■ b. In paragraph (n)(4), revise the first sentence following the heading and paragraph (n)(4)(v) and add paragraph (n)(4)(xiii) to read as set forth below:

§ 17.84 Special rules—vertebrates.

* * * * *

(n) * * *

(3) * * *

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Legally present—A Person is legally present when (1) on their own property, (2) not trespassing and has the landowner's permission to bring their stock animal or dog on the property, or (3) abiding by regulations governing legal presence on public lands.

* * * * *

Stock animal—A horse, mule, donkey, llama, or goat used to transport people or their possessions.

Unacceptable impact—Impact to ungulate population or herd where a State or Tribe has determined that wolves are one of the major causes of the population or herd not meeting established State or Tribal management goals.

Ungulate population or herd—An assemblage of wild ungulates living in a given area.

* * * * *

(4) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described under this paragraph (n)(4), are allowed: Opportunistic harassment; intentional harassment; take on private land; take on public land except land administered by National Parks; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; take for research purposes; and take to protect stock animals and dogs. * * *

* * * * *

(v) *Take in response to wild ungulate impacts.* If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the State or Tribes must prepare a science-based document that:

(1) Describes the basis of ungulate population or herd management objectives, what data indicate that the ungulate population or herd is below management objectives, what data indicate that wolves are a major cause of the unacceptable impact to the ungulate population or herd, why wolf removal is a warranted solution to help restore the ungulate population or herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population or herd response to wolf removal will be measured and control actions adjusted for effectiveness;

(2) Demonstrates that attempts were and are being made to address other identified major causes of ungulate herd or population declines or the State or Tribe commits to implement possible remedies or conservation measures in addition to wolf removal; and

(3) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence. The State or Tribe must:

(i) Conduct the peer review process in conformance with the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005) and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(ii) Obtain at least five independent peer reviews from individuals with relevant expertise other than staff employed by a State, Tribal, or Federal agency directly or indirectly involved with predator control or ungulate management in Idaho, Montana, or Wyoming.

(B) Before we authorize lethal removal, we must determine that an unacceptable impact to wild ungulate populations or herds has occurred. We also must determine that the proposed lethal removal is science-based, will not contribute to reducing the wolf population in the State below 20 breeding pairs and 200 wolves, and will not impede wolf recovery.

* * * * *

(xiii) *Take to protect stock animals and dogs.* Any person legally present on private or public land, except land administered by the National Park Service, may immediately take a wolf that is in the act of attacking the individual's stock animal or dog, provided that there is no evidence of intentional baiting, feeding, or deliberate attractants of wolves. The person must be able to provide evidence of stock animals or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agents must be able to confirm that the stock animals or dogs were wounded, harassed, molested, or killed by wolves. To preserve evidence that the take of a wolf was conducted according to this rule, the person must not disturb the carcass and the area surrounding it. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

* * * * *

Dated: December 27, 2007.

Kenneth Stansell,

Acting Director,

U.S. Fish and Wildlife Service.

[FR Doc. 08–334 Filed 1–24–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070627217–7523–02]

RIN 0648–AV70

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Region Standardized Bycatch Reporting Methodology Omnibus Amendment

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved management measures contained in the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment (SBRM Amendment) to the Fishery Management Plans (FMPs) of the Northeast Region, developed by the Mid-Atlantic and New England Fishery Management Councils (Councils). The SBRM Amendment establishes an SBRM for all 13 Northeast Region FMPs, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The measures include: Bycatch reporting and monitoring mechanisms; analytical techniques and allocation of at-sea fisheries observers; an SBRM performance standard; a review and reporting process; framework adjustment and annual specifications provisions; a prioritization process; and provisions for industry-funded observers and observer set-aside programs.

DATES: This final rule is effective February 27, 2008.

ADDRESSES: Copies of the SBRM Amendment, and of the Environmental Assessment (EA), with its associated Finding of No Significant Impact (FONSI), and the Regulatory Impact Review (RIR), are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790; and from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/FONSI/RIR is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, 978–281–9283.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements approved management measures contained in the Northeast Region Omnibus SBRM Amendment, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on October 22, 2007. A proposed rule for this action was published on August 21, 2007 (72 FR 46588), with public comments accepted through September 20, 2007. A subsequent publication extended this comment period through September 24, 2007 (72 FR 53751).

Section 303(a)(11) of the Magnuson-Stevens Act requires that all FMPs ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' In 2004, several conservation organizations challenged the approval of two major amendments to Northeast Region FMPs. In ruling on these suits, the U.S. District Court for the District of Columbia found that the FMPs did not clearly establish an SBRM as required under the relevant section of the Magnuson-Stevens Act and remanded the amendments back to the agency to fully develop and establish the required SBRM [See, *Oceana, Inc.*, v. *Evans*, 2005, WL 555416 (D.D.C. Mar 9, 2005)(Oceana I); and *Oceana, Inc.*, v. *Evans*, 384 F. Supp 2d 203 (D.D.C. 2005)(Oceana II)]. In particular, the Court found that the amendments (1) failed to fully evaluate reporting methodologies to assess bycatch, (2) did not mandate an SBRM, and (3) failed to respond to potentially important scientific evidence.

In response, the Councils, working closely with NMFS, undertook development of a remedy that would address all Northeast Region FMPs. In January 2006, development began on the Northeast Region Omnibus SBRM Amendment. This amendment covers 13 FMPs, 39 managed species, and 14 types of fishing gear. The purpose of the amendment is to: Explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries; determine whether these methods and processes need to be modified and/or supplemented; establish standards of precision for bycatch estimation for all Northeast Region fisheries; and, thereby, document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The amendment also responds to the ''potentially important scientific evidence'' cited by the Court in the two decisions referenced above.

The Northeast Region SBRM Amendment establishes an SBRM comprised of seven elements: (1) The methods by which data and information on discards are collected and obtained; (2) the methods by which the data obtained through the mechanisms identified in element 1 are analyzed and utilized to determine the appropriate allocation of at-sea observers; (3) a performance measure by which the effectiveness of the Northeast Region SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days; (4) a process to provide the Councils with periodic reports on discards occurring in Northeast Region fisheries and on the effectiveness of the SBRM; (5) a measure to enable the Councils to make changes to the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments; (6) a process to provide the Councils and the public with an opportunity to consider, and provide input into, the decisions regarding prioritization of at-sea observer coverage allocations; and (7) to implement consistent, cross-cutting observer service provider approval and certification procedures and to enable the Councils to implement either a requirement for industry-funded observers or an observer set-aside program through a framework adjustment rather than an FMP amendment.

Bycatch Reporting and Monitoring Mechanisms

The amendment maintains the status quo methods by which data and information on discards occurring in Northeast Region fisheries are collected and obtained. The Northeast Region SBRM will employ sampling designs developed to minimize bias to the maximum extent practicable. The Northeast Fisheries Observer Program (NEFOP) continues to serve as the primary mechanism to obtain data on discards in all Northeast Region commercial fisheries managed under one or more of the subject FMPs. All subject FMPs will continue to require vessels permitted to participate in said fisheries to carry an at-sea observer upon request, and all data obtained by the NEFOP under this SBRM will be collected according to the techniques and protocols established and detailed in the Fisheries Observer Program Manual and the Biological Sampling Manual. Data collected by the NEFOP include, but are not limited to, the following items: Vessel name; date/time sailed; date/time landed; steam time; crew size; home port; port landed; dealer name; fishing vessel trip report (FVTR) serial number; gear type(s) used; number/amount of gear; number of hauls; weather; location of each haul (beginning and ending latitude and longitude); species caught; disposition (kept/discarded); reason for discards; and weight of catch. These data are collected on all species of biological organisms caught by the fishing vessel and brought on board, including species managed under the subject FMPs, but also including species of non-managed fish, invertebrates, and marine plants. To obtain information on discards occurring in recreational fisheries subject to a Northeast Region FMP, the Northeast Region SBRM fully will incorporate, to the extent practicable and appropriate for the Region, all surveys and data collection mechanisms implemented by NMFS and affected states as a result of the agency-wide redesign of the Marine Recreational Fisheries Statistics Survey (MRFSS) Program.

Analytical Techniques and Allocation of At-sea Fisheries Observers

The amendment substantially expands and refines the status quo methods by which the data obtained through the mechanisms included above are analyzed and utilized to determine the appropriate allocation of at-sea observers to fully incorporate all managed species and all relevant fishing gear types in the Northeast Region. At-sea fisheries observers will, to the maximum extent possible and subject to available resources, be allocated and assigned to fishing vessels according to the procedures established through the amendment. All appropriate filters identified in the amendment will be applied to the results of the analysis to determine the observer coverage levels needed to achieve the objectives of the SBRM.

SBRM Performance Standard

The amendment is intended to ensure that the data collected under the Northeast Region SBRM are sufficient to produce a coefficient of variation (CV) of the discard estimate of no more than 30 percent, in order to ensure that the effectiveness of the Northeast Region SBRM can be measured, tracked, and utilized to effectively allocate the appropriate number of observer sea days. Each year, the Regional Administrator and the Science and Research Director will, subject to any external operational constraints, allocate at-sea observer coverage to the applicable fisheries of the Northeast Region sufficient to achieve a level of precision (measured as the CV) no greater than 30 percent for each applicable species and/or species group, subject to the use of the filters noted above.

SBRM Review and Reporting Process

The amendment requires an annual report on discards occurring in Northeast Region fisheries to be prepared by NMFS and provided to the Councils, and a report every 3 years that evaluates the effectiveness of the Northeast Region SBRM. Every 3 years, the Regional Administrator and the Science and Research Director will appoint appropriate staff to work with staff appointed by the Executive Directors of the Councils to obtain and review available data on discards and to prepare a report assessing the effectiveness of the Northeast Region SBRM. This report will include, at a minimum: (1) A review of the recent levels of observer coverage in each applicable fishery; (2) a review of recent observed encounters with each species in each fishery, and a summary of observed discards by weight; a review of the CV of the discard information collected for each fishery; (4) an estimate of the total discards associated with each fishery; (5) an evaluation of the effectiveness of the SBRM at meeting the performance standard for each fishery; (6) a description of the methods used to calculate the reported CVs and to determine observer coverage levels, if those methods are different from those described and evaluated in the SBRM Amendment; (7) an updated assessment of potential sources of bias in the sampling program and analyses of accuracy; and (8) an evaluation of the implications for management of the discard information collected under the SBRM, for any cases in which the evaluation performed for item 5 indicates that the performance standard is not met. Once each year, the Science and Research Director will present to the Councils a report on catch and discards occurring in Northeast Region fisheries, as reported to the NEFOP by at-sea fisheries observers. This annual discard report will include: (1) The number of observer sea days scheduled for each fishery, by area and gear type, in each quarter; (2) the percent of total trips observed, by gear type, in each quarter; (3) the distribution of sea sampling trips by gear type and statistical area in each fishery; (4) the observed catch and discards of each species, by gear type and fishery, in each quarter; and (5) the observed catch and discards of each species, by gear type and fishery, in each statistical area.

Framework Adjustment and/or Annual Specification Provisions

The amendment enables the Councils to make changes to certain elements of the SBRM through framework adjustments and/or annual specification packages rather than full FMP amendments. All subject FMPs provide for an efficient process to modify aspects of the Northeast Region SBRM, as relates to each specific FMP, should the need arise and the appropriate Council determine that a change to the SBRM is warranted and needed to address a contemporary management or scientific issue. Depending on the provisions of each FMP, changes to the SBRM may be effected either through a framework adjustment to the FMP or through annual or periodic specifications. Such changes to the SBRM may include modifications to the CV-based performance standard, the means by which discard data are collected/obtained in the fishery, reporting on discards or the SBRM, or the stratification (modes) used as the basis for SBRM-related analyses. Such changes may also include the establishment of a requirement for industry-funded observers and/or observer set-aside provisions.

Prioritization Process

The amendment establishes a process to provide the Councils and the public with an opportunity to consider, and provide input into, the decisions regarding prioritization of at-sea observer coverage allocations, if the expected resources necessary may not be available. In any year in which external operational constraints would prevent NMFS from fully implementing the required at-sea observer coverage levels, the Regional Administrator and Science and Research Director will consult with the Councils to determine the most appropriate prioritization for how the available resources should be allocated. In order to facilitate this consultation, in these years, the Regional Administrator and the Science and Research Director will provide the Councils, at the earliest practicable opportunity: (1) The at-sea observer coverage levels required to attain the SBRM performance standard in each applicable fishery; (2) the coverage levels that would be available if the resource shortfall were allocated proportionately across all applicable fisheries; (3) the coverage levels that incorporate the recommended prioritization; and (4) the rationale for the recommended prioritization. The recommended prioritization should be based on: Meeting the data needs of upcoming stock assessments; legal mandates of the agency under other applicable laws, such as the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA); meeting the data needs of upcoming fishery management actions, taking into account the status of each fishery resource; improving the quality of discard data across all fishing modes; and/or any other criteria identified by NMFS and/or the Councils. The Councils may choose to accept the proposed observer coverage allocation or to recommend revisions or additional considerations for the prioritized observer allocations ultimately adopted and implemented by the Regional Administrator and the Science and Research Director.

Industry-Funded Observers and Observer Set-Aside Program Provisions

The amendment implements consistent, cross-cutting observer service provider approval and certification procedures and enables the Councils to implement either a requirement for industry-funded observers and/or an observer set-aside program through a framework adjustment, rather than an FMP amendment.

Comments and Responses

A total of 11 individual comment letters were received on the proposed rule and the amendment.

Comment 1: A letter by representatives of a professional association for at-sea fisheries observers raised concerns regarding the provision of the SBRM Amendment that establishes observer certification and approval procedures to allow a multiple service delivery model under an industry-funded observer program. The commenters specifically focused on concerns related to the contractual relationship that would be established between the observer service provider

and the fishing vessel, rather than between the observer service provider and NMFS. The commenters refer to experience with a similar model utilized in Alaska under the North Pacific Groundfish Observer Program. The commenters cautioned that, in their opinion, such a contractual relationship may reduce the reliability of the data collected by the at-sea observers due to the potential for bias and conflict of interest. The commenters also cited concerns over quality control of the data due to the lack of direct oversight by the agency. To remedy the potential problems they identified, the commenters suggested that NMFS evaluate the performance of approved observer service providers on an annual basis, increase Federal funding for observers contracted by and paid for by NMFS, and/or utilize an independent non-profit organization (either an existing organization such as the Atlantic States Marine Fisheries Commission or an organization created specifically for this purpose) to provide an ''arms-length'' relationship between the fishing industry, NMFS, and observer service providers.

Response: NMFS acknowledges that a perceived conflict of interest could be a potential issue for some types of industry-funded observer programs. Rigorous data quality assurance and control standards, observer training and certification programs, and frequent reviews and oversight of the observer data collection programs are all means to address these concerns. NMFS acknowledges that some of the issues raised by the commenter regarding the North Pacific Groundfish Observer Program have been previously identified as potential concerns with that model, but notes that there are significant differences between the North Pacific program and the single industry-funded program that is currently in place in the Northeast Region. These differences include the observer set-aside that is an important component of the Northeast sea scallop observer program and serves to mitigate the conflict of interest concerns by providing a mechanism to offset the added cost to sea scallop fishing vessels of carrying an observer. Also, to minimize the likelihood that an observer would develop ties to a vessel owner/operator and/or feel pressure by a vessel owner/operator to misreport, the regulations prohibit observer service providers from consecutively deploying the same observer on the same vessel and from deploying an observer on the same vessel more than twice per month.

While NMFS shares some of the concerns identified by the commenters relative to the need to ensure that there is no real or perceived conflict of interest between the at-sea observers and the fishing vessels, and to ensure reliable, high quality data are collected and reported, none of these concerns are immediately applicable to this rulemaking. The regulatory changes implemented in this final rule merely establish the procedures that potential observer service providers must follow to be considered for approval, and the standards that they must meet on a continuing basis to maintain their certification to serve in the Northeast Region. However, excepting the sea scallop observer program that was formally implemented under a separate rulemaking (72 FR 32549, June 13, 2007), no other fisheries in the Northeast Region are operating under an industry-funded observer requirement that would utilize these regulations. This action makes no changes to the regulations or procedures established under Amendment 13 to the Sea Scallop FMP, other than to generalize the observer certification procedures to apply more broadly than for the sea scallop fishery alone. The intent of this action was to create a more efficient process for the Councils to develop future industry-funded programs, should the need arise in any fishery. Actual implementation of an industry-funded observer program that would enable fishing vessels to select from a list of approved observer service providers would require the appropriate Council to initiate, develop, and have approved such a program for each particular fishery.

The development of future Council fishery management actions to implement any additional industry-funded observer programs provides the appropriate opportunity to ensure that the programs fully address the data quality concerns and limitations noted by the commenters. NMFS is committed to ensuring that data collected and provided by at-sea fisheries observers are of the highest-possible quality and meet all applicable standards for reliability, precision, and accuracy. Any proposal by a Council to implement a future industry-funded observer program, such as is currently in place for the sea scallop fishery, would be reviewed to ensure it fully explains and justifies how the data to be obtained through the program meet all appropriate quality standards.

Comment 2: One member of the public endorsed the comments of the observers' professional association, voicing his concern over industry-funded observer programs as exist in Alaska under the North Pacific Groundfish Observer Program. The commenter added, however, that his concerns do not refer to the sea scallop observer program that is linked to an observer set-aside program to offset the costs to the vessels of carrying an observer. The commenter is most concerned with the perceptions of conflict of interest that can arise under situations where the observer service provider is contractually linked, and dependent on, the fishing vessels rather than NMFS.

Response: The response above to comment 1 addresses the majority of the points raised by the commenter. As noted by the commenter, observer set-aside programs, such as the Northeast sea scallop program, mitigate many of these concerns by providing a mechanism to offset the added cost to the vessel of carrying an observer. While there is no requirement to do so, NMFS fully anticipates that any program developed by a Council to implement an industry-funded observer program would be directly associated with an observer set-aside program that offsets the additional costs to the vessels. No such program is currently proposed or under development by either Council, but the SBRM Amendment provides a mechanism for the Councils to develop and propose a set-aside program that uses quota, days-at-sea, increased trip limits, or other means to compensate fishing vessels that carry observers.

Comment 3: The comments submitted by a public interest environmental organization were very similar to those of the observers' professional association. The commenters oppose changing the NEFOP to a model based on the North Pacific Groundfish Observer Program, in which the industry finances the observer program through independent contracts with observer service providers. The commenters raised concerns regarding the appearance of a conflict of interest between the fishing vessels and the observer service providers, a threat of bias in the data collection, creating an economic incentive to avoid observation, less transparency of observer data, and a lack of control on harassment of an interference with observers. The comment letter also expressed concern that the SBRM would discourage monitoring for marine mammals and other non-bycatch related monitoring.

Response: Although the commenters in this case appear to have misunderstood the intent of the SBRM Amendment, NMFS takes their concerns seriously. The response above to comment 1 addresses the majority of the concerns raised by the commenters, but NMFS points out that the commenters

claim that the SBRM Amendment effects a ''conversion'' of the NEFOP from one controlled by NMFS to an industry-funded program. This is not the case. The SBRM Amendment provides a mechanism for the Councils to develop and propose industry-funded observer programs that would serve to supplement the existing NMFS-funded observer program, but this action neither implements nor requires such a program. Currently, the Councils are free to develop and propose such a system (as was done in Amendment 13 to the Sea Scallop FMP); the SBRM Amendment allows the Councils to use the framework adjustment process to propose a similar program instead of requiring a full FMP amendment. NMFS fully anticipates that any such program would include an observer set-aside mechanism, such as exists for the sea scallop fishery. As noted above and by other commenters, such a mechanism mitigates many of the concerns raised by the commenters.

NMFS disagrees with the commenter that such a system, should one be proposed by a Council and implemented by NMFS, would result in industry ''control'' of the observer program. The regulations at 50 CFR 648.11(h) and (i) provide extensive and detailed procedures that must be followed by all observer service providers in order to obtain and maintain NMFS certification as valid service providers. These regulations specifically address the issues of potential conflicts of interest (§ 648.11(h)(6)), harassment of or interference with observers (§ 648.11(h)(5)(vii)(F)), and data transparency (§ 648.11(h)(5)(vii)(A)). Regarding the concerns raised about the availability of the ''raw'' observer data, the regulations at § 648.11(h)(5)(vii)(A) require that, in addition to providing summary data within 12 hours of landing, that the observer service providers ''provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.'' Regarding the commenters' opinion that the plan creates an economic incentive to evade observation, this claim does not take into account that observer set-aside programs in many ways may actually create an incentive to be observed, as a set-aside program would grant a vessel extra quota, trips, DAS, or increased possession limits in exchange for carrying an observer.

The commenters are also incorrect that the plan ''discourages'' marine mammal monitoring. NMFS acknowledges in the SBRM Amendment the importance of its mandate under other applicable laws, such as the MMPA and the Migratory Bird Act, but the focus of the SBRM is on those living marine resources defined as fish and bycatch under the Magnuson-Stevens Act. Only the Magnuson-Stevens Act requires an SBRM to be established, and the Magnuson-Stevens Act specifically excludes certain types of organisms, specifically marine mammals and birds, from the definitions.

The commenters are mistaken to conclude that the ''SBRM is based on a flawed model.'' The actual SBRM established as a result of this action is wholly severable from the provision that authorizes the Councils to develop and propose an industry-funded observer program through a framework adjustment rather than an amendment to an FMP. The SBRM does not implement, require, or rely upon any industry-funded observer programs that may be developed and proposed by a Council in the future.

Comment 4: An organization representing a coalition of fishing interests involved in the Atlantic herring fishery submitted comments critical of the field sampling protocols and procedures used by at-sea observers to monitor bycatch occurring in fisheries that pump their catch directly from the codend into the vessel hold. The commenters asserted that the current observer protocols for the herring fishery contain loopholes that were not addressed in the SBRM Amendment, due to the potential for unobserved catch to be released from the net without being brought on board the vessel for the observer to monitor. The commenters expressed concern regarding the lack of mandated observer coverage on at-sea processing vessels, which transfer catch from the codend of catcher vessels to the hold of the processor vessel and about how pair trawls are treated if an observer is aboard only one of the paired vessels. The commenters also expressed concern that the filtering procedures described in the SBRM Amendment would result in exclusion of certain fishing modes (such as mid-water trawls) from observer coverage due to low levels of coverage in the past (''the SBRM ensures that [the mid-water trawl] mode will be unobserved in perpetuity'').

Response: All fishing vessels permitted by NMFS to operate in the Northeast Region under one or more of the FMPs subject to the SBRM Amendment are currently obligated to carry a NMFS-certified observer on any trip for which they are requested by the Regional Administrator to do so (at § 648(a), (b), (c) , and (d)). This requirement does not change, and is, in fact, reinforced in section 1.7 of the amendment. This requirement, by definition, applies to herring at-sea processors. The commenters incorrectly claim that the SBRM excludes some fishing modes from observer coverage; in fact, according to the results of the importance filter adopted in the amendment, the coverage allocated to the New England mid-water trawl fishing mode, cited by the commenters as ''unobserved in perpetuity,'' would be 316 days, nearly twice the coverage level in 2004 and would represent 11.5 percent of trips taken in 2004. The commenters appear to misunderstand the function of the importance filters, which is to eliminate certain species (those for which the total discards in a fishing mode is a negligible proportion of either the total discards of that species across all fishing modes, or for which the total discards of that species is a negligible proportion of total fishing-related mortality of that species) from the calculation of the observer coverage allocation within a fishing mode (the allocation being no less than the highest coverage level of all species remaining after the importance filter is applied). Under no circumstances do the importance filters eliminate any fishing modes from the observer allocation process. This can be seen in Appendix C of the amendment in a table illustrating the results of applying the SBRM to the 2004 dataset. There is some level of observer coverage assigned to each of the 39 fishing modes addressed in the SBRM Amendment. In addition, the commenters asserted that the SBRM Amendment did not address the field sampling protocols to be used in collecting data by at-sea fisheries observers. This is incorrect. Section 1.7 of the SBRM Amendment stipulates that ''The NEFOP shall serve as the primary mechanism to obtain data on discards in all Northeast Region commercial fisheries managed under one or more of the subject FMPs,'' and that ''all data obtained by the NEFOP under this SBRM shall be collected according to the techniques and protocols established and detailed in the Fisheries Observer Program Manual (NEFOP 2006a) and the Biological Sampling Manual (NEFOP 2006b).'' This section of the SBRM Amendment goes on to identify the minimum data fields to be collected by Northeast Region observers. The Fisheries Observer Program Manual and the Biological Sampling Manual provide general as well as specific instructions for at-sea observers operating on mid-water trawl, purse seine, and pair trawl vessels; these instructions and sampling priorities explicitly account, to the extent

practicable, for the contingencies identified by the commenters (including pair trawls with only one vessel observed, pumped fish, loss of fish in the net, etc.).

Comment 5: A letter from an organization representing commercial fishermen from Cape Cod expressed concern with how the SBRM would perform in monitoring hard TACs (total allowable catch) and fishery sectors. The commenters acknowledged that at least some of the changes under the SBRM Amendment will improve the region's bycatch reporting, and characterized the importance filter process as ''crucial for prioritizing observer coverage.'' However, the commenters stressed three primary recommendations for improving the SBRM Amendment: (1) Ensuring that the SBRM provides a means to accurately and precisely quantify discards for all stocks across all stock areas; (2) identifying levels of monitoring coverage for sectors necessary for TAC management; and (3) providing a real-time, publicly-accessible, and transparent reporting methodology that allows for enforcement of accountability measures.

Response: The commenters imply that the SBRM Amendment should have addressed the new requirement included in the Magnuson-Stevens Reauthorization Act of 2007 (MSRA) for all FMPs to include ''Annual Catch Limits'' (ACLs) and ''Accountability Measures'' (AMs) and indicate how the SBRM would perform in the face of these new requirements. However, the MSRA does not require ACLs and AMs be developed and implemented for any fishery until at least 2010 (for fisheries experiencing overfishing) or 2011 (for all other fisheries). Also, the new MSRA provision related to ACLs and AMs, by its very definition, applies to all catch, not just bycatch, and is a requirement much broader in scope than the requirement to establish an SBRM, which remains a separate requirement under the Magnuson-Stevens Act and was not modified by the MSRA. Section 1.2 of the SBRM Amendment acknowledges the changes promulgated through the MSRA, but explains that no changes to the amendment are necessary as a result. This action remains necessary primarily to correct deficiencies identified by the Court in Amendment 13 to the Northeast Multispecies FMP and Amendment 10 to the Sea Scallop FMP in order to bring the Northeast Region FMPs into compliance with the requirement to establish an SBRM as specified as section 303(a)(11) of the Magnuson-Stevens Act. As the Councils embark on fishery management actions to bring the FMPs into compliance with the new requirements of the MSRA, changes to the SBRM established herein may be necessary to accommodate the specific attributes of the ACLs and AMs that will be developed, but such changes would address specific management needs that go beyond the mandate of section 303(a)(11) to establish an SBRM to assess the amount and type of bycatch, which is the focus of this action. Because it is impossible at this time to foresee all the particular attributes of the various ACL and AM programs that may be developed and adopted by the two Councils for all 13 FMPs, and how the SBRM may need to change to accommodate those programs, it would be premature to attempt to craft an SBRM that could accommodate all possible ACL and AM outcomes, without resulting in an SBRM so vague and generalized as to be ineffectual at meeting its current objectives.

Regarding the specific points raised by the commenter, NMFS asserts that the Northeast Region SBRM is wholly sufficient to quantify discards for all stocks across all stock areas. Data collected by at-sea fisheries observers provide sufficient information to determine the specific stocks of fish discarded, and the stock areas in which the discard event occurred. These data can be used to apportion the collected discard estimates across all stocks and stock areas. This is illustrated in Appendix F and Appendix G of the amendment, which provide example data queries and analyses based on the data collected by at-sea observers and a sample format for the information requested by the Councils to be provided in annual discard reports. In both cases, discard data are summarized by stock and statistical area, which is a finer scale even than stock area (i.e., stock areas are composed of multiple statistical areas).

The commenters also suggest that the SBRM must identify observer coverage levels for fishery sectors authorized under an FMP to provide for a specific level of certainty in future TAC management programs. The commenters appear to assume that a one-size-fits-all approach would be appropriate for all potential future instances of sector management. Sectors are unique and temporary fishery management provisions that authorize a collective of similar fishing vessels (e.g., hook vessels operating out of Cape Cod) to be granted a portion of a TAC for 1 year in exchange for abiding by the specific provisions and limitations identified in the sector management plan. Currently, there are two approved sectors operating in New England waters; both are authorized under the sector management provisions of Amendment 13 to the Northeast Multispecies FMP. As many as 19 additional multispecies sectors are under development, and the New England Council is considering adopting similar sector provisions in upcoming amendments to the other New England FMPs. The sector provisions of the Northeast Multispecies FMP require that the vessels interested in forming a sector prepare and submit annually a sector proposal that includes, among other things, ''detailed plans for the monitoring and reporting of landings and discards'' (at § 648.87(b)(2)(vi)). Under the sector provisions of the FMP, it is the responsibility of the sector proponents to propose how discards will be monitored and reported, while the Council and NMFS retain the authority to determine if the proposed plans are sufficient. Sector proposals developed by members of the fishing industry are submitted to and reviewed by the New England Council. Those approved by the Council are incorporated into framework adjustments to the Northeast Multispecies FMP and submitted to NMFS for review. At that time, NMFS considers the specific provisions of the proposed sector plan to ensure it would meet all requirements of the FMP and be consistent with the provisions of the Magnuson-Stevens Act and other applicable law. Given the variety of sector proposals currently under development, and the expectation of additional sector provisions included in the other New England FMPs, it would not be practicable to stipulate in this amendment the specific levels of observer coverage that would be necessary for each sector, as this would depend on the number of vessels participating, the area(s) to be fished, the target and likely incidental species, fishing gear(s) used, and the other reporting mechanisms required under each sector plan. This action is focused on the requirement at section 303(a)(11) of the Magnuson-Stevens Act to develop a methodology to assess the amount and type of bycatch and provides a framework for modifications to the overarching methodology to address specific future management needs. The Councils recognized the need for the SBRM Amendment to be flexible enough to adapt to such changes, noting in section 6.9.5 of the amendment that because new sector programs may be implemented through a framework adjustment, the same framework action could be used to ''modify the SBRM to

ensure sufficient data are collected'' on discards.

The commenters asserted that the SBRM must establish a ''real-time, publicly-accessible, and transparent reporting methodology.'' NMFS disagrees with the commenters on this point. The Magnuson-Stevens Act requires simply that an SBRM be established; it imposes no minimum legal requirements on whether this system provide data in real time, or the degree to which the data are publicly accessible. A ''real-time'' reporting system, as requested by the commenters, would require that data be presented in a publicly accessible medium as the discards are observed and documented by the at-sea fisheries observer. This would provide no time for the fishing trip to end, for the observer to submit the data to NMFS, and for NMFS to review, edit, and audit the data prior to publishing the data. This would severely reduce the quality of the data and, in so doing, diminish the usefulness and reliability of the discard data. Data reduction and summaries are necessary in order to prevent the release of sensitive and proprietary data that is protected under the Magnuson-Stevens Act and other Federal statutes. NMFS concludes that it is more appropriate to engage a full data quality control and assurance program, as summarized in Appendix D of the SBRM Amendment, in order to ensure the resulting data are of the highest possible quality before they are released to the public or used in management.

Comment 6: A conservation organization submitted extensive comments on the SBRM Amendment and its proposed rule, urging that NMFS not approve the amendment. The comments addressed several elements of the SBRM Amendment, and include references to the results of a technical review of the amendment conducted under contract to another conservation organization. The responses to the comments identified in the technical review are addressed separately under comment 10. All other points raised in the comment letter are addressed in this response.

The commenters, while acknowledging that the SBRM Amendment ''dramatically'' improves upon prior documents by specifying a monitoring and reporting system that could be implemented, expressed concern that the amendment fails to actually establish this system because it vests NMFS with discretion as to the allocation of observer coverage if there are external constraints (such as an insufficient budget) that prevent full implementation. The commenters suggested that the amendment could have adopted a formal decision procedure that would stipulate how observers are to be allocated if there is a budget shortfall, such as requiring that the budget allocations be cut pro rata across all fishing modes, or to rank fishing modes according to a standard of priority and fully allocating observer coverage across priority modes until funding is exhausted.

The commenters claim that the SBRM Amendment fails to mandate that data be reported in a rational manner useful for fisheries management, and that the amendment fails to establish a reporting requirement that provides information on the amount, type, and disposition of bycatch. The commenters also claim that the amendment fails to recognize the fishery management needs of the Councils and the needs of the public.

The commenters claim that the amendment fails to establish an SBRM because it provides for framework adjustment provisions to enable the Councils to develop and propose changes to the SBRM. The commenters also claim that the SBRM Amendment fails to consider the bycatch of species that are not targeted under Northeast Region FMPs, including failing to consider alternatives for including ''non-managed'' species in the SBRM.

The commenters claim that NMFS ''locked'' the public and Fishery Management Councils out of the decision-making process to develop the SBRM Amendment. The commenters also claim that the SBRM Amendment violates NEPA because an environmental impact statement (EIS) was not prepared. Regarding the environmental assessment's (EA) compliance with NEPA, the commenters raised the following concerns: The EA fails to adequately discuss the purpose, need, and scope of the amendment; the EA fails to consider a reasonable range of alternatives, including performance standards other than 30 percent, different reporting formats or frequencies, or different ways to assess accuracy; the EA fails to consider cumulative environmental impacts; and the EA fails to adequately address protected resources.

Response: NMFS disagrees with the commenters' assertion that the amendment fails to establish an SBRM because it vests NMFS with some degree of discretion in cases where external operational constraints prevent full implementation of the resulting at-sea observer allocations. The SBRM Amendment establishes an extensive and detailed methodology to utilize available observer data on discards occurring across all relevant Northeast Region fisheries, assess the degree to which those data meet the established performance standard, allocate observer coverage levels across all relevant fisheries to achieve said performance standard, and provide reports to the Fishery Management Councils on the discards that are occurring and on the effectiveness of the SBRM itself at meeting its objectives. The prioritization process is one component of the overall program that explicitly recognizes that external operational constraints (such as Congressional budget allocations) may occasionally prevent the full implementation of the SBRM. The process establishes a rigorous review and consultation process to engage the Councils and the public in determining the most appropriate approach to prioritize observer coverage on these occasions that reflects the needs and priorities of the agency and Councils at the time.

The commenters suggested that the amendment could have implemented a requirement to apportion any budget allocations pro rata across all fishing modes, or could have ranked fishing modes according to a specific standard of priority and require that observers be fully allocated to the highest priority modes in descending order until the available budget is exhausted. NMFS notes that several options such as these are described in section 6.6 of the amendment, but that the Councils recognized the importance of retaining sufficient flexibility in the SBRM to adapt to changing conditions and priorities in the fisheries. The approach suggested by the commenters would leave the Councils and NMFS with a rigid system that would require an FMP amendment to modify the priority allocation of resources. NMFS also notes that retaining some level of discretion in allocating resources is necessary for the agency to adequately meet its obligations under other laws in addition to the Magnuson-Stevens Act, such as the ESA and MMPA. Lastly, the commenters appeared to have misconstrued the instructions from the Court. Instead of requiring that the SBRM Amendment stipulate the precise areas where observers must be concentrated, the Court, in *Oceana II*, clarified that it ''only requires that the FMP establish some method for determining observer concentration instead of leaving all decisions to the Regional Administrator's discretion'' [See, *Oceana II* at p. 234 (footnote 41)]. The SBRM Amendment establishes a very specific method for determining observer allocations across all relevant fisheries, and does not leave ''all

decisions'' to the Regional Administrator. Rather, only in years in which external operational constraints prevent full implementation would NMFS have any discretion to adapt the results of the SBRM, and only then following a review and consultation with the Councils in a public forum. NMFS asserts that this approach is consistent with both the intent of the SBRM provisions of the Magnuson-Stevens Act and the guidance provided by the Court.

NMFS rejects the commenters' claim that the SBRM Amendment fails to mandate that data be reported in a rational manner useful for fisheries management, and that the amendment fails to establish a reporting requirement that provides information on the amount, type, and disposition of bycatch. Section 6.4 of the SBRM Amendment describes the alternatives considered regarding potential reporting procedures, and section 1.7 of the amendment establishes the requirements for two types of reports to be prepared at different time intervals. The amendment requires an annual report be provided to the Councils to provide the data they requested on the current status of observer coverage and discard information, along with an additional report provided every 3 years that assesses the SBRM in a more comprehensive manner. The amendment, in sections 1.7 and 6.4, identifies the specific data elements to be provided in the reports, including the amount, species, location, and gear types involved. The information to be reported, the frequency, and the format for the reports was proposed and adopted by both Councils as their preferred alternative approach to obtaining SBRM reports on a routine basis. NMFS asserts that the Councils are in the best position to determine their needs as to SBRM reports, and, as such, the SBRM Amendment clearly reflects the needs of the Councils for this information.

NMFS disagrees with the commenters that the SBRM Amendment fails to actually establish an SBRM simply because it provides a procedure for the Councils to make changes to certain provisions of the SBRM through the use of framework adjustments rather than full FMP amendments. The intent of this provision of the amendment is to facilitate an efficient and timely process for the Councils to develop and submit proposed changes to the SBRM, limited within certain constraints. Nothing in this provision diminishes or abrogates the agency's obligation to carefully review any framework adjustment proposed by a Council to ensure that the proposed changes are consistent with the Magnuson-Stevens Act, other applicable law, and do not undermine or contravene the parent FMP. The amendment clearly stipulates that intent, as at section 6.5.2, which provides that ''the intent of this [framework] provision is to provide an efficient means for the Council to change the performance standard in certain circumstances when a *higher* level of precision (i.e., reducing the CV to *less* than 30 percent) is desired for a particular fishery or management program [emphasis added].'' Providing this mechanism to modify certain elements of the SBRM is considered important because several provisions of the parent FMPs already establish framework adjustment protocols for items such as creating new special access programs (SAPs) or new fishery sectors. As these changes are developed through a framework adjustment process, changes to the SBRM may be necessary in order to ensure sufficient discard reporting in the new SAP or sector. Without the ability to effect the necessary changes to the SBRM through the framework adjustment implementing the SAP or sector, the Council would have to defer implementation of each such framework until an accompanying amendment could be developed to implement the changes to the SBRM. This delay would directly contravene the intent of the parent FMPs.

NMFS also disagrees with the commenters that the amendment failed to consider the bycatch of species that are not targeted under the Northeast Region FMPs. This issue is addressed in several sections of the amendment. First, section 1.7 of the amendment clearly stipulates that the data collected by at-sea fisheries observers ''shall be collected on all species of biological organisms caught by the fishing vessel and brought on board, including species managed under the subject FMPs but also including species on non-managed fish, invertebrates, and marine plants.'' This section of the amendment continues to stipulate, in a footnote, that a complete list of the species for which the listed data elements are to be collected can be found in Appendix A and Appendix R of the Fisheries Observer Program Manual. These lists include more than 500 distinct species and species codes that must be accounted for by observers in their catch and discard reports. This provision of the SBRM requires that information regarding the discards of all species be reported by at-sea observers and reported to NMFS. The same information collected on species managed under a subject Northeast Region FMP would also be available, at the same level of detail, on all other species. The SBRM, however, is specifically crafted around the species managed under a subject FMP, and it is these species, with the addition of threatened and endangered sea turtles, that drive the allocation of observers across the subject fishing modes. Contrary to the claim of the commenters, the Councils explicitly considered expanding this aspect of the SBRM calculations to include all non-managed species. This is described in section 6.8.1 of the amendment document and includes the Councils' rationale for not so expanding the SBRM.

NMFS rejects the claim by the commenters that the agency ''locked'' the public and Councils out of the decision-making process to develop the SBRM Amendment. The process to development the amendment included numerous and varied opportunities for the public and the Councils to fully engage and provide valued input, fulfilling the letter and spirit of NEPA. The commenters correctly pointed out that the primary analyses and technical materials were developed by a Fishery Management Action Team (FMAT) that was chaired by a NMFS staff member, but claim that this represents a ''flawed'' approach. The choice of a NMFS staff member to serve as chair of this technical group was suggested by the Councils as a way to help with staffing resource concerns shared by the Councils. However, in all respects other than the position of the group's chair, the membership of the FMAT reflected the standard operating procedures for Plan Development Teams (PDTs), as used by the New England Council, as well as FMATs as used by the Mid-Atlantic Council. The SBRM FMAT included staff from both Councils, the Northeast Fisheries Science Center, NOAA General Counsel, and the Northeast Regional Office, all with the requisite expertise and background in the subject matter.

All activities, analyses, and recommendations of the FMAT were reported to a Joint Oversight Committee composed of voting member of both Councils, and all such meetings of the SBRM Committee were held in public fora with advance notice to the public. Throughout the development of the amendment, the SBRM Committee held six public meetings ranging in location from Virginia Beach, VA, to Peabody, MA. All decisions of the Councils with regards to establishing the range of alternatives to be considered in the

amendment, selecting the preferred alternatives, approval of the draft amendment for release to the public, reviewing the results of the analyses and information provided by the FMAT, assessing the comments submitted by the public on the draft amendment and the changes proposed to address those comments were first vetted through the SBRM Committee in public meetings. In addition to the six meetings of the SBRM Committee, the Councils met publicly a total of 13 times to receive reports on the progress of the SBRM Amendment, to review the decisions and recommendations of the SBRM Committee, and to formally approve and adopt the amendment for release to the public and, later, to submit for Secretarial review. There was also a public meeting at which members of both Councils' SSCs conducted a formal peer-review of the technical components of the SBRM Amendment, and two public hearings were held to provide ample opportunity for interested members of the public to provide comments on the draft amendment.

Lastly, NMFS disagrees with the assertion by the commenters that the SBRM Amendment violates NEPA because an EIS was not prepared. Consistent with NEPA, Council for Environmental Quality (CEQ) regulations, and NOAA administrative policy, NMFS and the Councils collaborated to prepare an EA to evaluate the significance of the environmental impacts expected as a result of the actions considered in the SBRM Amendment. The results of this assessment are provided in section 8.9.2 of the amendment, which supports the finding of no significant impacts (FONSI) signed by the agency on October 16, 2007. The commenters provided no evidence, nor even any claims, that the conclusions in the FONSI are not supported by the facts presented in the EA for this finding. Contrary to the claim of the commenters, NMFS asserts that the EA considers a sufficient range of alternatives to satisfy the requirements of NEPA. As described throughout the amendment (the Executive Summary and chapters 6, 7, and 8), the alternatives considered by the Councils were structured around seven specific elements that together comprise the Northeast Region SBRM. Multiple alternatives were developed and considered for each element and, in some cases, various sub-options were also developed and considered. As noted in Appendix E of the amendment, in response to a similar comment received on the draft amendment, the available permutations of the various alternatives considered in this action exceeds 1,400 if the sub-options are not counted. Accounting for the sub-options, the number of possible outcomes exceeds 2,100 distinct sets of management alternatives. In addition to the sets of alternatives expressly analyzed in the EA, the Councils considered, but ultimately rejected from detailed analysis, an additional four distinct alternatives. These additional alternatives are described in section 6.8 of the amendment, and, contrary to the claim of the commenters, include alternatives that specifically addresses setting alternate CV levels and different intervals for the SBRM reports.

NMFS disagrees with the commenters that the EA fails to adequately discuss the purpose, need, and scope of the amendment. All of these elements are specifically identified and are fully described in chapter 1 of the amendment. The commenters assert that the EA fails to consider cumulative environmental impacts. NMFS rejects this claim, as section 7.3 of the amendment explicitly provides a discussion of the expected cumulative effects associated with the action. NMFS asserts that this treatment of cumulative effects is consistent with CEQ regulations and current NOAA policy. Regarding protected resources, several elements of sections 7.1 and 7.2 of the amendment address the potential impacts of the actions on protected resources, and NMFS considers this treatment, along with sections 8.3 and 8.8 of the amendment, to be adequate under all applicable law. Endangered sea turtles are explicitly addressed in the SBRM (see chapters 5 and 6), and are afforded a priority superior to all other fish species by ''trumping'' the second and third level importance filters (i.e., if the results of the second and third level importance filters would result in an observer allocation to a fishing mode that is less than the number of sea days calculated to adequately observe sea turtles, then the higher sea turtle allocation is applied). As noted throughout the amendment document, the Magnuson-Stevens Act specifically excludes marine mammals and birds from the definitions of fish and bycatch and, therefore, the SBRM (because it exists solely as a Magnuson-Stevens Act construct) need not expressly account for marine mammals or birds. Therefore, NMFS considers the SBRM Amendment to adequately address protected resources.

Comment 7: A comment letter written on behalf of four conservation organizations raised many of the same concerns as the conservation organization noted above. In particular, the commenters frequently referred to the results of the technical review described below. The responses to the comments identified in the technical review are addressed separately under comment 10. All other points raised in the comment letter are addressed in this response.

The commenters claim that the SBRM Amendment fails to achieve the purpose of the action or meet the related requirements of the Magnuson-Stevens Act and the prior Court orders because it fails to explain the methods and processes by which bycatch is currently monitored, fails to determine whether these methods and process should be modified and/or supplemented, and fails to document the SBRM established for all Northeast Region FMP fisheries. The commenters claim that the SBRM Amendment does not explain the methods by which data and information on discards are obtained by observers. The commenters reiterated the claim made in comment 4 that the SBRM Amendment ''conclude[s] that observer coverage is not warranted'' in the mid-water trawl fishery.

The commenters claim that the SBRM Amendment fails to specify levels of observer coverage required for each FMP, citing concern that the ''mere performance targets'' leave the actual level of observer coverage entirely up to the agency. The commenters also claim that the SBRM fails to adequately cover ''non-managed'' bycatch species.

The commenters claim that NMFS ''prevented'' the New England and Mid-Atlantic Councils and the public from meaningfully participating in the development of the SBRM Amendment. Similar to the previous commenter, the commenters claim that an EIS should have been prepared, rather than the EA, and that the document therefore does not comply with NEPA. In particular, the commenters claim that the lack of an EIS: Limited the opportunities for public participation and stymied the involvement of the Councils; failed to consider a range of alternatives; and failed to ensure that decision-makers and the public are well informed about the potential environmental impacts of the action. The commenters suggested that the amendment should have been presented in a more accessible format, claiming that the SBRM is a ''nearly incoherent document.'' The commenters claim that the FMAT formed to prepare the technical materials for the Councils was a ''failure'' and failed to engage the Councils. The commenters further claim that the SBRM Amendment was ''carefully steered around the avoidance

of the public participation requirements of NEPA,'' and that opportunities for public participation, including the two public hearings, were limited to Council meetings with short agenda items and ''little or no'' opportunity for public comment. The commenters also criticized the amount of time available to review and comment on the amendment, claiming that much of the document was not available ''in any form'' until shortly before the Councils approved the document in June 2007. The commenters concluded by criticizing the 60-day comment period on the amendment, claiming that this amount of time was insufficient.

The commenters suggested that NMFS engage independent and objective scientific expertise, along with the public, and prepare an EIS in support of a ''significantly revised'' SBRM Amendment. The commenters claim that the SBRM was never peer reviewed by independent reviewers at any stage of its development. The commenters recognized that the document was reviewed by members of the Councils' SSCs, but claim that these reviewers ''lacked the highly specialized expertise necessary to conduct a review of this nature,'' and that the reviewers cannot be considered as independent and objective because they serve as members of the Councils' SSCs.

Response: NMFS disagrees that the amendment fails to explain the methods and processes by which bycatch is currently monitored or that the amendment fails to evaluate whether these methods should be modified and/or supplemented, noting that chapter 4 addresses these specific issues. Additional information about the current bycatch data collection programs is provided in chapter 5 of the amendment and in associated reference documents that are clearly identified throughout the amendment. As noted above in response to comments on this issue, it is incorrect to conclude that the SBRM Amendment in any way suggests that observer coverage ''is not warranted'' in any fishing mode, including the New England mid-water trawl mode, which the amendment indicates would be allocated 316 observer sea days based on the 2004 observer data, a two-fold increase over the actual coverage in this fishing mode in 2004.

NMFS disagrees with the commenters' implication that the SBRM Amendment was intended to specify levels of observer coverage required for each FMP. Nothing in the Magnuson-Stevens Act, or in either relevant Court order described above, requires that an SBRM include specific observer coverage levels to be identified for each FMP. Rather, the intent of the Magnuson-Stevens Act SBRM provision, supported by the Court, was to establish procedures to determine the appropriate levels of coverage [See, *Oceana II* at p. 233 (footnote 38), where the Court states that ''*Oceana I* did not require that an FMP mandate a specific level of observer coverage'']. The amendment clearly establishes the procedures to be used to make these determinations and requires that the agency utilize these procedures (''Each year, the Regional Administrator and the Science and Research Director shall allocate sufficient at-sea observer coverage to the applicable fisheries of the Northeast Region in order to achieve a level of precision . . . no greater than 30 percent for each applicable species and/or species group'' SBRM Amendment at section 1.7).

The commenters' claim that the agency ''prevented'' the Councils from participating in a meaningful way in the development of the amendment is patently false. As described earlier in response to previous comments, the development of the SBRM Amendment was conducted under the oversight of a joint Council committee that included members from both Councils. All decisions regarding the development of the amendment were made by the Councils and were based on the recommendations of the SBRM Oversight Committee. Contrary to the claim of the commenters, the evidence clearly indicates that both Councils were fully engaged in the development of this amendment, and there were no actions taken on the part of the agency to ''prevent'' such engagement.

NMFS considers the SBRM Amendment and associated EA to comply fully with the requirements of NEPA, the CEQ regulations, and NOAA Administrative Order 216–6, and, therefore, rejects the assertion by the commenters that an EIS should have been prepared. According to the CEQ regulations, and all available guidance on the subject, an EIS need only be prepared when an EA or other related analysis identifies significant effects on the environment or if the facts available to the action agency cannot support the conclusions required in order to make a FONSI. The EA associated with the SBRM Amendment fully evaluated the expected direct, indirect, and cumulative impacts likely to result from implementation of the action. The EA, in both form and scope, followed all agency guidelines for an EA associated with an FMP amendment. As noted in response to previous comments, a full range of reasonable alternatives was considered by the Councils during the development of the amendment, and all relevant effects of the action, and its alternatives, were identified and made available to the relevant decision-makers. In response to the claim that the amendment document is ''nearly incoherent,'' NMFS notes that at no stage in the development of the amendment did anyone else raise such a comment. NMFS considers this amendment to be an organized, well-written, and approachable document that includes each element required by NEPA and all applicable laws. The inclusion in the amendment of highly technical concepts and methodologies was necessary in order to treat the statistical analyses and modeling elements inherent in the development of an SBRM in a complete and transparent manner. Great care was taken to present this information clearly, to organize the amendment in a logical manner, and to use clear prose to the extent possible.

NMFS disagrees with the claim that the FMAT process was a failure. The FMAT members included representatives from both Councils' staffs, and the FMAT reported to the Councils' SBRM Oversight Committee at each step in the process to develop the amendment. The FMAT produced a draft amendment 8 months after the first FMAT meeting, at which time it was accepted by both Councils and released for public review. Following the public comment period on the draft amendment and draft EA, the FMAT prepared revisions to several sections of the amendment and presented all revisions to the Committee less than 4 months after the end of the comment period. NMFS considers the FMAT process to be a success by all accepted standards and practices for Council actions. Regarding the claim that the development of the amendment was intended to avoid public participation, as noted above in response to the previous comment on this issue, public participation was encouraged and multiple opportunities for public participation were provided throughout the development process. Both public hearings held on the draft amendment were noticed well in advance of the hearings, both were held in public venues in conjunction with, but not during, public meetings of the New England and Mid-Atlantic Councils. Both hearings were relatively well attended (32 individuals attended the first hearing in Gloucester, MA, and 16 individuals attended the second hearing in New York, NY), and both hearings remained open until all in the audience who wished to provide comment had

done so. No time limits were placed on any commenter, and no one was precluded from speaking. As a result of the discussions of the Councils and comments from the public, several changes to the SBRM Amendment were made throughout its development, including the revisions to the importance filter process, the inclusion of multiple reporting procedures, and the incorporation of an external peer review of the underlying analyses conducted by the Councils' SSCs.

NMFS disagrees with the claim of the commenters that the document was not available ''in any form'' until shortly before the Councils approved the document in June 2007. Drafts of the amendment and EA were available prior to the Council meetings in September and October 2006 at which the draft amendment was approved for release to the public for public hearings. The public hearing draft of the amendment and EA was posted to the Internet and made available on November 1, 2006, initiating a 60-day comment period. Copies of the public hearing draft were available by mail for anyone who requested one, and copies were available at both public hearings. The public hearing draft of the amendment and EA remained available on the Internet until it was replaced by a revised draft in mid–2007. In advance of the April 2007 meeting of the SBRM Oversight Committee, errata sheets reflecting the sections of the draft amendment that had been revised to address public comments were made available on the New England Council's Internet page. Copies of these revised sections of the amendment were also made available at the April 2007 meeting. Following the April 2007 meeting of the Committee, these revised sections were integrated into the draft amendment, and a final draft of the amendment was posted to the Internet in early June.

Regarding the criticism that the 60-day comment period on the amendment (72 FR 41047) was insufficient, NMFS notes that this 60-day time period for public review of FMPs and amendments is stipulated in section 304 of the Magnuson-Stevens Act (''Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall . . . immediately publish in the **Federal Register** a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.'').

NMFS asserts that it is unnecessary to engage additional expertise, and finds no reason to disapprove and revise the SBRM Amendment. NMFS disputes the commenters' claim that the SBRM was not peer reviewed by independent reviewers, noting that both Councils solicited their respective SSCs for members with the expertise to conduct a formal peer review of the technical components of the SBRM Amendment. Four reviewers, two from each Council's SSC, with all the requisite expertise and background to conduct such a review, met in August 2006 in a public forum to assess the SBRM. The results of the peer review were made publicly available in September 2006 and were fully addressed in revisions to the initial draft of the SBRM Amendment and all comments and suggestions made by the SSC members were incorporated.

Comment 8: A comment letter by the chief scientist for a conservation organization asserted that the analyses and preferred options in the SBRM Amendment represent improvements over previous versions. The commenter stressed that the selected alternative for the importance filter is ''much better'' than the non-preferred alternative, and that it is ''appropriate'' to concentrate observer sampling effort on fishing modes that cause a high fraction of the discard mortality and a high fraction of the total fishing mortality for each harvested species. The commenter also stated that the preferred alternative precision standard (a CV of 30 percent) for bycatch estimates for each managed species and fishing mode is ''appropriate.'' In addition, the commenter concurred with one of the conclusions of the McAllister report (see below) that simulation testing should be done to evaluate the precision and potential biases of each proposed estimator.

Response: NMFS agrees with the commenter that the SBRM represents an improvement over previous versions, that the importance filter is a sound and appropriate approach to concentrate observer coverage, and that the performance standard of a 30 percent CV is appropriate for discard estimates. The response to the comment concurring with the McAllister report on simulation testing is addressed below in response to comment 10.

Comment 9: A comment letter written by attorneys representing an association of full-time, limited access scallop fishermen in New England and the Mid-Atlantic endorsed the SBRM Amendment, noting that, in their opinion, the SBRM Amendment addresses all relevant legal requirements. The commenters claim that the amendment establishes an appropriately flexible system to meet unknown future demands on the observer system. The commenters assert that the amendment appears to have achieved a reasonable and practicable balance in the scope of the SBRM and the approach taken to allocate observer coverage across the subject fishing modes. The commenters support the use of the importance filters by focusing limited resources on the areas of greatest concern to management. The commenters also support the provisions of the rule that allows the Councils to develop an observer set-aside program through a framework adjustment to the FMP, rather than a full amendment. In addition, the commenters support the establishment of standards for certifying additional observer service providers.

Response: NMFS agrees with the comments.

Comment 10: A comment letter from a conservation organization included a detailed technical review of the scientific analyses and methodology underlying the SBRM Amendment. A technical review was submitted by Dr. Murdoch McAllister of the University of British Columbia. Although the McAllister report found the importance filters to be ''scientifically sound,'' ''well-founded,'' and ''sensible from a scientific point of view'' and to be effective at reducing the amount of observer effort required without compromising the quality of data required for bycatch estimation, the McAllister report raised several issues related to the analysis conducted in support of the SBRM Amendment. The McAllister report claims to have identified a number of flaws in the estimation method chosen to be applied in the SBRM, and that the observer coverage levels that result from the application of this estimator could potentially lead to ''wastage'' of government resources because ''unnecessarily high'' or ''unacceptably low'' numbers of observer sea days could be specified by the SBRM. The McAllister report claims that the SBRM Amendment failed to adequately evaluate the statistical properties of the six alternative bycatch estimation methods considered, and raised concerns that the key assumptions of the preferred statistical method do not hold, such that the SBRM Amendment utilizes a statistical method that is inferior to others that might have been selected. The report notes that an alternative statistical method that was considered, but not selected, may have resulted in lower CVs in bycatch estimates than the other methods. The McAllister report recommends that

simulation testing of the candidate bycatch estimation methods be conducted to evaluate the potential bias and precision in the methods prior to selecting one for implementation.

The McAllister report also raises concern regarding the degree to which evidence of bias in the observer data is acknowledged in the analyses supporting the SBRM Amendment, suggesting that there is evidence of bias in the data where none was reported. This concern is extended to include the use of the FVTR as a source of kept biomass, which may have more bias than described in the amendment. The report concludes with the claim that the SBRM is ''unlikely'' to provide reliable discard estimates or prescriptions for observer coverage, noting that this is ''largely due'' to the issues previously raised regarding the ratio bycatch estimator that was selected.

In spite of the concerns raised, the McAllister report concedes that ''the observer data on bycatch appear to be the best available data on bycatch by species and fishing fleet type.'' Dr. McAllister notes that ''no other data exist with the extent of coverage of bycatch species, landed species, and fishing mode,'' and that there is a relatively small proportion of the various potential combinations of species and fishing mode for which observer coverage is too low to permit estimation of bycatch. The report acknowledges that there are sufficient data in the ''vast majority'' of fishing mode and species combinations to enable computation of a bycatch value and a standard error for the estimate, and that ''no other type of data collected comes close to providing the high level of coverage offered by the existing observer dataset.'' The McAllister report also acknowledges that the high proportion of the estimates of bycatch presented in the SBRM with CVs of 30 percent or less indicate that the ''existing observer database has potential to provide bycatch estimates with the desired level of precision.''

In addition to the concerns described above, the McAllister report also raises a concern regarding the selection of a 30 percent CV of the discard estimate as an appropriate performance standard for the SBRM, noting that in commonly applied stock assessment models, the desired CV of the catch estimate would be 10 percent or less, not 30 percent.

Response: Dr. Murdoch McAllister makes a number of important comments on the SBRM Amendment. His thorough review on behalf of Lenfest Ocean Program highlights a number of important issues for discard estimation and suggests some useful approaches for improving the estimators currently employed. NMFS considered his comments, but, despite the issues raised by Dr. McAllister, contends the SBRM is consistent with all legal and statutory requirements, and is based upon the best available science. The SBRM incorporates not only the sampling design but also the infrastructure to collect auxiliary data, the methods of estimation and the properties of the estimators, and approaches to improve the allocation of observer coverage to the diverse fishing fleets of the Northeast Region. The SBRM is fully consistent with the limitations of the data necessary to support estimation of discards across a wide range of species and fisheries.

Improvements can always be made to statistical models and techniques to derive bycatch estimates. By reviewing observer coverage annually and instituting optimal allocation procedures, the SBRM is designed to continuously improve the underlying data. Ultimately, the utility of any statistical model depends more on the quality of the data than the sophistication of the model. Nonetheless, the SBRM is designed to collect data that will support many different types of statistical estimators. In order to achieve this goal, the information in the observed samples must be sufficient for inference about the unobserved fraction of the fishery. The basis for the program rests on the quality of the discard data collected at sea by fisheries observers and the ability to extrapolate estimates of total discards from the observed fraction of the fleets to the unobserved fractions. Any estimator of total discards requires that the observed rate of discards in a sample can be expanded to a total. An estimator based on discards per trip requires an estimate of total trips; an estimator based on discards per day absent requires an estimate of total days absent. Estimators that compute discard rates as a function of some set of environmental conditions or vessel attributes must have the ability to apply those same characteristics for the unobserved set.

The remarks of Dr. McAllister appear to indicate some confusion regarding the estimators that are applied for the purpose of initializing the SBRM and those which will be used in stock assessments. NMFS acknowledges that these estimators do not necessarily have to be the same. In fact, one would expect that improved discard estimates can be derived after the data are collected because more information about the fishing trip, and the nature of the discards, is available. Possible refinements to the data and the resulting discard estimates include various post-stratification approaches, incorporation of other auxiliary variables, and intensive investigation of regulatory effects (e.g., size limits, trip limits, overall quotas, closed area effects, permit restrictions etc.). The ability to implement these changes is governed ultimately by the quality of the statistical sampling design. On that point, the SBRM is on firm ground: while the McAllister report provides a number of instances where further research efforts can be directed, it does not alter our conclusion that the SBRM is a scientifically-sound process for implementing a continuously improving process of bycatch estimation.

The SBRM addresses discarding issues for the entire range of fishing activities in the Northeast. This synoptic approach requires careful attention to the limitations and availability of data to estimate discards and provides a representative methodology to apply consistently across all Northeast Region fisheries. The inclusion of all species and all fisheries precluded a detailed case-by-case treatment of the best estimators in favor of a standardized approach to provide reasonable results across the full range of Northeast Region fisheries. The SBRM incorporates objective approaches to reduce the estimation problem to a subset of cells that are biologically important.

Dr. McAllister did not comment on the procedures for collecting data on trips or the observer training program. As this was not in his terms of reference, it is assumed that neither the Lenfest Ocean Program nor Dr. McAllister had any serious concerns about observer training or quality assurance procedures. The ability to extrapolate from the observed fishing trips to the unobserved fraction rests in part on the overall sampling design. On this topic, Dr. McAllister states ''In my view the sampling program proposed for obtaining bycatch estimates has a few issues regarding accuracy but largely appears to be the best available sampling program for bycatch estimation.''

It is noted that, in spite of the concerns raised, the McAllister report concedes that ''the observer data on bycatch appear to be the best available data on bycatch by species and fishing fleet type.'' The author notes that ''no other data exist with the extent of coverage of bycatch species, landed species, and fishing mode,'' and that there is a relatively small proportion of the various potential combinations of species and fishing mode for which observer coverage is too low to permit estimation of bycatch. His report

acknowledges that there are sufficient data in the ''vast majority'' of fishing mode and species combinations to enable computation of a bycatch value and a standard error for the estimate, and that ''no other type of data collected comes close to providing the high level of coverage offered by the existing observer dataset.'' The McAllister report also acknowledges that the high proportion of the estimates of bycatch presented in the SBRM with CVs of 30 percent or less indicate that the ''existing observer database has potential to provide bycatch estimates with the desired level of precision.''

Dr. McAllister criticizes the selection of the ratio estimator as the appropriate model for estimation. NMFS acknowledges that the ratio estimator is not uniformly supported across all 2,700 cells (45 fleets and 60 species groups). In some instances, the trip-based estimator (average discards per trip multiplied by total trips) may in fact have greater precision. In effect, all of the discard estimation methods considered in the SBRM are stratified ratio estimators. The simple expansion method preferred by Dr. McAllister uses total trips as a measure of effort. Implicitly, this means that the stratification variables used in the SBRM are sufficient to define strata with a low degree of within-stratum variability and high degree of between stratum variability. The incorporation of ''days absent'' as a measure of fishing effort recognizes that residual variation in trip length may be important for characterizing bycatch; however, the measure of days absent does not account for variations in transit time to fishing grounds or search activities (i.e., there could be significant differences in actual fishing time true effort if transit time is accounted for). The use of total landings addresses this weakness and provides at least one performance-based measure of fishing effort, wherein variation in fishing power can be addressed. Because catch is the product of effort and abundance, total landings per trip can be viewed conceptually as a surrogate for effective fishing effort, if average abundance within a year does not change too greatly.

The SBRM proposes the use of a stratified ratio estimator as a general measure of the total bycatch by species. The estimator incorporates two complementary components to improve the precision of the estimates. Stratification by ''fleets'' reduces the variability within non-overlapping sets. For some species, it would be possible to develop more refined stratifications, particularly after the sample has been collected. Some fleets are strongly associated with a particular species, such as the scallop dredge fleet and the hydraulic dredge fleet for clams. However, for most fleets, the target species is not identifiable in advance. Some vessels will change net types during a cruise to shift among species groups (e.g., gadoids vs. flatfish).

Contrary to the comments of Dr. McAllister, the estimators used in the SBRM are consistent with the many peer-reviewed published studies of discard estimation. For example, Pikitch et al. (1998)[1] estimated total bycatch for Pacific halibut as the product of a bycatch ratio of discard per hour fished (stratified by fleet, season, and depth) and total hours fished. Total hours fished were assumed to have negligible error because, in the words of the authors, ''the states of Oregon, Washington, and California collect logbooks for the majority of fishing trips (70–90 percent in Oregon, nearly 100 percent in Washington, and about 80 percent in California).'' In their paper, the authors concluded that logbook records, which McAllister claims are ''notoriously inaccurate,'' were sufficient to estimate hours fished even when they are known to be incomplete.

Stratoudakis et al. (1999)[2] recognized the bias in small sample ratio estimators and recommended an alternative method based on collapsed stratification. The authors examined a wide range of ratio estimators, similar to the procedures used in the SBRM. They recommended the use of a ''partially collapsed estimator'' that used total gadoid landings or total demersal species landings as the auxiliary variable in the ratio estimator. They recommended pooling across strata to estimate the discard ratio. In the SBRM, the discard ratio for the ''combined'' estimator was in fact a ''partially collapsed estimator'' over quarters. Their comparisons of ratio estimators with the stratified sample mean estimator suggested improved performance for most but not all species. They concluded the partially collapsed ratio estimator, with gadoid or total landings as the auxiliary variable, offers a sensible method for estimating total species discards within Scottish waters. Another advantage cited by these investigators was the decreased reliance on ad hoc decisions that arise when single species discard/kept ratios are employed.

In a comprehensive evaluation of discarding in the multispecies and multi-country fisheries of the Northwest Atlantic, Watson et al. (2000)[3] also estimated total discards by species using the ratio of discard to total kept. Previous studies of discarding have also relied extensively on discard to kept ratios, and have typically required pooling of information across fisheries. Clarke et al. (2002)[4] used a discard to kept ratio to estimate discards of a squalid shark off the northern coast of Ireland. They noted that this ratio ''enabled the estimation of the total weight discarded by raising the overall discard rate to the reported landings of the target species.'' Harrington et al. (2005)[5] and Zeller and Pauly (2005)[6] also reported a number of discard estimates based on discard to kept ratios.

Allain et al. (2003)[7] considered two methods for estimating the total weights of fish discarded by the French grenadier fleet. Extrapolations of total landings using effort based ratios, as suggested by McAllister, resulted in differences between observed and predicted between -67 and +52 percent per quarter. They noted that real effort is difficult to estimate owing to different fractions of time actually spent on fishing grounds. Instead, they favored a target species (grenadier) approach as the denominator of a discard to kept ratio because ''it was the target species of the fishery, it was the only species both landed and discarded, and it was the most common species in the catches of deepwater commercial trawlers.'' Borges et al. (2005)[8] also analyzed discards at the trip level and considered four ratio estimators. The authors

[1] Pikitch, E.K., J.R. Wallace, E.A. Babcock, D.L. Erickson, M. Saelens, and G. Oddsson. 1998. Pacific halibut bycatch in the Washington, Oregon, and California groundfish and shrimp trawl fisheries. North American Journal of Fisheries Management, 18:569-586.

[2] Stratoudakis, Y., R.J. Fryer, R.M. Cook, and G.J. Pierce. 1999. Fish discarded from Scottish demersal vessels: Estimators of total discards and annual estimates for targeted gadoids. ICES Journal of Marine Science, 56:592-605.

[3] Watson, R., S. Guennete, P. Fanning, and T.J. Pitcher. 2000. The basis for change: Part 1, Reconstructing fisheries catch and effort data. P. 23-39 in D. Pauly and T.D Pitcher (eds) Methods for Assessing the Impacts of Fisheries on Marine Ecosystems in the North Atlantic. Fisheries Centre Res. Rep. 8(2), 195 pp.

[4] Clarke, M.W., P.L. Connolly, and J.J. Braken. 2005. Catch, discarding, age estimation, growth, and maturity of the squalid shark, Deania calceus, west and north of Ireland. Fisheries Research, 55:25-35.

[5] Harrington, J.M., R.A. Myers, and A.A. Rosenberg. 2005. Wasted fishery resources: Discarded bycatch in the USA. Fish and Fisheries, 6:350-361.

[6] Zeller, D. And D. Pauly. 2005. Good new, bad news: Global fisheries discards are declining, but so are total catches. Fish and Fisheries, 6:156-150.

[7] Allain, V., A. Biseau, and B. Kergoat. 2003. Preliminary estimates of French deepwater fishery discards in the Northeast Atlantic Ocean. Fisheries Research, 60:185-192.

[8] Borges L., E. Rogan, and R. Officer. 2005. Discarding by the demersal fishery in the waters around Ireland. Fisheries Research, 76:1-13.

concluded that expansions based on total trips or total landings were most appropriate. Their studies suggested that no single approach may be appropriate for all fishery strata and that the performance of the discard to total kept estimator was sometimes inferior to a simple discard per trip estimator.

The Food and Agricultural Organization of the United Nations has sponsored two of the most comprehensive estimates of worldwide discards. The first, by Alverson et al. (1994),[9] estimated total discards by using ratios of discards to kept of the same species. The second major paper, by Kelleher (2005)[10], updated the Alverson et al. review using total landings in the fleet as the primary raising factor. The SBRM uses an approach similar to Kelleher. The focus is on fisheries rather than target species. Kelleher argues that the relationship between landings and discard of a species is influenced by many different factors and does not constitute an a priori basis for estimation of total discards.

Many attempts in the literature to model bycatch have been based on regression trees and Generalized Additive Models that partition the data into multiple categories (see Stratoudakis et al. 1999[11], Allen et al. 2002[12], Borges et al. 2005[13]). These partitions have been based on post hoc analyses of single species and have been valuable approaches for improving the utility of discard estimates. However, it is not clear how such approaches could be easily applied in the context of multivariate responses. The partitioning of fleets into sectors based on properties observable before the trip is taken is a major attribute of the current NEFOP sampling program (e.g., Cotter et al. 2002[14], Allen et al. 2002). The ability to post-stratify the trips into improved strata after the trip is taken is a responsibility of the individual assessment analyst. The SBRM allows for this process by ensuring that whatever assessment methodology is used, one must consider the total scope of potential discards across all fleets.

NMFS acknowledges that all measures of accuracy based on observations are incomplete, since the ''truth'' (or its approximation) is unknown. However, the multiple lines of evidence used in the SBRM suggest that potential biases in the NEFOP observer data do not negate the utility of all estimates. Several of the data validation issues highlighted by Dr. McAllister were examined as part of a recent Groundfish Assessment Review Meeting (GARM) held in the fall of 2007. This particular meeting of the GARM dealt with the catch, survey, and environmental data that will be used to assess 19 Northeast groundfish stocks in 2008. The review panel, including its chair, included eight independent, external scientists with relevant experience.

In addition to the methods described in the SBRM, another validation approach was presented at the GARM that included a comparison of total landings by species estimated from the observed fraction of the fleet with the actual landings enumerated in the VTR data. In other words, an estimate of the average landings of a single species per total landings in the observer data was multiplied by the total landings of all species in each fleet. If the observer data are a representative sample, the confidence interval for estimated total landings should encompass the true value. Liggens et al. (1997)[15] used a similar approach for estimating observer bias by comparing average catch rates and length frequencies between observed and unobserved vessels. The results of this exercise supported the conclusions presented in the SBRM Amendment, and confirm that the method and underlying data provide sound estimates of discards. For many species and species groups, the estimated landings based on NEFOP data compared favorably to the VTR landings, with the 95 percent confidence interval of the estimated landings encompassing the VTR landings.

The GARM considered this evidence and concluded that the combined ratio method was validated by comparing estimated landings using expanded kept portion of the catch in the observer data to the actual report landing. The estimated landings appear to be in line with the reported total landings. Using kept weight of all species in the denominator of the combined ratio ensures that all the catch data are used in estimating discards. The GARM review panel also concluded that the SBRM documents a number of estimators of discarding and validation of the combined ratio method was provided using the 2005 observer data set by a follow-up analysis. VTR data were used as a surrogate for Dealer data to expand the NEFOP discard ratios to total discards. In most cases (95 percent), there was good correspondence between VTR and Dealer landings, adding confidence to the use of these data, although there were patterns in the data for some species (e.g., surfclam/quahog, hakes) that require further exploration. The GARM concluded that, overall, the technique was synoptic, reasonably well validated, and exhibited little evidence of bias.

Contrary to Dr. McAllister's comments, simulation tests of alternative estimators have been conducted for several species. These results were reviewed as part of the GARM described above. NMFS has also conducted studies to estimate total landings from the observed sample data and have found good agreement for the methods used in the SBRM. Scientists at the Northeast Fisheries Science Center conducted a simulation study of the behavior of six different estimators of total discards, including the combined ratio (discard to kept) and the sample mean estimator (discard to trip) as described in the SBRM Amendment. Results supported the use of the discard to total kept ratio and the simple expansion method. The independent GARM reviewers considered this additional analysis and concluded that the analysis provided a comprehensive simulation study to test the overall performance of a number of discard estimation techniques with respect to bias and precision. Two methods were clearly superior to the other four techniques: The SBRM's combined ratio estimator (ratio of sums) and the direct estimator, based on mean discard per trip scaled up to all trips in the simulation datasets. The latter had been advocated by McAllister for the estimation of discards, and would be the preferred approach if there is no

[9] Alverson, D.L., M.H. Freeberg, S.A. Murawski, and J.G. Pope. 1994. A global assessment of fisheries bycatch and discards. FAO Fisheries Technical Paper No. 339, 235 pp.

[10] Kelleher, K. 2005. Discards in the world's marine fisheries: An update. FAO Fisheries Technical Paper No. 470, 134 pp.

[11] Stratoudakis, Y., R.J. Fryer, R.M. Cook, and G.J. Pierce. 1999. Fish discarded from Scottish demersal vessels: Estimators of total discards and annual estimates for targeted gadoids. ICES Journal of Marine Science, 56:592-605.

[12] Allen, M., D. Kilpatrick, M. Armstrong, R. Briggs, G. Course, and N. Perez. 2002. Multistage cluster sampling design and optimal sample sizes for estimation of fish discards from commercial trawlers. Fisheries Research, 55:11-24.

[13] Borges, L., A.F. Zuur, E. Rogan, and R. Officer. 2005. Choosing the best sampling unit and auxiliary variable for discard estimations. Fisheries Research, 75:29-39.

[14] Cotter, A.J.R., G. Course, S.T. Buckland, and C. Garrod. 2002. A PPS sample survey of English fishing vessels to estimate discarding and retention of North Sea cod, haddock, and whiting. Fisheries Research, 55:25-35.

[15] Liggens, G.W., M.J. Bradley, and S.J. Kennelly. 1997. Detection of bias in observer-based estimates of retained and discarded catches from a multi-species trawl fishery. Fisheries Research, 32:133-147.

correlation between the numerator and denominator of the estimate (i.e., there is no correlation between discard weight and kept weight). However, the GARM reviewers concluded that McAllister's preferred method only provides unbiased estimates of total discards if the total number of trips is known, which is often not the case in the New England fisheries. Total landings estimates are considered more reliable than those of the total number of trips, and so the GARM reviewers concluded that the SBRM's combined ratio estimator of mean discard based on observed trips has the advantage that it can be combined with known landings data to estimate total discards. They considered this to be a pragmatic solution to data deficiencies, and noted that the SBRM appears to provide estimates with similar precision as the direct estimator. The bias in the combined ratio estimator depends on the sample size (number of observed trips) and was negligible for the data being assessed in the simulation study.

Regarding the assertion that a CV of 30 percent is an insufficient precision standard for the SBRM, the commenter identifies, as a suggested alternative, a CV of 10 percent for catch estimates used in stock assessments. However, NMFS points out that estimates of bycatch, which are the focus of this action, are but one aspect of overall catch, which includes all commercial and recreational landings as well as discards. As illustrated in Appendix C to the SBRM Amendment, for most species, discards represent a very small proportion of total catch. Therefore, the CV of the landings estimates contributes much more significantly to the CV of the overall catch than does the CV of the discard estimate. Also, as explained earlier, the data generated through the SBRM are utilized in different ways in individual stock assessments, and that post-stratification techniques available at the individual stock assessment level provide an opportunity to refine estimates as Dr. McAllister suggests. While NMFS agrees that higher precision is always a laudable goal, it notes that the Councils' SSC reviewers, as well as another independent scientist commenting on the SBRM Amendment (see comment 8), all concluded that the proposed standard of a CV of 30 percent is appropriate for its stated purpose.

In sum, NMFS has carefully considered the comments and suggestions made by Dr. McAllister, in some cases conducting additional analyses which have been subjected to an additional level of independent external peer review through the GARM, and found that none of the comments undermine NMFS's findings regarding the adequacy of the Northeast Region SBRM.

Comment 11: One member of the public expressed concern over whether the agency may be unduly swayed in the actions it takes due to political interference. The commenter suggested that all fishing quotas be cut by 50 percent, but no evidence or analysis was provided to support such a reduction.

Response: This comment letter did not address the specific provisions of the SBRM Amendment or its proposed rule, and the comments have no bearing on the agency's decision relative to this action.

Classification

The Administrator, Northeast Region, NMFS, determined that the Northeast Region SBRM Omnibus Amendment is necessary for the conservation and management of Northeast Region fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

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

Dated: January 22, 2008

Samuel D. Rauch III

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.11, paragraphs (h) and (i) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) *Observer service provider approval and responsibilities*—(1) *General.* An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on the NMFS/NEFOP website at *http://www.nefsc.noaa.gov/femad/fsb/*.

(2) *Existing observer service providers.* Observer service providers that currently deploy certified observers in the Northeast must submit an application containing the information specified in paragraph (h)(3) of this section, excluding any information specified in paragraph (h)(3) of this section that has already been submitted to NMFS.

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services

provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified, observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with less than eight individuals will be delayed until further requests make up the full training class size. Requests for training classes must be made 30 days in advance of the requested date and must have a complete roster of trainees at that time.

(x) An Emergency Action Plan (EAP) describing its response to an ''at sea'' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation.* (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) *Responsibilities of observer service providers.* (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing, unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain a minimum of eight appropriately trained NEFOP certified observers in order to remain approved; should a service provider cadre drop below eight, the provider must submit the appropriate number of candidates for the next available training class. Failure to do so shall be cause for suspension of their approved status until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a fishing vessel or to attend an appropriate NMFS/NEFOP Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a

statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports*—(A) *Observer deployment reports.* The observer service provider must report to NMFS when, where, to whom, and to what fishery an observer has been deployed, within 24 hours of their departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5 pm, Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to NMFS within 24 hours of the event or within 24 hours of learning of the event.

(viii) *Refusal to deploy an observer.* (A) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at§ 600.746.

(C) The observer service provider may refuse to deploy an observer on a fishing vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously

and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: *http://www.st.nmfs.gov/st4/nop/*.

(2) *Observer training.* In order to be deployed on any fishing vessel, a candidate observer must have passed an appropriate NMFS/NEFOP Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

■ 3. Add § 648.18 to subpart A to read as follows:

§ 648.18 Standardized bycatch reporting methodology.

NMFS shall comply with the Standardized Bycatch Reporting Methodology (SBRM) provisions established in the following fishery management plans: Atlantic Bluefish; Atlantic Herring; Atlantic Salmon; Deep-Sea Red Crab; Mackerel, Squid, and Butterfish; Monkfish; Northeast Multispecies; Northeast Skate Complex; Sea Scallop; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; Surfclam and Ocean Quahog; and Tilefish.

■ 4. In § 648.21, paragraph (c)(13) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(c) * * *

(13) Changes, as appropriate, to the Northeast Region SBRM, including the coefficient of variation (CV) based performance standard, fishery stratification, and/or reports.

* * * * *

■ 5. In § 648.24, paragraph (a)(1) is revised to read as follows:

§ 648.24 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of EFH (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

* * * * *

■ 6. In § 648.55, paragraph (e)(32) is revised and paragraph (e)(33) is added to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(e) * * *

(32) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs.

(33) Any other management measures currently included in the FMP.

* * * * *

■ 7. In § 648.77, paragraph (a)(1) is revised to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at

least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, suspension or adjustment of the surfclam minimum size limit, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

* * * * *

■ 8. In § 648.90, paragraphs (a)(2)(i), (a)(2)(iii), (b)(1)(ii), and (c)(1)(i) are revised to read as follows:

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

* * * * *

(a) * * *

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives, including changes to the Northeast Region SBRM. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

* * * * *

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

* * * * *

(b) * * *

(1) * * *

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and any other management measures currently included in the FMP.

* * * * *

(c) * * *

(1) * * *

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts,

must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

* * * * *

■ 9. In § 648.96, the section heading, paragraphs (a), (b)(5), and (c)(1)(i) are revised to read as follows:

§ 648.96 Monkfish annual adjustment process and framework specifications.

(a) *General.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year in accordance with paragraph (b)(1) of this section, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(b) * * *

(5) *Annual review process.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop options for the upcoming fishing year, as needed, and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, the Northeast Region SBRM (including the CV-based performance standard, fishery stratification, and/or reports), or other measures necessary to achieve the Monkfish FMP's goals and objectives. The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

* * * * *

(c) * * *

(1) * * *

(i) Based on their annual review, the MFMC may develop and recommend, in addition to the target TACs and management measures established under paragraph (b) of this section, other options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: Closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and other frameworkable measures included in §§ 648.55 and 648.90.

* * * * *

■ 10. In § 648.100, paragraph (a) is revised and paragraph (b)(12) is added to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Review.* The Summer Flounder Monitoring Committee shall review each year the following data, subject to availability, unless a TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the annual allowable levels of fishing and other restrictions necessary to achieve, with at least a 50–percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (Fmax): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) * * *

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

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■ 11. In § 648.108, paragraph (a)(1) is revised to read as follows:

§ 648.108 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate

justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs), any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

* * * * *

■ 12. In § 648.120, paragraph (a) is revised and paragraph (b)(13) is added to read as follows:

§ 648.120 Catch quotas and other restrictions.

(a) *Review.* The Scup Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas: Commercial, recreational, and research data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; discards; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit (F_{max}).

(b) * * *

(13) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

* * * * *

■ 13. In § 648.140, paragraph (a) is revised and paragraph (b)(12) is added to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) *Review.* The Black Sea Bass Monitoring Committee shall review each year the following data, subject to availability, unless a TAL already has been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas, to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 23 percent (based on Fmax) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) * * *

(12) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

* * * * *

■ 14. In § 648.160, paragraph (a) is revised and paragraph (b)(9) is added to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. In determining the TAL and other restrictions necessary to achieve the specified F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) * * *

(9) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports.

* * * * *

■ 15. In § 648.165, paragraph (a)(1) is revised to read as follows:

§ 648.165 Framework specifications.

(a) * * *

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports and/or industry-funded observers or observer set-aside programs), and any

other management measures currently included in the FMP.

* * * * *

■ 16. In § 648.200, paragraph (b) introductory text is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

* * * * *

■ 17. In § 648.206, paragraphs (b)(28) and (b)(29) are revised and paragraph (b)(30) is added to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(28) TAC set-aside amounts, provisions, adjustments;

(29) Changes, as appropriate, to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and

(30) Any other measure currently included in the FMP.

* * * * *

■ 18. In § 648.230, paragraphs (a), (b)(4), and (b)(5) are revised and paragraph (b)(6) is added to read as follows:

§ 648.230 Catch quotas and other restrictions.

(a) *Process for setting specifications.* The Spiny Dogfish Monitoring Committee will review the following data at least every 5 years, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure that a target fishing mortality rate specified in the Spiny Dogfish Fishery Management Plan will not be exceeded in each year for which TAL and any other measures are recommended: Commercial and recreational catch data; discards; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) * * *

(4) Trip limits;

(5) Changes to the Northeast Region SBRM, including the CV-based performance standard, fishery stratification, and/or reports; or

(6) Other gear restrictions.

* * * * *

■ 19. In § 648.237, paragraph (a)(1) is revised to read as follows:

§ 648.237 Framework provisions.

(a) * * *

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside program; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

* * * * *

■ 20. In § 648.260, paragraph (b) introductory text is revised to read as follows:

§ 648.260 Specifications.

* * * * *

(b) *Development of specifications.* In developing the management measures and specifications, the PDT shall review at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

* * * * *

■ 21. In § 648.293, paragraphs (a)(1)(xiv) and (xv) are revised and paragraph (a)(1)(xvi) is added to read as follows:

§ 648.293 Framework specifications.

(a) * * *

(1) * * *

(xiv) Habitat areas of particular concern,

(xv) Set-aside quotas for scientific research, and

(xvi) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs.

* * * * *

■ 22. In § 648.321, paragraphs (b)(19) and (b)(20) are revised and paragraph (b)(21) is added to read as follows:

§ 648.321 Framework adjustment process.

* * * * *

(b) * * *

(19) OY and/or MSY specifications;

(20) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs; and

(21) Any other measures contained in the FMP.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070227048–7091–02]

RIN 0648–XF04

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Prohibition on the Possession of Yellowtail Flounder in the U.S./Canada Management Area

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

ACTION: Temporary rule; possession prohibition.

SUMMARY: NMFS announces that 100 percent of the Georges Bank (GB) yellowtail flounder Total Allowable Catch (TAC) has been harvested, and that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is prohibiting the harvest, possession, and landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area, and maintaining the Eastern U.S./Canada Area closure to limited access NE multispecies days-at-sea (DAS) vessels for the remainder of the 2007 fishing year (through April 30, 2008). This action is being taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), is required by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP), and is intended to prevent over-harvest of the TAC for GB yellowtail flounder during the 2007 fishing year.

DATES: Effective 0001 hours local time January 24, 2008, through April 30, 2008.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at § 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid Federal limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2007 fishing year is 900 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limit in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation . The regulations at § 648.85(a)(3)(iv)(C)(*3*) require the Regional Administrator to prohibit the harvesting, possession, and the landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area and close the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year when 100 percent of the GB yellowtail flounder TAC is projected to be caught.

Based upon the reduced 2007 TAC for GB yellowtail flounder (a 43–percent reduction from 2006), the GB yellowtail flounder trip limit was initially set at 3,000 lb (1,361 kg) per trip to prevent over-harvest during the 2007 fishing year, and to prevent a premature closure of the Eastern U.S./Canada Area, which could result in reduced opportunities to fish for GB cod and GB haddock in the Eastern U.S./Canada Area. On November 27, 2007, the GB yellowtail flounder trip limit was increased to 7,500 lb (3,402 kg) because the 3,000–lb trip (1,361–kg) limit was projected to result in under-harvest of the TAC. The 7,500–lb (3,402–kg) trip limit resulted in an unpredicted high rate of GB yellowtail flounder landings, markedly different from the historical fishing patterns that formed the basis of the projection. On January 10, 2008, the GB yellowtail flounder trip limit was decreased to 1,500 lb (680 kg) from 7,500 lb (3,402 kg) because the rapid catch rate observed since implementing the 7,500–lb (3,402–kg) GB yellowtail flounder trip limit (33 percent of the TAC was caught between December 6, 2007, and January 3, 2008) was projected to result in the TAC being achieved on January 23, 2008.

Based on Vessel Monitoring System data and other available information, as of January 17, 2008, 100 percent of the GB yellowtail flounder TAC has been caught. Based on this information, the Regional Administrator, in accordance with the regulations at § 648.85(a)(3)(iv)(C)(*3*), is prohibiting the harvesting, possession, and the landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area, and closes the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year effective 0001 hours local time January 24, 2008, through April 30, 2008.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. This action prohibits the harvest, possession, and landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area and closes the Eastern U.S./Canada Area to limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year (through April 30, 2008). This action is being taken to prevent the GB yellowtail flounder TAC from being exceeded during the 2007 fishing year. This action is required by the regulations at 50 CFR 648.85(a)(3)(iv)(C)(*3*) and is non-discretionary. Since 100 percent of the GB yellowtail flounder TAC is projected to have been harvested as of January 17, 2008, there is insufficient time to allow for public notice, comment, and delayed effectiveness before the TAC will be exceeded.

It was not possible to take this action earlier to provide more time for public comment because of the rapidly increasing GB yellowtail flounder harvest rate, the reduced GB yellowtail flounder TAC, and the ability of NMFS to monitor the harvest (the estimate that 100 percent of the GB yellowtail flounder TAC had been harvested was not available until January 17, 2008). Exceeding the 2007 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13 to the FMP, resulting in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the U.S./Canada Management Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

The potential of prohibiting the harvest, possession, and landing of GB yellowtail flounder by all federally