

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 100818375-0379-02]

RIN 0648-XX84

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule To Implement Addenda to 17 Fishing Year (FY) 2010 Sector Operations Plans and Contracts

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes to add certain exemptions from Federal fishing regulations to some or all Northeast (NE) multispecies sector operations plans that were previously approved by the final sector rule published April 9, 2010. That rule approved FY 2010 sector operations plans and contracts and allocations of Annual Catch Entitlements (ACE) for 17 sectors in the NE multispecies fishery. In addition to several universal exemptions approved in the final rule for Amendment 16 the NE Multispecies Fisheries Management Plan (FMP), the final sector rule also approved several additional exemptions from NE multispecies regulations for those sectors that requested them through their respective sector operations plans. The sectors requested several exemptions in the FY 2010 operations plans that NMFS subsequently disapproved for various reasons, including that they were not allowed as exemptions under Amendment 16, or that they were being addressed in the Amendment 16 proposed rule. Among these was a request to participate in the Gulf of Maine (GOM) Haddock Sink Gillnet Pilot Program, a program proposed in Amendment 16 that would have allowed the seasonal use of 6-inch (15.24-cm) mesh gillnets in the GOM Regulated Mesh Area (RMA) to target haddock. The GOM Sink Gillnet Pilot Program was subsequently disapproved by NMFS in Amendment 16. NMFS has undertaken this action to consider an exemption functionally equivalent to the GOM Haddock Sink Gillnet Pilot Program for all FY 2010 sectors. NMFS is also considering granting an exemption that would allow the discarding of unmarketable fish at sea.

DATES: Written comments must be received on or before September 17, 2010.

ADDRESSES: You may submit comments, identified by 0648-XX84, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* (978) 281-9135, Attn: Melissa Vasquez.
- *Mail:* Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Sector Exemption Rule."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of requests for addenda to the FY 2010 sector operations plans and contracts, and the supplemental environmental assessment (EA), are available from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EA, the preamble, and the Classification sections of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Policy Analyst, phone (978) 281-9166, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: This action proposes to implement addenda to FY 2010 NE multispecies sector operations plans and contracts that would add certain exemptions from Federal fishing regulations for FY 2010 sectors. The Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that the addenda to the 17 approved FY 2010 sector operations plans and contracts are consistent with the goals of the FMP as described in Amendment 16, and

other applicable laws, and are in compliance with the regulations that govern NE multispecies sector allocation management as specified in 50 CFR 648.87.

Background

A final rule published April 9, 2010 (75 FR 18113), approved FY 2010 sector operations plans and contracts and allocations of ACE for 17 NE multispecies sectors. The Amendment 16 regulations governing the development of sector operations plans and contracts allow for a sector to request exemptions from Federal fishing regulations through the sector operations plan and contract submitted to NMFS for approval on an annual or bi-annual basis (§ 648.87(b)(2)(xv)). Pursuant to § 648.87(c)(2), the Regional Administrator may exempt vessels participating in a sector from certain Federal fishing regulations, in addition to the Amendment 16 universal exemptions already approved for all sectors. Regulations prohibit sectors from requesting exemptions that involve NE multispecies year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including days-at-sea (DAS) reporting requirements or Special Access Program (SAP)-specific reporting requirements). For FY 2010, the final rule implementing FY 2010 sectors approved several new exemptions from NE multispecies regulations for those sectors that requested them through their sector operations plans. Specifically, certain sectors received exemptions from the following measures: (1) 120-day blockout of the fishery required for Day gillnet vessels; (2) 20-day spawning blockout of the fishery required for all vessels; (3) limitation on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limitation on the number of gillnets that may be hauled on Georges Bank (GB) when fishing under a groundfish monkfish DAS; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions.

The sectors also requested several exemptions in the FY 2010 operations plans that NMFS subsequently disapproved, because they are prohibited from being requested or because similar exemption requests

were being addressed in the Amendment 16 proposed rule. Among these was a request by the Sustainable Harvest Sector to participate in the GOM Haddock Sink Gillnet Pilot Program, a program proposed in Amendment 16 that would have allowed the seasonal use of 6-inch (15.24-cm) mesh gillnets in the GOM RMA (as opposed to the current 6.5-inch (16.51-cm) mesh requirement) for the purposes of targeting GOM haddock.

Upon initial review of the FY 2010 sector operations plans and contracts, NMFS requested that sectors remove exemption requests that repeated measures already proposed under Amendment 16, including the GOM Haddock Sink Gillnet Pilot Program. The Pilot Program was subsequently disapproved by NMFS in Amendment 16 because of concern that it could increase catch of overfished stocks, such as cod, and therefore undermine the rebuilding programs for these stocks.

In comments on the proposed FY 2010 sector rule, the Sustainable Harvest Sector, the New England Fishery Management Council (Council), and 14 other commenters asked what actions NMFS was considering for exemption requests such as the pilot program that were removed from sector operations plans to reduce duplication with Amendment 16, but which were subsequently disapproved. NMFS responded in a March 23, 2010, letter to the Council that it would work with sector managers regarding reconsideration of the pilot program for sectors in a separate rulemaking. At that time, NMFS noted it would also consider granting approved sector exemption requests to all FY 2010 sectors, if appropriate, through additional rulemaking. As a result, in April 2010, NMFS solicited requests from the approved FY 2010 sectors to

determine if they would be interested in an exemption that would be functionally equivalent to the GOM Haddock Sink Gillnet Pilot Program, as well as any additional exemptions approved in the final sector rule which their sector had not previously requested. In response, all 17 sectors submitted requests for addenda to their operations plans and contracts to incorporate additional exemptions. Therefore, 17 addenda to the approved FY 2010 sector operations plans and contracts, and the additional exemptions requested therein, are being proposed for implementation in this proposed rule.

Among the exemptions being proposed is a partial exemption from the requirement to retain and land all legal-sized fish of the 14 stocks allocated to sectors. Recently, NMFS has received correspondence from members of industry and sector managers expressing concerns with the prohibition on discarding legal-sized fish of allocated stocks by sector vessels, specifically legal-sized unmarketable fish. Regulations at § 648.87 (b)(1)(v)(A) specifically prohibit sector vessels from discarding legal-sized regulated species allocated to sectors. This requirement applies to all fish or pieces of fish above the minimum size, including fish that may be considered unmarketable, as well as carcasses. Sector members and managers have stated that the need to separate the unmarketable fish from the food-grade product within limited deck and storage space has created operational difficulties and potential safety hazards at sea. Although this problem was raised to the Council during the development of Amendment 16, no exceptions to this requirement were considered or recommended.

To address this concern, this action proposes a partial exemption in each

sector operations plan from the prohibition on discarding of legal-sized unmarketable fish of allocated stocks, provided that the legal-sized unmarketable fish are accounted for in the discard rate, as determined through observer coverage, similar to how other allowable discards are accounted for. For the purposes of this exemption, unmarketable fish is defined as any legal-sized fish the vessel owner/captain elects not to retain, because of condition or marketability problems.

Proposed Exemptions

The final rule approving FY 2010 sector operations plans and contracts granted additional exemptions only to the sectors that originally requested those exemptions. NMFS is proposing expanding these previously approved sector-specific exemptions to those additional sectors that have requested them through addenda to their FY 2010 sector operations plans and contracts. Of the 17 sectors that requested additional exemptions, 13 sectors requested all of the approved FY 2010 sector exemptions which they had not previously requested, 2 sectors requested 3 additional exemptions, 1 sector requested 2 additional exemptions, and 1 sector requested only one additional exemption (Table 1). One sector also requested 4 new exemptions that had not been previously approved for FY 2010 sectors. Those new exemptions are not being proposed in this action, because it was determined that adding these exemptions to the list of alternatives could result in implementation delays that would reduce the efficacy of this action for FY 2010 sectors. However, sectors will be able to propose these and other new exemptions in their operations plans for FY 2011.

	NEFS-II	NEFS-III	NEFS-IV *	NEFS-V	NEFS-VI	NEFS-VII	NEFS-VIII	NEFS-IX	NEFS-X	NEFS-XI	NEFS-XII	NEFS-XIII	GB Cod Fixed Gear	Sustainable Harvest	Port Clyde	Tri-State	Northeast Coastal Communities
Exemption																	
GOM Sink Gillnet																	
Discarding																	
120-day gillnet block			Black														
20-day spawning block																Black	
Gillnet limit																	
Community fixed gear			Black														
50-net limit with DAS																	
Limit on # of hooks																	
DAS leasing size and HP restrictions																Black	
Grey = New Exemption Request Black = Previously Requested and Approved Exemption White = Not requested NEFS = Northeast Fishery Sector * NEFS-IV is a lease only sector and their ACE is fished under the operations plans of other sectors																	

Table 1. Exemptions Granted to and Requested by FY 2010 Sectors

The following are the previously approved exemptions expanded to additional sectors, as well as new exemptions proposed in this rule:

1. GOM Haddock Sink Gillnet Exemption (Newly Proposed for Sectors)

This exemption is functionally equivalent to a pilot program that was proposed by the Council in Amendment 16 to allow vessels to potentially catch more haddock seasonally in the GOM. The regulations currently require a minimum mesh size of 6.5-in (16.51-cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)). Minimum mesh size requirements have been used, along with other management measures, to reduce overall mortality on groundfish stocks, as well as to reduce discarding and improve survival of sub-legal groundfish. This exemption would allow FY 2010 sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2011

to April 30, 2011, when fishing for haddock. The designation of this season is consistent with the original pilot program proposal and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets during this period. The GOM Haddock Sink Gillnet Program, as proposed by the Council, included the provision that Day gillnet vessels would not be able to fish with, possess, haul, or deploy more than 30 nets per trip. Consistent with the original scope of the pilot program, NMFS is proposing that Day gillnet vessels utilizing this exemption also be limited to 30 nets per trip during this period. However, to maximize the flexibility for sector vessels fishing under this exemption, as well as the general utility of this exemption, NMFS is requesting public comment on a net limit between 30 and 150 stand-up nets for Day gillnet vessels utilizing the GOM

Sink Gillnet Exemption. NMFS has analyzed the impacts of Day gillnet vessels using up to 150 nets, the most expansive number, in the supplemental EA prepared for this action. Day gillnet vessels participating in sectors granted the exemption from Day gillnet net limits, are exempt from the general net limit in the GOM RMA, and would be able to fish up to 150 nets in the GOM RMA when not participating in this program. The Letter of Authorization (LOA) issued to the sector vessels that qualify for this exemption will specify the net restrictions to help ensure the provision is enforceable. There would be no limit on the number of nets that participating Trip gillnet vessels would be able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

This exemption would provide sector vessels the opportunity to potentially catch more haddock in the GOM, a fully rebuilt stock. Recent gillnet selectivity studies, explained in the Amendment 16 Final Environmental Impact Statement (FEIS), indicate that 6.5-inch (16.51 cm) sink gillnets retain few haddock and that 6-inch (15.24 cm) mesh gillnets might improve the ability for gillnets to better target haddock. However, the Amendment 16 FEIS also noted that gillnets are effective at catching cod and pollock and that, if the catch rates of these species were to be maintained or increased under the pilot program, mortality on these stocks could increase. NMFS disapproved the GOM Haddock Sink Gillnet Pilot Program in the final rule implementing Amendment 16 because of its potential to increase catch and fishing mortality of GOM cod and pollock, two stocks that, at the time, both required reductions in mortality under established rebuilding programs, without substantially increasing the catch of haddock. Recently, new scientific information has indicated that pollock is not overfished, overfishing is not occurring, and the stock is rebuilt. NMFS believes that impacts to allocated target stocks, like GOM cod, resulting from this exemption would be expected to be negligible, because fishing mortality by sector vessels is restricted by an ACE for allocated stocks, which caps overall mortality. This exemption may increase revenues for sectors fishing with gillnet gear, by allowing a greater catch of haddock to be retained, thus increasing efficiency and revenue in the fishery.

A comment by the Conservation Law Foundation on the Amendment 16 proposed rule expressed concern that the original GOM Haddock Sink Gillnet Pilot Program could impact Atlantic wolffish, which migrate through the proposed program area. The 2008 report of the Northeast Data Poor Stocks Working Group Meeting noted only a weak indication of seasonal migration by wolffish in the GOM as they move from shallow to deep water in autumn and then deep to shallow water in spring. It may be that smaller mesh gillnets would increase or decrease catch of wolffish during January through April; however, there is little information at this time that would support either conclusion. Furthermore, bycatch of wolffish and other non-allocated stocks when fishing under this exemption would be tied to effort on allocated stocks, which would be limited overall by the sector's ACE. NMFS will monitor the level of bycatch

of groundfish to determine whether it is a problem under this exemption.

It is possible that a higher net limit for Day gillnet vessels participating in this program could result in an increase in the number of gillnets in the water at one time and therefore potentially increase interactions with protected species. However, if additional nets result in greater efficiency, then it is also possible that an increase in nets could decrease the overall number of soak hours throughout the year, thus potentially reducing interactions with protected species. Sector vessels utilizing this exemption would still be required to comply with all requirements of the Harbor Porpoise Take Reduction Plan and Atlantic Large Whale Take Reduction Plan. The GOM Haddock Sink Gillnet exemption has been requested by Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, the GB Cod Fixed Gear Sector and the Tri-State Sector.

2. Discarding Exemption

The regulations prohibit sector vessels from discarding any of the 14 legal-sized regulated species allocated to sectors (§ 648.87(b)(1)(v)(A)). Amendment 16 implemented this provision to ensure that the sector's ACE is accurately monitored. Members of industry have requested a partial exemption from this requirement with respect to unmarketable fish, because of concerns that retaining and landing large amounts of unmarketable fish and carcasses is creating operational difficulties and unsafe working conditions for sector vessels at sea. Available data from the Northeast Fishery Observer Program (NEFOP) for sector trips monitored during the first three months of FY 2010 indicate that sector vessels may land as much as 1,000 lb (453.59 kg) of damaged fish and carcasses on a given trip. To comply with this requirement, sector vessels have had to store this unmarketable fish on the vessel, in some cases in totes on deck, creating unsafe work conditions. Anecdotal information suggests that fish dealers typically dispose of unmarketable fish for sector vessels as a courtesy. However, there is currently little data available to indicate the scope of this occurrence among dealers, and any other methods of disposal used by sector vessels.

The Regional Administrator is proposing a partial exemption from the requirement to retain all legal-sized fish for FY 2010 sectors that would allow sector vessels to discard these fish under the condition that legal-sized unmarketable allocated fish are

accounted for in the overall sector-specific discard rates in the same way discards of undersized fish are currently accounted for, through observer or at-sea monitoring coverage. This exemption would enhance operational flexibility and safer working conditions to sector vessels. In addition, this exemption would relieve the burden on sector vessels and their dealers from having to dispose of the unmarketable fish upon landing. The determination of what fish should be discarded under this exemption would be at the discretion of the vessel operator. There would be an incentive for vessel operators to retain and market as much of their catch of allocated stocks as possible to maximize the value of the sector's ACE, because discarded fish would still count against the sector's ACE without any financial benefit. Thus, it is unlikely that this exemption would lead to more discards, but would provide that flexibility to sector vessels. This exemption would be expected to result in negligible impacts to allocated species and non-allocated species and bycatch, because discarded fish are already deceased. Impacts to protected resources and the physical environment would also be expected to be negligible, because overall effort by sectors is limited by an ACE. Implementation of this exemption for all sectors may increase safety at sea, and may increase the expected profit margins of fishermen by eliminating any costs associated with disposal of the unmarketable fish, thereby resulting in a low positive impact on sector participants and ports. This exemption is proposed for 16 sectors: Sustainable Harvest Sector, the Tri-State Sector, the GB Cod Fixed Gear Sector, the Port Clyde Community Groundfish Sector, the Northeast Coastal Communities Sector, and Northeast Fishery Sectors II and III, and V–XIII.

3. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels

The 120-day block requirement out of the fishery for Day gillnet vessels was implemented in 1997 under Framework 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, given that gillnets continue to fish as long as they are in the water. Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1

and September 30. An exemption to this requirement was previously approved for the following six sectors in the final rule approving FY 2010 sector operations plans and contracts: Northeast Fishery Sectors (NEFS) III and XI, the GB Bank Cod Fixed Gear Sector, the Sustainable Harvest Sector, the Tri-State Sector, and the Port Clyde Community Groundfish Sector. This action proposes that eight additional sectors would be exempted from this Day gillnet requirement through an operations plan addendum: Northeast Fishery Sectors II, V–VIII, X and XII, and the Tri-State Sector. This exemption was previously approved for the FY 2010 sectors that originally requested this based upon the rationale that this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. Under this proposed rule, this exemption for all sectors would increase the operational flexibility of sector vessels and would be expected to increase profit margins of sector fishermen. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively.

4. 20-Day Spawning Block

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. This regulation was developed to reduce fishing effort on spawning groundfish stocks and was previously approved for FY 2010 sectors based upon the rationale that the sector's ACE will restrict fishing mortality, making this measure no longer necessary as an effort control. Exemption from this requirement would provide vessel owners with greater flexibility to plan operations according to fishing and market conditions. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. This exemption was previously approved for the Sustainable Harvest Sector, the Tri-State Sector, and the Northeast Coastal Communities Sector. An additional 13 sectors would receive this exemption through this action: Northeast Fishery Sectors II and III, and V–XIII, the GB Cod Fixed Gear Sector, and the Port Clyde Community Groundfish Sector.

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

Current gear restrictions in the groundfish RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be groundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). This exemption, as previously approved for the Sustainable Harvest Sector in the final sector rule for FY 2010, allows sector vessels to fish up to 150 nets (any combination of flatfish or groundfish nets) in each of the RMAs, and would provide greater operational flexibility to sector vessels in deploying gillnet gear. This exemption was previously approved because it is designed to control fishing effort and is no longer necessary for sector vessels, since each sector is restricted by an ACE for each stock, which caps overall fishing mortality. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. Since publication of the final sector rule for FY 2010, this exemption has been requested by 12 additional sectors: The Port Clyde Community Groundfish Sector, the Tri-State Sector, the GB Cod Fixed Gear Sector, the Northeast Fishery Sectors II and III, V–VIII, and X–XII.

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

Northeast Fishery Sectors III and XI received an exemption for FY 2010 from current regulations that prohibit one vessel from hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84) in order to share fixed gear among sector vessels. This exemption was originally approved to allow sector vessels to reduce costs by pooling gillnet gear, and because it was determined that the regulations pertaining to hauling and setting responsibilities are no longer necessary when sectors are confined to an ACE for each stock. Consistent with the exemption as originally approved, the sectors requesting this exemption have proposed that all vessels utilizing community fixed gear be jointly liable for any violations associated with that gear. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. This exemption is proposed for an 11 additional sectors: The Northeast Fishery Sectors II, V–VIII, X and XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector,

the GB Cod Fixed Gear Sector and the Tri-State Sector.

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

The GB Cod Fixed Gear Sector received an exemption for FY 2010 from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv) prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB. This exemption was previously approved, because it would allow nets deployed under existing net limits of the Monkfish FMP to be hauled more efficiently by vessels dually permitted under both FMPs. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. This exemption is proposed for an additional 12 sectors for FY 2010: Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, and the Tri-State Sector.

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

The GB Cod Fixed Gear Sector was granted an exemption for FY 2010 from the number of hooks that a vessel may fish on a given fishing trip. Current regulations (§ 648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the Southern New England (SNE) RMA, or 4,500 rigged hooks in the MA RMA. This exemption was approved in the final sector rule for FY 2010 because it would allow sector vessels to more efficiently harvest ACE and is no longer a necessary control on effort by sector vessels. For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. This exemption has been granted to the GB Cod Hook Sector every year since 2004. This action proposes that an additional 13 sectors would be exempted from this requirement: the Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, the Tri-State Sector, and the Northeast Coastal Communities Sector.

9. Length and Horsepower Restrictions on DAS Leasing

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

The Sustainable Harvest Sector and Tri-State Sector received an exemption from the DAS Leasing Program length and horsepower baseline restrictions on DAS leases between vessels within their individual sectors as well with vessels in other sectors with this exemption. Restricting sectors to their ACEs eliminates the need to use vessel characteristics to control fishing effort. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. Approving this exemption for additional sectors could increase the profitability of sector participants by expanding the pool of eligible lessors and lessees for any given vessel. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and redirection of effort in their FY 2010 operations plans. In addition, any potential redirection in effort would be restricted by the sector's ACE for each stock, as well as effort controls in other fisheries (e.g., trip limits and DAS). For additional information on this exemption, please refer to the proposed and final sector rule (74 FR 68015 and 75 FR 18113), respectively. This proposed action would exempt the Northeast Fishery Sectors II–XIII, the GB Cod Fixed Gear Sector, and the Port Clyde Community Groundfish Sector from the requirements.

Supplemental Environmental Assessment

In accordance with the National Environmental Policy Act, one supplemental EA was prepared for the 17 operations plan addenda. The supplemental EA is tiered from the Environmental Impact Statement (EIS) for Amendment 16 and the 17 sector EAs prepared for the 17 sector operations plans and contracts approved for FY 2010. The supplemental EA for this action examines the biological, economic, and social impacts associated

with the GOM Haddock Sink Gillnet Exemption. It also provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of all proposed exemptions if approved for all the FY 2010 sectors. For the purpose of this analysis, the supplemental EA assumes that all 17 sectors have requested and are proposed to be approved for all additional exemptions, because an individual sector approved for a given exemption could have access to unlimited allocation through ACE trading. The summary finding of the supplemental EA concludes that, operating under the proposed exemptions, the sectors would produce similar effects that have non-significant impacts. An analysis of aggregate sector impacts was also conducted. Visit <http://www.regulations.gov> to view the supplemental EA prepared for the 17 sector operations plan addenda that this rule would implement.

Classification

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

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

An initial regulatory flexibility analysis (IRFA), consisting of this section, the preamble of this proposed rule, and the supplemental EA prepared for this action, was prepared as required by § 603 of the Regulatory Flexibility Act (RFA). This IRFA describes the economic impact that the proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the supplemental EA prepared for this action. A summary of the analysis follows.

Economic Impacts of the Proposed Action on Regulated Small Entities Enrolled in a Sector

This proposed action would affect regulated entities engaged in commercial fishing for groundfish that are enrolled in any one of the 17 sectors that are operating in FY 2010. Anyone with a valid limited access Federal permit under the NE Multispecies FMP

is eligible to join a sector. The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is \$4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million annually. Since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of April 30, 2010, a total of 762 of the 1,477 eligible permits are enrolled in sectors for FY 2010.

The EIS for Amendment 16 compares economic impacts of sector measures with non-sector measures, and analyzes costs and benefits of the universal exemptions. The proposed rule proposing approval of the FY 2010 sector operations plans and contracts (74 FR 68015, December 22, 2009) discussed the economic impacts of the additional exemptions requested by sectors. This proposed rule and the accompanying supplemental EA discuss the economic impacts of approving the GOM Sink Gillnet Exemption and the partial exemption from the prohibition on discarding, as well as expanding the additional exemptions approved for FY 2010 sectors. The exemptions considered in this proposed rule would provide additional economic flexibility to vessels already participating in NE multispecies sectors during FY 2010. All exemptions requested by the sectors are intended to provide positive social and economic effects to sector members and ports.

The GOM Haddock Sink Gillnet Exemption is being requested by Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, the GB Cod Fixed Gear Sector, and the Tri-State Sector, which represent 616 permits. The exemption would allow the use of 6-inch (15.24 cm) mesh gillnets in the GOM RMA from January 1, 2011–April 30, 2011. This exemption would provide participating sector vessels an opportunity to potentially retain more GOM haddock, a healthy stock, and share in the benefits from the stock recovery. To utilize this exemption, it would be necessary for participating sector vessels to purchase 6-inch (15.24 cm) mesh gillnets. However, it would allow a greater catch of haddock, which may increase revenues for gillnet fishermen and the ports where they land their fish, particularly if participating

vessels are able to change fishing behavior to selectively target this stock and minimize catch of other allocated target stocks.

The Sustainable Harvest Sector, the Tri-State Sector, the GB Cod Fixed Gear Sector, the Port Clyde Community Groundfish Sector, the Northeast Coastal Communities Sector, and Northeast Fishery Sectors II and III, and V–XIII, representing 716 permits, are requesting exemption from the regulations that currently prohibit sector vessels from discarding any legal-sized regulated species allocated to sectors. Sector vessels have had to retain legal-sized unmarketable fish, which requires them to store this fish on the vessel while at sea, in some cases in large quantities in totes on deck, creating unsafe work conditions. In addition, sector vessels have had to determine a method of disposal of any unmarketable fish landed. Anecdotal information indicates that some fish dealers dispose of unmarketable fish for sector vessels as a courtesy; however, the scope of this occurrence and any operational costs incurred by the dealer or vessels is unknown. A partial exemption from this regulation that would allow sector vessels to discard unmarketable fish would provide sector vessels more operational flexibility and improve safety conditions at sea. It would also relieve the burden, if any, on sector vessels and their dealers to find a way to dispose of the unmarketable fish once landed.

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

the FY 2010 sectors, representing 390 permits, are already utilizing this exemption and approving the requests by additional sectors for this exemption would extend this flexibility and potential economic benefits to an additional 245 permits.

The Northeast Fishery Sectors II, V–VIII, X and XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, the GB Cod Fixed Gear Sector and the Tri-State Sector are requesting exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed gear exemption would allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision would reduce the total amount of gear that would have to be purchased and maintained by participating sector members resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished. This exemption has already been approved for 120 permits in FY 2010 sectors and approving these additional requests would extend the exemption to an additional 496 permits.

The Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, the Tri-State Sector, and the Northeast Coastal Communities Sector, representing an additional 540 permits, are requesting exemption from the number of hooks that may be fished. These exemptions would provide vessel owners in these additional sectors with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption would also provide an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since 2004 and was granted to the GB Cod Fixed Gear Sector for FY 2010. Approving this exemption for these additional sectors would extend the potential economic benefits to more vessels in other sectors.

Northeast Fishery Sectors II and III, V–VIII, and X–XII, the Sustainable Harvest Sector, the Port Clyde Community Groundfish Sector, and the Tri-State Sector have requested to be exempt from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish monkfish DAS. Approving this exemption would increase operational flexibility for an additional 522 permits, providing an opportunity for a substantial portion of the fleet to improve vessel profitability.

Northeast Fishery Sectors II and III, and V–XIII, the GB Cod Fixed Gear Sector, and the Port Clyde Community Groundfish Sector, are requesting exemption from the required 20-day spawning block out of the fishery. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel. This exemption was previously approved for 3 sectors representing 153 permits. Approving these exemption requests would extend the exemption to an additional 563 permits.

The Port Clyde Community Groundfish Sector, the Tri-State Sector, the GB Cod Fixed Gear Sector, the Northeast Fishery Sectors II and III, V–VIII, and X–XII, are requesting an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This exemption would provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs. A total of 116 permits participating in FY 2010 sectors are already exempt from this requirement. The proposed action would extend this flexibility and potential economic benefits to an additional 500 permits.

The Port Clyde Community Groundfish Sector, the GB Cod Fixed Gear Sector, and Northeast Fishery Sectors II–XIII, request exemption from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions would allow greater flexibility to lease DAS between vessels of different sizes and may be expected to expand the market of potential lessees for some vessels. The efficiency gains of this exemption as approved for the Tri-State Sector and the Sustainable Harvest Sector were limited because the exemption would only apply to leases between Tri-State

Sector and Sustainable Harvest Sector members, representing 135 permits. This proposed action would extend this exemption to an additional 609 permits, which would not only potentially increase efficiency for the additional sectors for which this exemption is approved, but also for members of the Tri-State and Sustainable Harvest Sectors by expanding the pool of potential lessees with this exemption. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption would be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

Economic Impacts of the Alternative to the Proposed Action

Under the No Action alternative, one or more of the sectors' requests for operations plan addenda would be disapproved, which would result in sector vessels operating under the operations plans and exemptions as approved for the start of the 2010 FY in the final rule published April 9, 2010 (75 FR 18113). Under this scenario, sector vessels may experience the efficiency gains and economic benefits of sector participation and the exemptions for which they have already been approved, as described in the IRFA

for the proposed rule proposing approval of FY 2010 sector operations and exemptions. However, sector vessels would not be provided the opportunity to benefit from the increase in the operational flexibility that may be gained from all the exemptions available to FY 2010 sectors and revenues would be expected to be lower than under the proposed action. Relative to the proposed action, it is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Allowing sectors to propose either entirely new exemptions or variations of previously approved exemptions was considered. However, this alternative was considered unreasonable because these exemptions are discrete measures which, by their nature, do not lend themselves to alternate configurations, and allowing sectors to propose entirely new exemptions or changing already approved exemptions to the list of alternatives could result in implementation delays that would reduce the utility of this action for sectors in this fishing year (FY 2010). In addition, this action is intended to be a continuing part of a longer action implementing Amendment 16, Framework Adjustment 44 to the NE

Multispecies FMP, and the final rule approving FY 2010 sector operations plans, in which other alternative measures have already been considered. The FY 2010 sectors will have an opportunity to propose any new or revised exemptions in their operations plans for FY 2011.

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

This proposed rule contains no collection-of-information requirement subject to the

Paperwork Reduction Act

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plan addenda.

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

Dated: August 27, 2010.

Samuel D. Rauch III,

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