15,304 | 13,224 | 13,131 | 93 | | | | | 960 | 1,120 |
| N. Windowpane Flounder | 202 | 151 | 144 | 98 | na | 98 | | | | | 2 | 44 |
| S. Windowpane Flounder | 730 | 548 | 527 | 102 | na | 102 | | | 183 | | 55 | 186 |
| Ocean Pout | 313 | 235 | 220 | 197 | na | 197 | | | | | 2 | 21 |
| Atlantic Halibut | 180 | 109 | 106 | 57 | na | 57 | | | | | 44 | 5 |
| Atlantic Wolffish | 94 | 70 | 65 | 62 | na | 62 | | | | | 1 | 3 |

Table 3 — Proposed FY 2015 Catch Limits (mt, live weight)

| Stock | OFL | U.S. ABC | Total ACL | Groundfish Fishery | Preliminary Sector | Preliminary Common Pool | Recreational Groundfish | Midwater Trawl Fishery | Scallop Fishery | Small-Mesh Fisheries | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | A to H | A+B+C | A | B | C | D | E | F | G | H |
| GB Cod | 4,191 | 2,506 | 2,387 | 2,262 | 1,738 | 31 | | | | | 25 | 100 |
| GOM Cod | 2,639 | 1,550 | 1,470 | 1,316 | 812 | 18 | 486 | | | | 103 | 51 |
| GB Haddock | 56,293 | 43,606 | 41,526 | 38,940 | 38,814 | 126 | | 406 | | | 436 | 1,744 |
| GOM Haddock | 561 | 435 | 412 | 392 | 278 | 2 | 111 | 4 | | | 6 | 9 |
| GB Yellowtail Flounder | | | | | | | | | | | | |
| SNE/MA Yellowtail Flounder | 1,056 | 700 | 665 | 566 | 471 | 95 | | | 64 | | 7 | 28 |
| CC/GOM Yellowtail Flounder | 1,194 | 548 | 523 | 479 | 466 | 13 | | | | | 33 | 11 |
| American Plaice | 2,021 | 1,544 | 1,470 | 1,408 | 1,383 | 25 | | | | | 31 | 31 |
| Witch Flounder | 1,846 | 783 | 751 | 610 | 599 | 11 | | | | | 23 | 117 |
| GB Winter Flounder | | | | | | | | | | | | |
| GOM Winter Flounder | | | | | | | | | | | | |
| SNE/MA Winter Flounder | 4,439 | 1,676 | 1,612 | 1,210 | 1,074 | 136 | | | | | 235 | 168 |
| Redfish | 16,845 | 11,974 | 11,393 | 11,034 | 10,990 | 44 | | | | | 120 | 239 |
| White Hake | 6,237 | 4,713 | 4,417 | 4,278 | 4,247 | 30 | | | | | 46 | 93 |
| Pollock | | | | | | | | | | | | |
| N. Windowpane Flounder | 202 | 151 | 144 | 98 | | 98 | | | | | 2 | 44 |
| S. Windowpane Flounder | 730 | 548 | 527 | 102 | | 102 | | | 183 | | 55 | 186 |
| Ocean Pout | 313 | 235 | 220 | 197 | | 197 | | | | | 2 | 21 |
| Atlantic Halibut | 198 | 119 | 116 | 62 | | 62 | | | | | 48 | 6 |
| Atlantic Wolffish | 94 | 70 | 65 | 62 | | 62 | | | | | 1 | 3 |

*Shaded cells indicate no catch limit has been set yet for the stocks. These catch limits will be set in a future action.

Table 4 — Proposed FY 2016 Total ACLs, sub-ACLs, and ACL sub-components (mt, live weight)

| Stock | OFL | U.S. ABC | Total ACL | Groundfish Fishery | Preliminary Sector | Preliminary Common Pool | Recreational Groundfish | Midwater Trawl Fishery | Scallop Fishery | Small-Mesh Fisheries | State Waters sub-component | Other sub-component |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | A to H | A+B+C | A | B | C | D | E | F | G | H |
| White Hake | 6,314 | 4,645 | 4,420 | 4,280 | 4,250 | 30 | | | | | 46 | 93 |

**FY 2016 catch limits are only proposed for white hake in this action. FY 2016 catch limits for all other groundfish stocks will be set in a future action.

Table 5—Proposed FYs 2014-2016 Common Pool Trimester TACs (mt, live weight)

| Stock | 2014 | | | 2015 | | | 2016 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Trimester 1 | Trimester 2 | Trimester 3 | Trimester 1 | Trimester 2 | Trimester 3 | Trimester 1 | Trimester 2 | Trimester 3 |
| GB Cod | 7.6 | 11.3 | 11.6 | 9.8 | 14.4 | 14.8 | | | |
| GOM Cod | 4.9 | 6.6 | 6.8 | 4.9 | 6.6 | 6.8 | | | |
| GB Haddock | 15.0 | 18.3 | 22.2 | 34.0 | 41.6 | 50.4 | | | |
| GOM Haddock | 0.51 | 0.49 | 0.88 | 0.6 | 0.6 | 1.1 | | | |
| GB Yellowtail Flounder | 0.6 | 0.9 | 1.6 | | | | | | |
| SNE/MA Yellowtail Flounder | 19.9 | 35.0 | 39.7 | 19.9 | 35.1 | 39.9 | | | |
| CC/GOM Yellowtail Flounder | 4.7 | 4.7 | 4.0 | 4.7 | 4.7 | 4.0 | | | |
| American Plaice | 5.8 | 8.7 | 9.7 | 5.9 | 8.9 | 9.9 | | | |
| Witch Flounder | 2.9 | 3.3 | 4.5 | 2.9 | 3.3 | 4.5 | | | |
| GB Winter Flounder | 1.7 | 5.1 | 14.7 | | | | | | |
| GOM Winter Flounder | 9.8 | 10.0 | 6.6 | | | | | | |
| Redfish | 10.5 | 13.0 | 18.4 | 10.9 | 13.6 | 19.2 | | | |
| White Hake | 11.6 | 9.4 | 9.4 | 11.7 | 9.6 | 9.6 | 11.6 | 9.4 | 9.4 |
| Pollock | 26.0 | 32.5 | 34.3 | | | | | | |

**Shaded cells indicate that no catch limit has been set yet for these stocks. These catch limits will be set in a future management action.

Table 6—Proposed Common Pool Incidental Catch TACs for FYs 2014-2015 (mt, live weight)

| Stock | Percentage of Common Pool sub-ACL | 2014 | 2015 |
|---|---|---|---|
| GB Cod | 2 | 0.6 | 0.8 |
| GOM Cod | 1 | 0.2 | 0.2 |
| GB Yellowtail Flounder | 2 | 0.06 | |
| CC/GOM Yellowtail Flounder | 1 | 0.1 | 0.1 |
| American Plaice | 5 | 1.2 | 1.2 |
| Witch Flounder | 5 | 0.5 | 0.5 |
| SNE/MA Winter Flounder | 1 | 1.4 | 1.4 |

Table 7—Percentage of Incidental Catch TACs Distributed to Each Special Management Program

| Stock | Regular B DAS Program | Closed Area I Hook Gear Haddock SAP | Eastern US/CA Haddock SAP |
|---|---|---|---|
| GB Cod | 50% | 16% | 34% |
| GOM Cod | 100% | | |
| GB Yellowtail Flounder | 50% | | 50% |
| CC/GOM Yellowtail Flounder | 100% | | |
| American Plaice | 100% | | |
| Witch Flounder | 100% | | |
| SNE/MA Winter Flounder | 100% | | |
| White Hake | 100% | | |

Table 8—Proposed FYs 2014-2015 Incidental Catch TACs for Each Special Management Program (mt, live weight)

| Stock | Regular B DAS Program | | Closed Area I Hook Gear Haddock SAP | | Eastern U.S./Canada Haddock SAP | |
|---|---|---|---|---|---|---|
| | 2014 | 2015 | 2014 | 2015 | 2014 | 2015 |
| GB Cod | 0.3 | 0.3 | 0.1 | 0.1 | 0.2 | 0.2 |
| GOM Cod | 0.2 | 0.2 | | | | |
| GB Yellowtail Flounder | 0.03 | | | | 0.03 | |
| CC/GOM Yellowtail Flounder | 0.1 | 0.1 | | | | |
| American Plaice | 1.2 | 1.2 | | | | |
| Witch Flounder | 0.5 | 0.5 | | | | |
| SNE/MA Winter Flounder | 1.4 | 1.4 | | | | |

BILLING CODE 3510–22–C

**4. Small-Mesh Fisheries Accountability Measure**

For FY 2013 and beyond, Framework 48 adopted an allocation of GB yellowtail flounder for the small-mesh fisheries. For this allocation, the small-mesh fisheries were defined as vessels fishing with otter trawl gear with a codend mesh size of 5 inches (12.7 cm) or less. The target species for these small-mesh fisheries typically include squid and whiting. Framework 48 adopted a GB yellowtail flounder allocation for these fisheries due to concerns for the low stock size of GB yellowtail flounder, and that these fisheries have accounted for a larger portion of the total catch in recent years. Corresponding accountability measures (AMs) were not adopted last year because development of AMs required close coordination with the Mid-Atlantic Fishery Management Council, which is responsible for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. As a result, Framework 48 presumed that AMs would be developed by the respective Fishery Management Plans in a future management action through coordination of the New England and Mid-Atlantic Councils. Thus, Framework 51 and this rule now propose to establish AMs for GB yellowtail flounder for the small-mesh fisheries, and apply them retroactively to FY 2013 catches.

The U.S./Canada Resource Sharing Understanding requires that, if the U.S. quota for GB yellowtail flounder is exceeded, then the U.S. quota for the following fishing year must be reduced by the amount of the overage. The pound-for-pound reduction is applied to the sub-ACL of the fishery component that caused the overage. For example, if the small-mesh fisheries caused an overage of the U.S. quota in Year 1, the small-mesh fisheries sub-ACL would be reduced by the amount of the overage in the next fishing year (Year 2). This pound-for-pound reduction serves as a reactive AM. However, the small-mesh fisheries are currently required to discard all GB yellowtail flounder caught. Thus, a pound-for-pound reduction of the quota, without corresponding measures to help reduce catches of GB yellowtail flounder, would not appropriately mitigate an overage, or prevent future overages from occurring.

This rule proposes an additional reactive AM that would require vessels fishing with bottom otter trawl gear with a codend mesh size of less than 5 in (12.7 cm) to fish with selective trawl gear in the GB yellowtail flounder stock area (Statistical areas 522, 525, 561, and 562) if the small-mesh fisheries sub-ACL is exceeded. Currently, approved gear types include the raised footrope trawl, separator trawl, rope trawl, Ruhle trawl, and mini-Ruhle trawl. Additional gear types can be authorized by the Council in a future management action, or approved by the Regional Administrator through the gear-approval process defined at § 648.85(b)(6). The proposed AM would be triggered regardless of whether the total ACL is exceeded. With the exception of the GB yellowtail flounder AM for the scallop fishery, this approach to triggering an AM is consistent with how other fishery components are treated (i.e., commercial and recreational groundfish fisheries and mid-water trawl fishery). AMs linked to the sub-ACLs of the fishery ensure that each component is held responsible for its catch of the respective stock.

The proposed AM would only be implemented at the start of a fishing year (May 1). The AM would not be implemented in the middle of the fishing year due to the potential for disproportionate impacts on the small-mesh fisheries, which operate at different times on GB, depending on the target species. If an overage of the small-mesh fisheries sub-ACL in Year 1 occurs, the proposed AM would be triggered:

- *At the start of Year 2* if, based on reliable data, NMFS determined inseason during Year 1 that the small-mesh fisheries sub-ACL had been exceeded; or

• *At the start of Year 3,* if final catch estimates available after the end of Year 1 indicate that the small-mesh fisheries sub-ACL was exceeded in Year 1.

The proposed AM would ensure that there are sufficient measures in place to reduce catches of GB yellowtail flounder, should an overage occur. This AM also ensures that the small-mesh fisheries catch of GB yellowtail flounder does not negatively impact other components of the fishery. Further, because GB yellowtail flounder is jointly managed with Canada, it is especially important that the United States implement sufficient management measures to prevent overages of the U.S. TAC, and if overages occur, to sufficiently mitigate that overage.

**5. Inseason Adjustment of U.S./Canada Quotas**

In 2013, the TMGC developed a U.S./Canada quota trading mechanism that would provide more flexibility in setting annual U.S./Canada quotas in order to create additional fishing opportunities. Framework 51 proposes to adopt a 1-year mechanism for FY 2014 that would allow the Regional Administrator, in consultation with the Council, to adjust the U.S./Canada quotas inseason consistent with any trade agreed upon with Canada. Any additional quota that the United States receives from a trade would be allocated to all of the fishery components consistent with the current ABC distribution used by the Council in this action for setting groundfish catch limits. Under this proposed approach, both groundfish and non-groundfish fisheries would potentially benefit from additional quota, regardless of what fishery gave up quota for the trade. For example, if the United States trades away eastern GB cod in return for GB yellowtail flounder, the scallop and small-mesh fisheries would benefit from the additional GB yellowtail flounder quota, even though the commercial groundfish fishery was the only component to give away its cod quota.

The Canadian fishing year is based on the calendar year, while the U.S. groundfish fishing year is May 1–April 30. The difference between the U.S. and Canadian fishing years allows a trade to occur for adjacent years. Under the proposed mechanism, a trade could occur towards the end of the Canadian fishing year, when the U.S. fishing year is only half completed. For example, if Canada underharvests its quota, it could trade away its surplus quota to the United States in the current fishing year, in return for additional quota from the United States for the upcoming fishing year. Under this proposed mechanism, the United States would only receive additional quota in the current fishing year, and would only trade away its quota for the upcoming fishing year, prior to the start of the fishing year, and before allocations are made to components of the U.S. fishery.

The proposed mechanism would exist only for quota trades made by, or before the end of, FY 2014. The Council adopted a 1-year only trading mechanism for several reasons:

1. The Council wished to determine whether trades between the United States and Canada are practical under the proposed approach; and

2. The Council is considering a more sophisticated trading mechanism as part of Amendment 18 to the Groundfish Plan that would better ensure the entities trading away quota would directly receive quota in return.

**6. Distribution of Eastern/Western Georges Bank Haddock Sector Allocations**

Eastern GB haddock is a sub-unit of the total GB haddock stock, and the total ABC for GB haddock includes the shared U.S./Canada quota for eastern GB haddock. A portion of a sector's GB haddock allocation may only be caught in the Eastern U.S./Canada Area, and the remaining portion of their total GB haddock allocation can be caught only in the Western U.S./Canada Area. This restriction was adopted by Amendment 16 in order to cap the amount of GB haddock that a sector could catch in the eastern U.S./Canada Area and help prevent the United States from exceeding its eastern GB haddock quota. However, limiting the amount of haddock that could be caught in the western U.S./Canada Area could unnecessarily reduce flexibility, and potentially limit fishing in the area, even if a sector has not caught its entire GB haddock allocation. Ultimately, this could prevent the fishery from achieving optimum yield for the GB haddock stock.

To address this concern, this rule proposes to allow sectors to ''convert'' their eastern GB haddock allocation into western GB haddock allocation. This measure would follow a process similar to the one used for processing sector trades. Sectors could convert eastern GB haddock allocation into western GB haddock allocation at any time during the fishing year, and up to 2 weeks into the following fishing year to cover any overage during the previous fishing year. A sector's proposed allocation conversion would be referred to, and approved by, NMFS based on general issues, such as whether the sector is complying with reporting or other administrative requirements, including weekly sector reports, or member vessel compliance with Vessel Trip Reporting requirements. Based on these factors, we would notify the sector if the conversion is approved or disapproved. At this time, NMFS proposes to use member vessel compliance with Vessel Trip Reporting requirements as the basis for approving, or disapproving a re-allocation of Eastern GB quota to the Western U.S./Canada Area. This is identical to the process used for reviewing, and approving, quota transfer requests between sectors.

The responsibility for ensuring that sufficient allocation is available to cover the conversion is the responsibility of the sector. This measure would also extend to state-operated permit banks. Any conversion of eastern GB haddock allocation into western GB haddock allocation may be made only within a sector, or permit bank, and not between sectors or permit banks. In addition, once a portion of eastern GB haddock allocation has been converted to western GB haddock allocation, that portion of allocation remains western GB haddock for the remainder of the fishing year. Western GB haddock allocation may not be converted to eastern GB haddock allocation. This proposed measure does not change the requirement that sector vessels may only catch their eastern GB haddock allocation in the Eastern U.S./Canada Area, and may only catch the remainder of their GB haddock allocation in the Western U.S./Canada Area.

This measure would provide additional flexibility for sectors to harvest their GB haddock allocations, without increasing the risk of biological harm to the stock. This measure may also create additional fishing opportunities for sector vessels on a healthy groundfish stock, and better help the fishery achieve optimum yield for this stock. The total catch limit for GB haddock includes the U.S. quota for eastern GB haddock, so this proposed measure would not jeopardize the total ACL for GB haddock, or the U.S. quota for the eastern portion of the stock. A sector would also still be required to stop fishing in the Eastern U.S./Canada Area once its entire eastern GB haddock allocation was caught, or in the Western U.S./Canada Area once its western GB haddock allocation was caught, or at least until it leased in additional quota. This ensures sufficient accountability for sector catch that will help prevent overages of any GB haddock catch limit.

**7. Revised Discard Estimation for Georges Bank Yellowtail Flounder**

Landings and discards of a stock count against a sector's allocation. A sector's discard rate for a stock is estimated by extrapolating discards of that stock on observed fishing trips. For each sector and stock, a discard rate is calculated for each combination of gear type and stock area (known as a ''discard strata''). For example, a sector receives a unique discard rate for yellowtail flounder caught on trips fishing with bottom otter trawl gear in the GB yellowtail flounder stock area (Statistical areas 522, 525, 561, and 562). In Framework 48 to the Groundfish Plan, the Council proposed to change the stratification of discard estimates for GB yellowtail flounder by creating two separate discard strata for GB yellowtail flounder: (1) A stratum for statistical area 522 by itself; and (2) a stratum for statistical areas 525, 561, and 562 combined. This measure was developed, in part, because there were concerns that the substantial reductions in the GB yellowtail flounder quota for FY 2013 would severely constrain sector vessels. Under the existing stratification (a single stratum for statistical areas 522, 525, 561, and 562 combined), the Council was concerned that even if some sector vessels fished in areas on GB where little yellowtail flounder is caught, in order to reduce catch of GB yellowtail flounder, other vessels fishing on other parts of GB, with higher catch rates of yellowtail flounder, would impact the discard rate for the entire sector. As a result, creating a separate strata for statistical area 522 and statistical areas 525, 561, and 562 combined would more accurately reflect fishing effort in these areas.

Based on public comments received on the Framework 48 proposed rule, we disapproved the change to the stratification of GB yellowtail flounder discards because it would increase the costs and burden of monitoring, and potentially increase uncertainty of catch estimates, without any measurable benefit for sectors. Industry members opposed this measure in Framework 48 because they said it would not benefit groundfish vessels. We did not receive any comments in support of this measure. Although finer scale discard strata may have allowed discard estimates to more closely reflect actual discard rates of yellowtail flounder in different areas of GB, we determined that the new discard strata would not have provided any benefits that sectors could not realize through the existing discard rate strata (by only fishing in areas of GB with low catches of GB yellowtail flounder). For more information on this measure, as proposed in Framework 48, see the proposed and interim final rules for Framework 48 here: *http://www.nero.noaa.gov/sfd/sfdmultifr.html#yr2013*.

Despite the disapproval in Framework 48, this rule proposes to change the stratification of GB yellowtail flounder discards for sectors and create two separate discard strata for GB yellowtail flounder: (1) A stratum for statistical area 522; and (2) a stratum for statistical areas 525, 561, and 562. This proposed measure is identical to the measure that was proposed, and disapproved, in Framework 48. The proposed measure would only apply to inseason sector monitoring, and would only apply to GB yellowtail flounder. The proposed measure would not change the stratification of discards for the common pool fishery, or any non-groundfish fishery.

Although the stratification of discards could be changed for all gear types, the proposed measure is primarily intended for trawl vessels, which catch the majority of GB yellowtail flounder. This rule also proposes to give the Regional Administrator authority for determining whether this change to the stratification for GB yellowtail flounder is needed, or not, for non-trawl gears. If the Regional Administrator determines that the change to stratification is not necessary for other, non-trawl gears, these gears types could be excluded from the proposed stratification. At this time, we have determined that the revised stratification for GB yellowtail flounder should be proposed only for trawl gear.

Analysis of the proposed measure completed by the Council in the Framework 51 Environmental Assessment indicates that if the proposed discard strata for GB yellowtail flounder had been used in FY 2010 and FY 2011, the total discards estimates would have increased by 5 percent, and declined by less than 1 percent, respectively. Thus, based on this analysis, changing the stratification used for monitoring GB yellowtail flounder would not likely lead to large changes in the total discard estimates; however, it does have the potential to increase the variance in discard estimates, which could increase monitoring coverage levels necessary to accurately monitor sector catch.

The impacts of the proposed discard strata on individual sectors would likely vary. The Framework 51 analysis shows that GB yellowtail flounder discard estimates for some sectors would decrease by up to 40 percent, while discard estimates for other sectors would increase by up to 25 percent. As a result, the economic impacts of the proposed measure would be mixed. For those sectors that would receive a lower discard rate, vessels would expend less GB yellowtail flounder quota on each trip, which would increase net revenues, and potentially allow for more fishing. For sectors that would receive an increased discard rate, the opposite would be true, and the proposed measure could reduce net revenues. Sections 7.1.2.3.2 and 7.4.2.3.2 of the Framework 51 Environmental Assessment have additional details on the impacts of the proposed measure.

We are concerned that if a new discard strata is developed for GB yellowtail flounder, it could set a precedent for revising discard strata for other quota-limiting stocks (like GOM cod). Each additional discard strata created for monitoring sector catch increases the administrative burden on NMFS, and has the potential for increasing the monitoring coverage levels necessary to accurately monitor catch if it increases the variance of discard estimates. We are concerned for the approvability of this measure for all of these reasons, in addition to the reasons this measure was initially disapproved in Framework 48.

When the Council took final action on Framework 51, and adopted the proposed revisions to the GB yellowtail flounder discard strata, it also passed a motion that the measure be implemented ''unless NMFS develops a discard tool to address this issue through the sectors.'' The Council's motion was unclear how this determination would be made, and who would make this determination whether to implement the proposed revisions to the GB yellowtail flounder discard strata in Framework 51, or to instead, rely on the discard tool developed by NMFS.

Since the Council took final action on Framework 51, we developed a discard tool that sectors can use in order to more appropriately allocate discards among sector vessels based on individual fishing activity. We held a sector workshop on February 20, 2014, to present the discard tool to the sectors, and we received positive feedback from sector representatives. Based on the results of the February 20, 2014, sector workshop, we believe that the discard tool for sectors to allocate discards to their members provides a better solution than the proposed stratification for GB yellowtail flounder, and more sufficiently addresses the problem for the reasons provided below.

- Each sector can decide whether to use the discard tool and, if so, can

decide what stocks, and gear types, to apply the methodology.

- Each fishing year, or during the fishing year, a sector could make changes to how the discard tool is used based on the needs and interests of the sector.
- A sector could use the discard tool for as many, or as few, allocated stocks as it desires, whereas the discard strata proposed in Framework 51 would only serve as a patch fix for GB yellowtail flounder.
- The discard tool uses only exiting data already available to managers; no additional data would have to be collected.
- The discard tool does not require any regulatory changes, does not have the potential to increase variance of discard estimates, and thus, does not have the potential to increase monitoring coverage levels.

We are requesting specific comments to address our concerns about the proposed revisions to the GB yellowtail flounder discard strata, whether these proposed revisions would provide sectors with any measurable benefits, and whether the discard tool would sufficiently address sector needs in lieu of the Framework 51 proposed measure.

**8. Prohibition on Possession of Yellowtail Flounder by the Limited Access Scallop Fishery**

Currently, limited-access scallop vessels are required to land all legal-sized yellowtail flounder. This measure was adopted beginning in FY 2010 in order to reduce bycatch of yellowtail flounder in the scallop fishery consistent with National Standard 9 of the Magnuson-Stevens Act, which requires bycatch be reduced as much as practicable. Landing yellowtail flounder is not cost effective for scallop vessels, so, the current requirement was intended to remove any incentive for scallop vessels to ''target'' yellowtail flounder. With the respect to this measure, it is important to note that scallop vessels do not ''target'' yellowtail flounder in the traditional sense; rather they may choose not to move out of an area with high levels of yellowtail flounder bycatch. Recent information shows that compliance with the current landing requirement has been extremely low probably due, in part, because landing yellowtail flounder is not cost effective for scallop vessels. The current landing requirement is likely difficult to enforce because it requires law enforcement officers to intercept scallop vessels at sea during the act of illegally discarding legal-sized yellowtail flounder.

Despite documented low compliance rates, industry reports have recently indicated that a very small number of scallop vessels may be ''targeting'' yellowtail flounder. To address this possibility, this action proposes to remove the landing requirement, and prohibit the possession of all yellowtail flounder by limited access scallop vessels. Prohibiting possession of yellowtail flounder is intended to remove the incentive for scallop vessels to ''target'' yellowtail flounder since they could not be retained, or sold, which is expected to ultimately reduce yellowtail flounder mortality.

National Standard 9 of the Magnuson-Stevens Act requires that bycatch be reduced as much as practicable, where bycatch is defined as ''fish harvested in a fishery, but that are not sold or kept,'' and refers to economic and regulatory discards. Thus, the proposed measure to prohibit possession of yellowtail flounder would actually increase bycatch, as it is defined in the Magnuson-Stevens Act, compared to the existing requirement to land all legal-sized yellowtail flounder. However, for the purposes of reviewing the proposed measure, a more important consideration is the total fishing mortality for each yellowtail flounder stock. If the proposed action would reduce fishing effort on yellowtail flounder, then total fishing mortality for yellowtail flounder stocks would be expected to decrease. This would provide important conservation benefits, particularly for GB yellowtail flounder, which has declined in recent years.

The recent 2012 stock assessment for SNE/MA yellowtail flounder reduced the discard mortality rate from 100 percent to 90 percent for commercial catches. As a result, prohibiting possession of this stock by limited access scallop vessels has the potential to slightly reduce mortality on this yellowtail flounder stock assuming that some of the discarded fish survive. The stock assessments for Cape Cod/Gulf of Maine and GB yellowtail flounder assume a 100-percent discard mortality rate, so it is unclear whether zero possession has the same potential benefits for these yellowtail stocks as the SNE/MA stock.

We are requesting specific comment on whether the current landing requirement truly created an incentive to ''target'' yellowtail flounder, thereby increasing total mortality on the stocks, and whether the proposed measure would be expected to decrease total fishing mortality on each of the yellowtail flounder stocks.

**9. 2014 Windowpane Flounder Accountability Measures**

In fall 2013, final catch information became available for FY 2012. These final catch estimates indicated that the northern windowpane flounder ACL was exceeded by 28 percent, and the southern windowpane flounder ACL was exceeded by 36 percent. The FY 2012 final catch report can be found here: *http://www.nero.noaa.gov/ro/fso/reports/Groundfish_Catch_Accounting.htm.*

These FY 2012 overages will automatically trigger AMs beginning in FY 2014 that require selective trawl gear to be used in certain parts of the stock areas for both windowpane flounder stocks. For the entire 2014 fishing year, common pool and sector vessels fishing on a groundfish trip with trawl gear will be required to use one of the following selective trawl gears when fishing in the AM areas: (1) Haddock separator trawl; (2) Ruhle trawl; (3) mini-Ruhle trawl; or (4) rope separator trawl. There are no restrictions on longline or gillnet gear. These gear restrictions will apply in the large AM areas for both northern and southern windowpane flounder because the overages were more than 20 percent of the ACL for both stocks (maps and coordinates of the AM areas can be found here: *http://www.nero.noaa.gov/sfd/sfdmulti.html*). As a reminder, sectors cannot request an exemption from these AMs. As long as the catch limits are not exceeded in FY 2014, the AM would be removed at the start of the 2015 fishing year, beginning on May 1, 2015. These AMs are not part of Framework 51, but are proposed in conjunction with Framework 51 for expediency purposes.

The FY 2014 windowpane flounder AMs will not impact non-groundfish fisheries because these fisheries did not have an allocation of either windowpane flounder stock for FY 2012. Although these non-groundfish fisheries may have contributed to the 2012 overages, the commercial groundfish fishery will be held 100-percent accountable. For FY 2013 and beyond, at the Council's recommendation, we approved the allocation of southern windowpane to the scallop fishery and other non-groundfish fisheries fishing with bottom otter traw gear with codend mesh of 5 inches (12.7 cm) or greater. Allocating this stock to other fisheries will help ensure that each fishery is held accountable for their catch in the future, and that catch from one fishery cannot negatively impact another. For FY 2013 and beyond, any AM triggered for southern windowpane will only apply

to the fishery that caused the overage, except in the situation where the state waters sub-component caused the overage. Northern windowpane is still not allocated to any non-groundfish fishery, so the groundfish fishery would continue to be held 100-percent accountable for any overages of the northern windowpane catch limit, regardless of what fishery caused the overage.

**10. Annual Measures for FY 2014 Under Regional Administrator Authority**

The Groundfish FMP gives us authority to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This proposed rule includes a description of these management measures that are being considered for FY 2014 in order to provide an opportunity for the public to comment on whether the proposed measures are appropriate. These measures are not part of Framework 51, and were not specifically proposed by the Council, but are proposed in conjunction with Framework 51 for expediency purposes, and because they relate to the proposed catch limits in Framework 51.

Table 9 provides a summary of the default trip limits that would take effect in FY 2014 if we took no action, the current common pool trip limits for FY 2013, and the proposed trip limits that would be in effect for the start of FY 2014. Table 10 provides a summary of the proposed FY 2014 cod trip limits for vessels fishing with a Handgear A, Handgear B, or Small Vessel Category permit. Proposed trip limits for FY 2014 were developed after considering changes to the FY 2014 common pool sub-ACLs and sector rosters, trimester TACs for FY 2014, catch rates of each stock during FY 2013, and other available information.

The default cod trip limit is 300 lb (136.1 kg) per trip for Handgear A vessels. If the GOM or GB cod trip limit for vessels fishing on a groundfish DAS drops below 300 lb (136.1 kg), then the respective Handgear A cod trip limit must be adjusted to be the same. This action proposes a GOM cod trip limit of 200 lb (90.7 kg) per DAS for vessels fishing on a groundfish DAS, so the proposed Handgear A trip limit for GOM cod is reduced to 200 lb (90.7 kg) per trip, accordingly.

The regulations also require that the Handgear B vessel trip limit for GOM and GB cod be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)) to the default cod trip limits applicable to DAS vessels. The FY 2014 GOM cod trip limit proposed in this action for DAS vessels (200 lb (90.7 kg) per DAS) is 75 percent lower than the default trip limit in the regulations. As a result, the proposed Handgear B vessel trip limit for GOM cod is reduced proportionally to 25 lb (11.3 kg) per trip.

Vessels with a Small Vessel category permit can possess up to 300 lb (136.1 kg) of cod, haddock, and yellowtail, combined, per trip. For FY 2014, we are proposing that the maximum amount of cod and haddock (within the 300-lb (136.1-kg) trip limit) be adjusted proportionally to the trip limits applicable to NE multispecies DAS vessels (see Table 9).

BILLING CODE 3510–22–P

Table 9—Proposed FY 2014 Common Pool Trip Limits

| Stock | Default Trip Limit in Regulations | Current FY 2013 Trip Limit | Proposed FY 2014 Trip Limit |
|---|---|---|---|
| GB Cod | 2,000 lb (907.2 kg)/DAS, up to 20,000 lb (9,072 kg)/trip | | |
| GOM Cod | 800 lb (362.9 kg)/DAS, up to 4,000 lb (1,814.3 kg)/trip | 650 lb (294.8 kg)/DAS, up to 2,000 lb (907.2 kg)/trip | 200 lb (90.7 kg)/DAS, up to 600 lb (272.2 kg)/trip |
| GB Haddock | Unlimited | 10,000 lb (4,535.9 kg)/trip | |
| GOM Haddock | Unlimited | 0 lb/trip | |
| GB Yellowtail Flounder | Unlimited | 100 lb (45.4 kg)/trip | |
| SNE/MA Yellowtail Flounder | 250 lb (113.4 kg)/DAS, up to 1,500 (680.4 kg)/trip | 2,000 lb (907.2 kg)/DAS, up to 6,000 lb (2,721.6 kg)/trip | |
| CC/GOM Yellowtail Flounder | 250 lb (113.4 kg)/DAS, up to 1,500 lb (680.4 kg)/trip | 2,000 lb (907.2 kg)/trip | 1,000 lb (453.6 kg)/trip |
| American plaice | Unlimited | | |
| Witch Flounder | Unlimited | 500 lb (226.8 kg)/trip | |
| GB Winter Flounder | Unlimited | 1,000 lb (453.6 kg)/trip | |
| GOM Winter Flounder | Unlimited | 2,000 lb (907.2 kg)/trip | 1,000 lb (453.6 kg) per trip |
| SNE/MA Winter Flounder | Unlimited | 300 lb/trip | 1,000 lb (453.6 kg)/DAS up to 2,000 lb (907.2 kg kg)/trip |
| Redfish | Unlimited | | |
| White hake | 500 lb (226.8 kg)/DAS, up to 2,000 lb (907.2 kg)/trip | 1,000 lb (453.6 kg)/DAS, up to 3,000 lb (1,360.8 kg)/trip | 1,000 lb (453.6 kg)/trip |
| Pollock | 1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,535.9 kg)/trip | Unlimited | 10,000 lb (4,535.9 kg) per trip |
| Atlantic Halibut | 1 fish/trip | | |
| Windowpane Flounder | Possession Prohibited | | |
| Ocean Pout | | | |
| Atlantic Wolffish | | | |

Table 10—Proposed FY 2014 Cod Trips Limits for Handgear A, Handgear B, and Small Vessel Category Permits

| Permit | Default Cod Trip Limit | Proposed FY 2014 GOM Cod Trip Limit | Proposed FY 2014 GB Cod Trip Limit |
|---|---|---|---|
| Handgear A | 300 lb (136.1 kg)/trip | 200 lb (45.4 kg)/trip | 300 lb (136.1 kg)/trip |
| Handgear B | 75 lb (34.0 kg)/trip | 25 lb (11.3 kg)/trip | 75 lb (34.0 kg)/trip |
| Small Vessel Category | 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; Maximum of 75 lb (34.0 kg) of GOM cod and 0 lb of GOM haddock within the 300-lb combined trip limit | | |

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (70 FR 31323; June 1, 2005) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (or 2,250,000 lb (1,020,600 kg). This calculation accounts for the projected catch from the area outside the SAP. Based on the proposed GB yellowtail groundfish sub-ACL of 561,077 lb (254,500 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action proposes to allocate zero trips to the Closed Area II Yellowtail Flounder/

Haddock SAP for FY 2014. Vessels could still fish in this SAP in FY 2014 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels would not be allowed to fish in this SAP using flounder nets.

**11. Regulatory Corrections Under Regional Administrator Authority**

The following changes are being proposed to the regulations to correct references, inadvertent deletions, and other minor errors.

In § 648.80(g)(5)(i), this rule would correct the reference to the mesh obstruction or constriction definition.

In § 648.85(b)(6)(iv)(B), the observer call-in requirement under the B DAS program is corrected to 48 hr prior to the start of the trip, instead of 72 hr prior to the start of the trip. This change was inadvertently omitted during the Amendment 16 rulemaking.

This rule would remove § 648.87(b)(1)(i)(F) and (G). This regulatory text was added as part of NMFS's emergency rule for addressing sector carryover for FY 2013. This regulatory text was supposed to expire on April 30, 2014; however, was inadvertently left in the regulations permanently.

In § 648.87(c)(2), this rule would clarify that sector exemptions are limited to those regulations implementing the groundfish program, and not any regulation applicable to a groundfish vessel. The proposed regulatory correction more precisely reflects the intent of Amendment 16.

In § 648.90(a)(4), this rule would reinstate the regulatory text describing the ABC and ACL recommendation process, which was inadvertently deleted in a previous rulemaking.

In § 648.90(a)(5), this rule would reinstate the regulatory text describing the trigger of the scallop fishery accountability measures, which was inadvertently deleted in a previous rulemaking.

In § 697.7(c)(1)(xxii) and (c)(2)(xvii), this rule would replace the word ''traps'' with ''lobster traps.'' This proposed correction is intended to clarify that the lobster regulations do not prohibit Federal lobster permit holders from possessing, or using, non-lobster trap gear on trips fishing with a method other than traps (e.g., mobile trawl gear).

NMFS defines a lobster trap as ''any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching lobsters.'' This definition applies to all Federal lobster permit holders regardless of whether the permit holder might actually be targeting a different species with the trap (e.g., crab or fish traps). Federal lobster permit holders are prohibited from possessing, or using, lobster traps on any trip that catches lobster with non-trap gear (e.g., trawl gear). However, trap gear that is configured in such a way so that it is not capable of catching lobster is not considered ''lobster trap'' gear. As a result, Federal lobster permit holders are allowed to possess, and use, non-lobster trap gear on board their vessel even if harvesting lobster with gear other than lobster traps (e.g., trawl gear).

*Classification*

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 51, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

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

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 51 and its accompanying EA/RIR/IRFA. The IRFA describes the economic impact that this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 51, the beginning of this section (**SUPPLEMENTARY INFORMATION**) in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

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

The Small Business Administration defines a small business as one that is:

- Independently owned and operated;
- not dominant in its field of operation;
- has annual receipts that do not exceed—
  - $19.0 million in the case of commercial finfish harvesting entities (NAIC[1] 114111)
  - $5.0 million in the case of commercial shellfish harvesting entities (NAIC 114112)
  - $7.0 million in the case of for-hire fishing entities (NAIC 114119); or
- has fewer than—
  - 500 employees in the case of fish processors
  - 100 employees in the case of fish dealers.

This proposed rule impacts commercial and recreational fish harvesting entities engaged in the groundfish limited access and open access fisheries, the small-mesh multispecies and squid fisheries, and the scallop fishery. A description of the specific permits that are likely to be impacted is included below for informational purposes, followed by a discussion of the impacted businesses (ownership entities), which can include multiple vessels and/or permit types. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered to be the regulated entities.

*Limited Access Groundfish Fishery*

The limited access groundfish fishery consists of those enrolled in the sector program and those in the common pool. As of January 14, 2014 (FY 2013), there were 1,088 individual limited access permits. For purposes of this analysis, groundfish limited access eligibilities held as Confirmation of Permit History are not included because, although they may generate revenue from quota leasing, they do not generate any gross sales from fishing activity, and thus, would not be classified as commercial fishing entities.

Of the 1,088 limited access groundfish permits issued in FY 2013, 664 of these permits were enrolled in the sector program, and 424 were in the common pool. Each of these permits will be eligible to join a sector or enroll in the common pool in FY 2014. Alternatively each permit owner could also allow their permit to expire by failing to renew it. Of the 1,088 limited access groundfish permits, 767 have landings of any species and 414 have some amount of groundfish landings.

*Handgear B*

The Handgear B permit is an open access groundfish permit that can be requested at any time, with the

[1] The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

limitation that a vessel cannot have a limited access and an open access Handgear B permit concurrently. There are no qualification criteria required for this permit. The Handgear B permit is a rod-and-reel handgear permit that must adhere to specified possession limits for groundfish species with special provisions for cod. The cod possession limit for Handgear B permits is set annually to 75 lb (34 kg) per trip, and is automatically adjusted relative to the GOM cod trip limit for limited access DAS vessels enrolled in the common pool fishery. The current possession limit is 75 lb (34 kg). As of February 18, 2014 (FY 2013), there were 891 Handgear B permits, and 78 of those vessels landed groundfish.

*Charter/Party Fishery*

The charter/party permit is an open access groundfish permit that can be requested at any time, with the limitation that a vessel cannot have a limited access and an open access party/charter permit concurrently. There are no qualification criteria required for this permit. Charter/party permits are issued as an open access permit (Category I) under the Groundfish Plan, and are subject to recreational management measures. As of February 20, 2014 (FY 2013), there were 667 party/charter permits issued; 383 of which reported taking a party or charter trip. Of these active party/charter vessels, 120 caught cod or haddock in the Gulf of Maine in FY 2013.

*Limited Access Scallop Fisheries*

The limited access scallop fisheries include Limited Access (LA) scallop permits and Limited Access General Category (LGC) scallop permits. LA scallop businesses are subject to a mixture of DAS and dedicated area trip restrictions. LGC scallop businesses are able to acquire and trade LGC scallop quota, and there is an annual cap on quota/landings. The proposed action would not alter the regulations for LGC permit holders. As of February 19, 2014 (FY 2013), there were 348 active LA scallop permits with at least one dollar of revenue from sea scallops.

*Small-Mesh Fisheries*

The small-mesh exempted fishery allows vessels to harvest species in designated areas using mesh sizes smaller than the minimum mesh size required by the Groundfish Plan. To participate in the small-mesh multispecies (whiting) fishery, vessels must hold either a limited access multispecies permit or an open access multispecies permit (category K). Limited access multispecies permit holders can only target whiting when not fishing under a DAS, and while declared out of the fishery. A description of limited access multispecies permits was provided above. As of February 18, 2014 (FY 2013), there were 776 open access category K multispecies permits issued, with only 34 of them landing whiting. Many of these vessels target both whiting and longfin squid on small-mesh trips taken in the GB yellowtail flounder stock area, and therefore, most of them also have open access or limited access Squid, Mackerel, and Butterfish (SMB) permits. The GB yellowtail flounder stock area provided almost half of total whiting landings in CY 2010–2011. Since squid landings in the GB yellowtail flounder stock area comprised less than 10 percent of overall squid landings during the same time period, and since most SMB permitted vessels fishing in the GB yellowtail flounder stock area will also have a multispecies permit, SMB permits will not be handled separately in this analysis.

*Ownership Entities*

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ''ownership entities'' are defined as those entities with common owners as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit application, those seven persons would form one ''ownership entity,'' that hold those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership data set is based on calendar year 2012 permits and contains average gross sales associated with those permits for calendar years 2010 through 2012. Matching the potentially impacted FY 2013 permits described above (limited access and open access groundfish, Handgear B, charter/party, and limited access scallop) to the calendar year 2012 ownership data results in 2,064 distinct ownership entities. Of these, and based on the Small Business Administration guidelines, 2,042 are categorized as small, and 22 are categorized as large entities, all of which are shellfish businesses.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries, and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50 percent of gross sales from sales of regulated species associated with a specific fishery, we are able to identify those ownership groups most likely to be impacted by the proposed regulations.

Using this threshold, 151 entities are groundfish-dependent, all of which are small, and all of which are finfish commercial harvesting businesses. Of the 151 groundfish-dependent entities, 130 have some level of participation in the sector program, and 21 operate exclusively in the common pool fishery. There are 234 regulated entities which are scallop-dependent. All of these are shellfish businesses, and 20 are considered large. There are 35 small-mesh fishery-dependent entities; 19 of them are finfish businesses, 16 of them are shellfish businesses, and all of them are considered small. The small-mesh fishery-dependent entities may overestimate the number of impacted entities since missing statistical area information in the commercial dealer database makes it difficult to track whiting and squid landings that occurred exclusively in the GB yellowtail flounder stock area.

**Economic Impacts of the Proposed Measures and Alternatives and Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action**

The economic impacts of each proposed measure are summarized below and are discussed in more detail in sections 7.4 and 8.11 of the Framework 51 EA. The outcome of ''significant economic impact'' can be ascertained by examining two factors: Disproportionality and profitability. Disproportionality refers to whether or not the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. Profitability refers to whether or not the regulations significantly

reduce profits for a substantial number of small entities.

The proposed action has the potential to place small entities at a significant competitive disadvantage relative to large entities. This is mainly because large entities likely have more flexibility to adjust to, and accommodate, the proposed measures. Impacts on profitability from the proposed action may be significant for a substantial number of small entities as described below.

*Gulf of Maine Cod and American Plaice Rebuilding Strategies*

The preferred alternatives to change the rebuilding strategies for GOM cod and American plaice (10-year rebuilding program) are expected to positively impact profitability of small entities regulated by this action. The rebuilding strategies being considered for both species are expected to result in higher Net Present Values (NPVs) for each stock compared to if no action was taken, which would translate into larger profits. The alternatives to the preferred alternative included the No Action alternative, an 8-year rebuilding program for GOM cod, and a 7 and 8-year rebuilding program for American plaice. The 10-year rebuilding plan for GOM cod is expected to have modest gains in NPV and profitability compared to the 8-year rebuilding plan. For American plaice, there is little discernible difference between the three rebuilding strategies considered. In addition, by adopting new rebuilding strategies for GOM cod and American plaice, the proposed action will help prevent severe economic loss that could occur under highly restrictive catch limits in FY 2015 that would occur if no action was taken, especially to groundfish-dependent small entities. Party/charter fishing businesses would also experience significant economic loss under the No Action option for GOM cod, but would be unaffected by the American plaice action because there is no directed recreational fishery for this stock, and no recreational allocation of American plaice.

*Catch Limits*

The preferred alternative to modify the ACLs and sub-ACLs for white hake, eastern GB cod and haddock, and GB yellowtail flounder has the potential to impact groundfish and scallop-dependent small entities, and is discussed in the next section. Recreational harvesting entities, as well as small-mesh fishery-dependent entities, do not target these stocks, and are not expected to be directly impacted by this proposed action. Based on the proposed catch limits, gross revenues for the groundfish industry are predicted to decrease in FY 2014 by 26 percent compared to FY 2012, and by 4 percent compared to FY 2013. Net revenue is predicted to decline by 21 percent in FY 2014 compared to FY 2012, and by 12 percent compared to predicted net revenues for FY 2013. The negative impacts of the revised ACLs would be non-uniformly distributed across vessel size classes, with smaller vessels being more heavily impacted compared to large vessels. Although small entities are defined based on gross sales of ownership groups, not physical characteristics of the vessel, it is reasonable to assume that larger vessels are more likely to be owned by large entities. As a result, the proposed ACLs could put small entities at a competitive disadvantage compared to large entities.

Under the No Action alternative, no catch limits would be specified for the U.S./Canada stocks or white hake. As a result, sector vessels would be unable to fish in the respective stock areas in FY 2014. This would result in greater negative economic impacts on vessels compared to the proposed action due to lost revenues as a result of being unable to fish. If no action was taken to specify catch limits for these stocks, the Magnuson-Stevens Act requirements to achieve optimum yield and consider the needs of fishing communities would be violated.

If the scallop fishery triggers the GB yellowtail flounder accountability measures, the proposed ACLs for this stock would likely reduce scallop fishery revenues. How this reduction in revenue would compare to No Action is unclear. The No Action would not set a scallop fishery sub-ACL for GB yellowtail flounder. If no sub-ACL was set, this would not prevent the scallop fishery from fishing in FY 2014. In addition, if no sub-ACL is set, catches in FY 2014 would likely not trigger an AM, which might allow for greater scallop fishery revenues. The proposed FY 2014 GB yellowtail flounder sub-ACL could create a competitive disadvantage within the scallop fishery if an AM is triggered as a result of an overage. Small entities would have less flexibility compared to large entities to adjust to the area closures that would result from an ACL overage.

The proposed catch limits are based on the latest stock assessment information, which is considered the best scientific information available, and the applicable requirements in the Groundfish Plan and the Magnuson-Stevens Act. Because NMFS can only approve or disapprove measures recommended in Framework 51, the only other possible alternatives to the catch limits proposed in this action that would mitigate negative impacts would be higher catch limits. Alternative, higher catch limits, however, are not permissible under the law because they would not be consistent with the goals and objectives of the Groundfish Plan, or the Magnuson-Stevens Act, particularly the requirement to prevent overfishing. The Magnuson-Stevens Act, and case law, prevent implementation of measures that conflict with conservation requirements, even if it means negative impacts are not mitigated. The catch limits proposed in this action are the highest allowed given the best scientific information available, the SSC's recommendations, and requirements to end overfishing and rebuild fish stocks. The only other catch limits that would be legal would be lower than those proposed in this action, which would not mitigate the economic impacts of the proposed catch limits.

*Small-Mesh Fisheries Accountability Measures*

The preferred alternative to implement a GB yellowtail flounder accountability measure for small-mesh fisheries is expected to negatively impact small-mesh fishery-dependent small entities, and has the potential to create minor economic benefits for groundfish-dependent small entities. Under the preferred alternative, if the small-mesh fisheries sub-ACL for GB yellowtail flounder is exceeded, selective trawl gear would be required in the year immediately following the overage, or 2 years after the overage, depending on data availability. Small entities would likely experience higher costs as a result, including the fixed cost of purchasing new gear and/or modifying existing gear. These potential gear restrictions would also likely lower the catch rates of target species (e.g., squid and whiting), which would increase operating costs, and effectively lower net revenue and overall profitability. The negative impacts from the proposed action are expected to be lower than another alternative considered in Framework 51 that would have closed the entire GB yellowtail flounder stock area to small-mesh fisheries if the sub-ACL was exceeded. If the proposed accountability measure successfully reduces discards of GB yellowtail flounder, and prevents overfishing, catch rates for the species could increase for groundfish-dependent small entities, resulting in small increases in profitability.

*Economic Impacts of Other Measures*

Framework 51 also considered multiple alternatives that would modify U.S./Canada management measures to provide more flexibility for groundfish vessels. For each specific measure, no other alternatives were considered other than the No Action alternative and the proposed action.

The proposed U.S./Canada trading mechanism is not expected to have any additional economic impacts, positive or negative, relative to the No Action alternative, which would not specify any U.S./Canada trading mechanism. At this time, it is not known how the proposed action might increase or decrease quota allocated to groundfish fishermen because it is difficult to anticipate what, if any, trade would be made between the U.S. and Canada. However, if the ability to trade quota inseason were to result in increased quota for sector and/or common pool fishermen, and if that quota were to be converted into landings, then the proposed action would be beneficial to groundfish-dependent small entities.

The second proposed measure would modify the distribution of the eastern and western allocations of GB haddock and is expected to have small, but positive, impacts on groundfish-dependent small entities that participate in the sector program due to increased operational flexibility. Under the proposed action, sector vessels would be allowed to convert their eastern GB haddock allocation into western GB haddock allocation. This would likely increase flexibility for sector vessels, and prevent the western U.S./Canada Area from being closed to a sector prematurely, before the sector had harvested all of its GB haddock allocation. However, since catch of eastern and western GB haddock has been persistently lower than the respective catch limits, the benefit of the proposed action is likely very small.

The proposed action to revise the discard strata for GB yellowtail flounder is only expected to impact groundfish-dependent entities that participate in the sector program. If the discard rate decreases in area 522 as a result of the proposed action, vessels fishing in that area would be able to expend less GB yellowtail quota on each trip. This would likely allow more fishing, and would likely increase net revenues for vessels. The proposed action is expected to have the largest effect on trawl vessels, since these vessels catch the majority of the GB yellowtail flounder catch. The proposed revision to the GB yellowtail flounder discard strata could potentially result in a higher discard rate for the other areas (525, 561, and 562). This would potentially decrease net revenues to vessels fishing in those areas, because the opportunity cost of quota would likely increase.

Finally, the proposed prohibition on possession of yellowtail flounder by limited access scallop vessels is expected to impact only scallop-dependent small entities. If scallop vessels are prohibited from retaining and landing yellowtail flounder, there could be some economic loss for vessels that have been landing the species. Only a relatively small proportion (less than a quarter) of the active limited access vessels are currently landing yellowtail flounder, and the average revenue per vessel from yellowtail flounder is less than 5 percent of the average total revenue. As such, the effects of the proposed action on the profitability of scallop-dependent small entities are expected to be small.

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

The proposed action contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

This action proposes to adjust the ACE transfer request requirement implemented through Amendment 16. This rule would add a new entry field to the Annual Catch Entitlement (ACE) transfer request form to allow a sector to indicate how many pounds of eastern GB haddock ACE it intends to re-allocate to the Western U.S./Canada Area. This change is necessary to allow a sector to apply for a re-allocation of eastern GB ACE in order to increase fishing opportunities in the Western U.S./Canada Area. Currently, all sectors use the ACE transfer request form to initiate ACE transfers with other sectors via an online or paper form to the Regional Administrator. The proposed change adds a single field to this form, and would not affect the number of entities required to comply with this requirement. Therefore, the proposed change would not be expected to increase the time or cost burden associated with the ACE transfer request requirement. Public reporting burden for this requirement includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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**

*50 CFR Part 648*

Fisheries, Fishing, Recordkeeping and reporting requirements.

*50 CFR Part 697*

Fisheries, Fishing.

Dated: March 11, 2014.

**Samuel D. Rauch III,**

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

For the reasons stated in the preamble, 50 CFR parts 648 and 697 are proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 1a. In § 648.14, revise paragraph (i)(2)(iii)(D) to read as follows:

**§ 648.14. Prohibitions.**

* * * * *

(i) * * *

(2) * * *

(iii) * * *

(D) Fish for, possess, or land yellowtail flounder from a vessel on a scallop fishing trip.

* * * * *

■ 2. In § 648.60, revise paragraph (a)(5)(ii)(C) to read as follows:

**§ 648.60. Sea scallop access area program requirements.**

(a) * * *

(5) * * *

(ii) * * *

(C) *Yellowtail flounder.* Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

* * * * *

■ 3. In § 648.80, revise paragraph (g)(5)(i) to read as follows:

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

* * * * *

(g) * * *

(5) * * *

(i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully

fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(c).

* * * * *

■ 4. In § 648.85, revise paragraphs (a)(2)(ii) and (b)(6)(iv)(B) and add paragraph (a)(2)(iv) to read as follows:

**§ 648.85. Special management programs.**

(a) * * *

(2) * * *

(ii) *TAC Overages.* Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage 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.

* * * * *

(iv) *Inseason TAC Adjustments.* For FY 2014 only, the Regional Administrator, in consultation with the Council, may adjust the FY 2014 TACs for the U.S./Canada shared resources inseason consistent with any quota trade recommendations made by the TMGC and/or Steering Committee, and approved by the Regional Administrator. Any such inseason adjustment to the FY 2014 TACs may only increase the TAC available to the U.S. fishery, and may not reduce the TAC amount distributed in FY 2014 to any fishery component as specified in paragraph (a)(2)(iii) of this section. The revised FY 2014 TAC(s) shall be distributed consistent with the process specified in paragraph (a)(2)(iii) of this section. For example, if the U.S. receives additional yellowtail flounder TAC in FY 2014, and trades away a portion of its FY 2015 haddock TAC, the Regional Administrator would increase the FY 2014 U.S. TAC for yellowtail flounder inseason consistent with the process specified in this paragraph (a)(2)(iv). The adjustment to the FY 2015 U.S. TAC for haddock would be made as part of the process for establishing TACs, as described in paragraph (a)(2)(i)(C) of this section.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 48 hr prior to the beginning of any trip declared into the Regular B DAS Program as required by paragraph (b)(6)(iv)(C) of this section, and in accordance with the Regional Administrator's instructions. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity on that trip to that area only (*i.e.,* the vessel operator may change his/her plans regarding planned fishing areas).

* * * * *

■ 5. In § 648.87:

■ a. Revise paragraphs (b)(1)(i)(B), (b)(1)(v)(A), and (c)(2);

■ b. Add paragraph (e)(3)(iv); and

■ c. Remove paragraphs (b)(1)(i)(F) through (G) to read as follows:

**§ 648.87. Sector allocation.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) *Eastern GB stocks—(1) Allocation.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(*2*) *Re-allocation of haddock ACE.* A sector may re-allocate all, or a portion, of a its haddock ACE specified to the Eastern U.S./Canada Area, pursuant to paragraph (b)(1)(i)(B)(*1*) of this section, to the Western U.S./Canada Area at any time during the fishing year, and up to 2 weeks into the following fishing year (i.e., through May 14), unless otherwise instructed by NMFS, to cover any overages during the previous fishing year. Re-allocation of any ACE only becomes effective upon approval by NMFS, as specified in paragraphs (b)(1)(i)(B)(*2*)(*i*) through (*iii*) of this section. Re-allocation of haddock ACE may only be made within a sector, and not between sectors. For example, if 100 mt of a sector's GB haddock ACE is specified to the Eastern U.S./Canada Area, the sector could re-allocate up to 100 mt of that ACE to the Western U.S./Canada Area.

(*i*) *Application to re-allocate ACE.* GB haddock ACE specified to the Eastern U.S./Canada Area may be re-allocated to the Western U.S./Canada Area through written request to the Regional Administrator. This request must include the name of the sector, the amount of ACE to be re-allocated, and the fishing year in which the ACE re-allocation applies, as instructed by the Regional Administrator.

(*ii*) *Approval of request to re-allocate ACE.* NMFS shall approve or disapprove a request to re-allocate GB haddock ACE provided the sector, and its participating vessels, is in compliance with the reporting requirements specified in this part. The Regional Administrator shall inform the sector in writing, within 2 weeks of the receipt of the sector's request, whether the request to re-allocate ACE has been approved.

(*iii*) *Duration of ACE re-allocation.* GB haddock ACE that has been re-allocated to the Western U.S./Canada Area pursuant to this paragraph (b)(1)(i)(B)(*2*) is only valid for the fishing year in which the re-allocation is approved, with the exception of any requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section, unless otherwise instructed by NMFS.

* * * * *

(v) * * *

(A) *Discards*

(*1*) A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(*2*) *GB yellowtail flounder discards.* For the purpose of counting discards of GB yellowtail flounder against a sector's ACE pursuant to paragraph (b)(1)(v)(A)(*1*) of this section, GB yellowtail flounder discards shall be calculated for the following two GB areas for each gear type, unless otherwise specified in this paragraph: Statistical area 522, by itself, and statistical areas 525, 561, and 562 combined. This provision does not change the methods used to estimate discards of other groundfish stocks. If the Regional Administrator determines this finer stratification of GB yellowtail flounder discards is only appropriate for trawl gear, then the Regional Administrator may exclude other, non-trawl gears from this stratification method in a manner consistent with the Administrative Procedure Act.

* * * * *

(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 implementing the NE multispecies FMP, 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.

* * * * *

(e) * * *

(3) * * *

(iv) *Re-allocation of GB haddock ACE.* Subject to the terms and conditions of the state-operated permit bank's MOAs with NMFS, a state-operated permit bank may re-allocate all, or a portion, of its GB haddock ACE specified for the Eastern U.S./Canada Area to the Western U.S./Canada Area provided it complies with the requirements in paragraph (b)(1)(i)(B)(*2*) of this section.

* * * * *

■ 6. In § 648.90:

■ a. Revise paragraphs (a)(2)(iv) through (vii), (a)(4)(i), and (a)(4)(iii)(G); and

■ b. Add paragraphs (a)(2)(viii), (a)(5)(iv), and (a)(5)(v) to read as follows:

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

* * * * *

(a) * * *

(2) * * *

(iv) *Rebuilding plan review for GOM cod and American plaice.* Based on this review of the most current scientific information available, the PDT shall determine whether the following conditions are met for either stock: The total catch limit has not been exceeded during the rebuilding program; new scientific information indicates that the stock is below its rebuilding trajectory (i.e., rebuilding has not progressed as expected); and $F_{rebuild}$ becomes less than 75% $F_{MSY}$. If all three of these criteria are met, the PDT, and/or SSC, shall undertake a rebuilding plan review to provide new catch advice that includes the following, in priority order: Consideration of extending the rebuilding program to the maximum 10 years if a shorter time period was initially adopted; review of the biomass reference points; and calculation of $F_{rebuild}$ ACLs based on an extension of the rebuilding program to 10 years, the review of the biomass reference points, and the existing rebuilding plan.

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

(vi) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vii) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

(viii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi) of this section. If the Council fails to submit a recommendation to the

Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

* * * * *

(4) * * *

(i) * * *

(A) *ABC recommendations.* The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommend by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

* * * * *

(iii) * * *

(G) *GB yellowtail flounder catch by small mesh fisheries*—(*1*) For the purposes of this paragraph, the term ''small-mesh fisheries'' is defined as vessels fishing with bottom tending mobile gear with a codend mesh size of less than 5 in (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3).

(*2*) Small-mesh fisheries allocation. GB yellowtail flounder catch by the small-mesh fisheries, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(5) * * *

(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether the overall ACL for each stock allocated to the scallop fishery has been exceeded. When evaluating whether the overall ACL has been exceeded, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock. If catch by scallop vessels exceeds the pertinent sub-ACL specified in paragraph (a)(4)(iii)(C) of this section by 50 percent or more, or if scallop catch exceeds the scallop fishery sub-ACL and the overall ACL for that stock is also exceeded, then the applicable scallop fishery AM shall take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(*1*) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H):, A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedures Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

* * * * *

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

■ 8. In § 697.7, revise paragraphs (c)(1)(xxii) and (c)(2)(xvii) to read as follows:

### § 697.7. Prohibitions.

* * * * *

(c) * * *

(1) * * *

(xxii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any lobster trap gear, on a fishing trip in the EEZ from a vessel that fishes for, takes, catches, or harvests lobster by a method other than lobster traps.

* * * * *

(2) * * *

(xvii) Possess, deploy, fish with, haul, harvest lobster from, or carry aboard a vessel any lobster trap gear on a fishing trip in the EEZ on a vessel that fishes

for, takes, catches, or harvests lobster by a method other than lobster traps.

* * * * *

[FR Doc. 2014–05779 Filed 3–14–14; 8:45 am]

**BILLING CODE 3510–22–P**