

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

[Docket No. 140507412-4914-01]

RIN 0648-BE22

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Framework Adjustment 52**

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

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

**SUMMARY:** Framework Adjustment 52 to the Northeast Multispecies Fishery Management Plan proposes two modifications to the windowpane flounder accountability measures. First, the size of the accountability measure gear restricted areas could be reduced if NMFS determines that improvements in windowpane flounder stock health occurred despite the catch limits being exceeded. Second, the duration of the accountability measure could be shortened if NMFS determines that an overage of the catch limit did not occur the previous fishing year. The proposed measures would allow NMFS to implement accountability measures based on more current survey and catch data. This proposed action is intended to increase fishing opportunities for the groundfish fishery while still preventing overfishing.

**DATES:** Comments must be received by December 2, 2014.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2014-0079, by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0079](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0079), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Framework Adjustment 52."

*Instructions:* Comments sent by any other method, to any other address or

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

Copies of Framework 52, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the New England Fishery Management Council are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assesses the impacts of the proposed measures on small entities, and describes steps taken to minimize any significant economic impact on these entities. A summary of the IRFA is included in the Classification section of this proposed rule. The Framework 52 EA, RIR, and IRFA are also accessible via the Internet at [www.nefmc.org/nemulti/index.html](http://www.nefmc.org/nemulti/index.html) or [www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/index.html](http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/index.html).

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, phone: 978-281-9182.

**SUPPLEMENTARY INFORMATION:****Background***Current Windowpane Flounder Accountability Measures*

Framework 47 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) modified the accountability measures (AMs) for non-allocated stocks to ensure that sector vessels, as well as common pool vessels, were held accountable for catch overages (77 FR 26104; May 2, 2012). The current AMs for windowpane flounder are small and/or large year-round gear-restricted areas (Figure 1). The AMs are triggered when the total catch of windowpane flounder, in either the Northern or Southern stock area, exceeds the allowable limit. When these AMs are in effect, bottom-trawl vessels fishing in these areas are required to use selective trawl gear that reduces flatfish catch. Approved

selective trawl gears include the haddock separator trawl, the Ruhle trawl, the rope trawl, and any other gears authorized by the Greater Atlantic Regional Administrator at the request of the New England Fishery Management Council. There are no restrictions on longline or gillnet gear because these gear types rarely catch flatfish.

As currently used, the size of the AM gear-restricted area implemented following an overage depends on the degree to which the catch limit is exceeded (Figure 1). The size of the AM area is adjusted in correlation with the magnitude of the overage or its effects. For larger overages, a larger area is used. The larger area is intended to reduce catch of windowpane flounder to help correct for the overage and thereby also mitigate the effects of the overage on the stock. A smaller correction is required for smaller overages; therefore, a smaller AM area is applied. In specific application, the overage first has to be greater than the management uncertainty buffer (which is currently 5 percent) for a windowpane flounder AM to be triggered. If the overage is greater than 5 and up to 20 percent of the overall annual catch limit, the small AM gear restricted area is triggered. If the overage is more than 20 percent of the overall annual catch limit, the large AM gear restricted area is triggered. The AMs for the groundfish fishery or any other fisheries are triggered only if the total catch limit for the stock is exceeded and the fishery specific catch limit is also exceeded. Because scallop vessels have a separate allocation of southern windowpane flounder, the groundfish southern New England AM gear restricted area is only triggered when both the groundfish-specific and total-stock catch limits are exceeded (Figure 2). Because the AMs are meant to restrict catch by common pool and sector vessels, sectors cannot request an exemption from an AM. More detailed information on Framework 47, including how windowpane flounder AMs are implemented, is available at <http://www.greateratlantic.fisheries.noaa.gov/nero/regs/frdoc/12/12MulFW47FR.pdf>.

The final rule implementing Framework 48 (78 FR 26118, May 3, 2013, see page 26124) included an allocation of southern windowpane flounder to the scallop fishery and some other non-groundfish fisheries starting in fishing year 2013. Allocating this stock to other fisheries will help ensure that other fisheries are held accountable for their catch in the future and that an

overage by one of these fisheries would not negatively impact another.

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**Figure 1 – Gear restricted AMs for windowpane flounder**

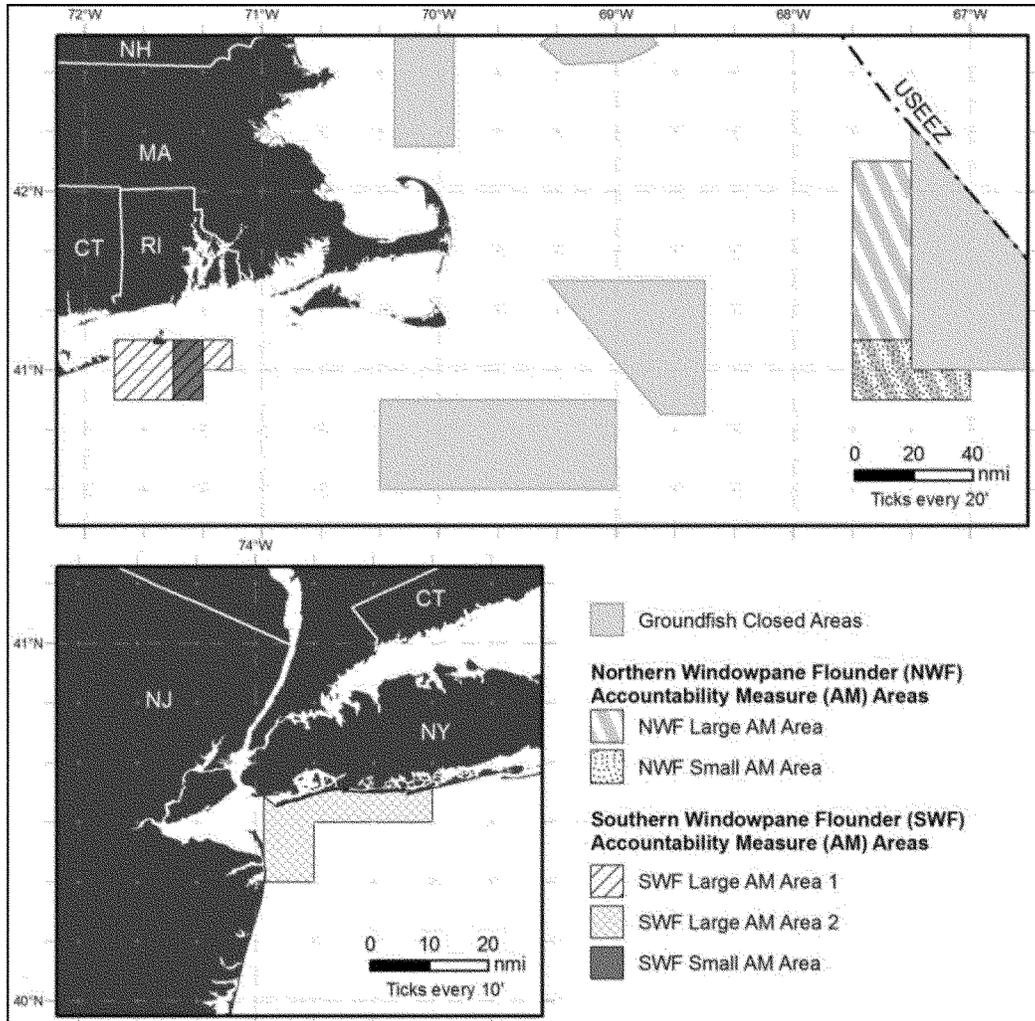
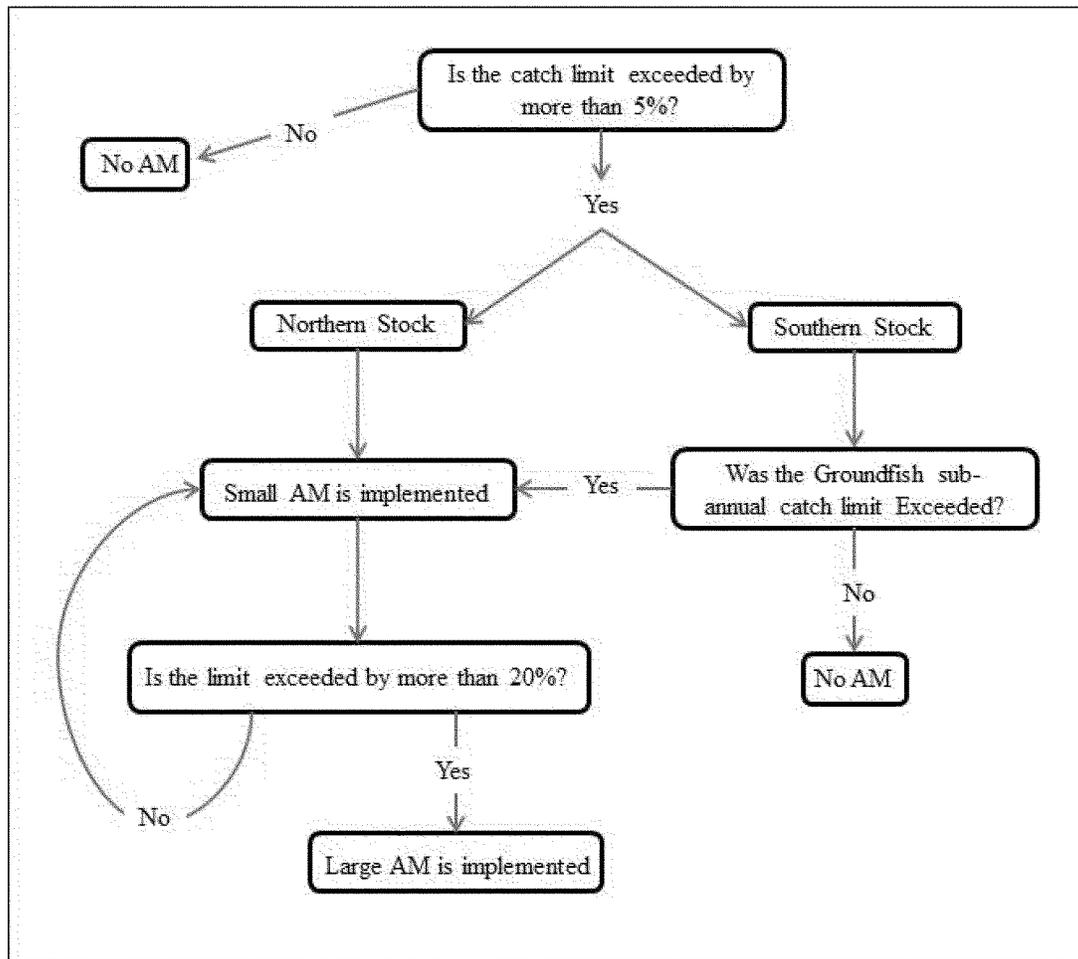


Figure 2 – Flowchart for Windowpane Flounder AMs



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*Windowpane Flounder Catch Limits Were Exceeded in Fishing Years 2012 and 2013*

Table 1 details final catch information for fishing year 2012. The northern windowpane flounder catch limit was exceeded by 28 percent, while the southern windowpane flounder catch limit was exceeded by 36 percent. The fishing year 2012 final catch report can be found online at: [http://www.nero.noaa.gov/ro/fso/reports/Groundfish\\_Catch\\_Accounting.htm](http://www.nero.noaa.gov/ro/fso/reports/Groundfish_Catch_Accounting.htm). Although catch from non-groundfish fisheries contributed to the northern windowpane flounder overage, the AM applies solely to the groundfish fishery because none of these other fisheries received a northern windowpane flounder allocation in fishing year 2012. Because the fishing year 2012 overages (in this case, year 1) were not identified until fishing year 2013 (year 2), the large AM gear restricted areas in both Southern New England and on Georges Bank were implemented on May 1,

2014, the beginning of the 2014 fishing year (year 3).

Table 2 presents preliminary 2013 catch estimates from March 19, 2014. Despite not having catch estimates for the sub-components from other non-groundfish fisheries, the commercial northern windowpane flounder catch estimate (227 mt), which we consider to be reliable data, exceeded the allowable biological catch (151 mt) by 50 percent. Thus, in addition to the 2014 triggered AM due to overages that occurred in fishing year 2012, the fishing year 2013 overage also triggered the same 2014 AM. Table 3 presents final fishing year 2013 catch data for windowpane flounder.

In order for the southern groundfish fishery AM gear restricted area to be triggered, the overall catch limit has to be exceeded, as well as groundfish fishery sub-annual catch limit (see Figure 2). Currently, catch data indicate that the groundfish fishery slightly exceeded its southern windowpane flounder catch limit, but it remains

unclear if the overall southern windowpane flounder catch limit was exceeded.

*AMs From Framework 47 Result in Severe Economic Impacts*

Although we approved the windowpane flounder AMs in Framework 47, the accompanying environmental assessment estimated the economic costs from these AMs to be as much as \$15 million. The environmental assessment did not foresee the full scope of the costs combined with other developments. Following substantial reductions in the 2013 catch limits for many key groundfish stocks, groundfish vessels have become increasingly more reliant on some flatfish species, particularly winter flounder. When the windowpane flounder AMs were developed, Southern New England/Mid-Atlantic winter flounder was a non-allocated stock, and, therefore, revenue from winter flounder landings was not included in the estimated costs. As a

result, the windowpane flounder AMs we implemented for fishing year 2014 are likely having an even greater economic impact on the fleet than anticipated in Framework 47 due to the loss of the opportunity to fish for winter flounder. At the request of some industry members, the Council agreed to review the windowpane flounder AMs in Framework 52 to see if they could be modified in a way that still corrects the overage and mitigates the effects of the overage but also reduces the economic costs to industry.

#### Framework 52

Framework 52 would modify the current AMs for southern and northern windowpane flounder by allowing NMFS to update survey and catch information to better determine the most appropriate AM in correlation to the conditions of the stock or whether the applicable catch limits were exceeded. This action proposes two alternatives that would reduce the scope of the northern or southern windowpane flounder AM in size or duration if: (1) The stock is rebuilt and it can be determined that there were improvements in windowpane flounder stock health; or (2) the fishery remains within its catch limits the year following an overage. These alternatives are not mutually exclusive and could be used within the same fishing year. The proposed measures are intended to help prevent overfishing and rebuild overfished stocks while reducing economic impacts, using the best scientific information available.

#### *Reducing the Size of the AM After Analyzing Recent Survey and Catch Data*

The first alternative proposes to reduce the scope of the AM gear restricted area from large to small if the stock is rebuilt and we can determine that the windowpane flounder "biomass criterion" is greater than the catch from the most recent fishing year. In this case, the biomass criterion is defined as the 3-year average of the three most recent fall scientific surveys multiplied

by 75 percent of the  $F_{msy}$  from the most recent stock assessment. Meeting or exceeding the biomass criterion indicates that overfishing was likely not occurring and that large AM areas could be reduced (i.e., the small AM is sufficient to correct and mitigate the effects of the overage because the consequences of the overage on the stock are likely less than previously assumed). Additional information on the biomass criterion can be found in Appendix 1 to the Framework 52 environmental assessment.

This change would incorporate a review of recent survey catch data and a comparison of the trends in survey catch to the actual commercial catch to ensure that the correct AM gear restricted area is implemented. Reviewing additional survey data would allow managers to better account for uncertainties in the index-based stock assessment model that is used because it relates any potential overage in catch back to the biomass and catch trends used in the stock assessment. This action does not change the actual gear restricted area AMs developed under Framework 47.

#### *Reducing the Duration of an AM In-Season If a Subsequent Overage Does Not Occur*

As explained above, AMs must be implemented as soon as possible after an overage is identified to correct the operational issue causing, or mitigate any biological consequences from, the overage. Because stock allocations are divided among several different fisheries, as well as other fishery sub-components that do not actually receive an allocation (e.g., state-waters fisheries), we need to include catch by all groups prior to verifying where the catch limit was exceeded. We do not receive year-end data from the other sub-component fisheries until late summer.

Once we receive complete catch information in late August/early September, an AM implemented in year 3 (following an overage in year 1 and an underage in year 2) could be shortened

by removing it in season, consistent with the Administrative Procedure Act. This alternative would provide an incentive for industry to modify its fishing behavior in an effort to reduce the duration of an AM in year 3, and remove the need for continuing an AM. Furthermore, because this option does not require a pound for pound payback, and because the underage could be due to a reduction in stock size, the reduced catch expected to result from the delay in removing an implemented AM in year 3 would provide an additional buffer against any such remaining management uncertainty.

This alternative is not applicable if, utilizing reliable catch data (such as observed discards), we determine that the current season's windowpane flounder catch limit has been exceeded because it would be inconsistent for us to remove an AM in-season while planning for an AM the following year.

#### *Changes to Fishing Year 2014 AMs*

For northern windowpane flounder, neither of the alternatives would apply to the fishing year 2014 Georges Bank gear restricted area AM. This is because the northern windowpane flounder stock is considered overfished, subject to overfishing, and because catch limits for this stock were exceeded in fishing years 2012 and 2013 (Tables 1 and 3). However, the southern windowpane flounder stock is not overfished or subject to overfishing, is rebuilt, and an initial review shows that the biomass criterion is greater than the fishing year 2013 catch. This information indicates that we would be able to reduce the size of the Southern New England/Mid-Atlantic gear restricted area AM from large to small. The southern windowpane flounder catch limit was exceeded in fishing year 2013, so the second alternative criterion is not met and we would be unable to remove the small AM restricted gear area mid-season (Table 3).

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**Table 1 Fishing Year 2012 Windowpane Flounder Catch (in mt)**

Stock	Overfishing Limit	Acceptable Biological Catch	Groundfish sub-ACL	Total Allocation	Catch			
					Total	Groundfish Fishery	State Waters Fishery	Non-Groundfish Fisheries
Northern Windowpane Flounder	230	173	129	<b>163</b>	<b>209</b>	130	2	77
Southern Windowpane Flounder	515	386	72	<b>381</b>	<b>521</b>	107	34	380

**Table 2 Preliminary Fishing Year 2013 Windowpane Flounder Catch (in mt, as of March 19, 2014)**

Stock		Groundfish	Scallop	State Waters <sup>1</sup>	Other Sub-component <sup>1</sup>	Total
	Preliminary FY 2013 Catch	<b>227</b>		NA	NA	<b>227</b>
Southern Windowpane Flounder	Catch Limit	<b>102</b>	183	55	186	<b>527</b>
	Preliminary FY 2013 Catch	<b>106</b>	104	NA	NA	<b>210</b>

<sup>1</sup> Inseason catch estimates are not available for state waters or the other sub-component

**Table 3 Final Fishing Year 2013 Windowpane Flounder Catch (in mt)**

Stock		Groundfish	Scallop	State Waters	Other Sub-component	Total	% of Catch Limit Caught
	FY 2013 Catch	<b>237</b>		1	42	<b>280</b>	195
Southern Windowpane Flounder	Catch Limit	<b>102</b>	183	55	186	<b>527</b>	
	FY 2013 Catch	<b>116</b>	129	37	272	<b>555</b>	105

### Regulatory Correction Under Regional Administrator Authority

To clarify the intent of Framework 47, this rule would change the regulatory text at 50 CFR 648.90(a)(5)(i)(D)(1), 648.90(a)(5)(i)(D)(2), and 648.90(a)(5)(i)(D)(3) to explain that a large AM area is implemented if the overage is greater than 20 percent of the overall annual catch limit. While reviewing the regulations for windowpane flounder AMs, we discovered that the regulations detailing the large and small AMs for windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish were different than approved in Framework 47. The current regulations incorrectly state that a small AM is implemented if an overage is between 5 and 20 percent of the overall annual catch limit and a large AM is implemented if the overage is 21 percent or more. This mistakenly leaves a void between 20 and 21 percent. The Council also stipulated in Framework 48 that any overage greater than 20 percent would require a review of the AM for Atlantic halibut and Atlantic wolffish. This provision was not part of Framework 47 when AMs were established for windowpane flounder and ocean pout and is being removed from § 648.90(a)(5)(i)(D)(1). Lastly, the regulations currently state that a large AM area is implemented for both Atlantic halibut and Atlantic wolffish if the overall ACL is exceeded by more than 20 percent. This is incorrect; there are no large or small AM areas for Atlantic halibut and Atlantic wolffish, only specific trawl and fixed gear AMs that are applied when there is an overage greater than the management uncertainty buffer.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with Framework 52, other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

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

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA includes this section of the preamble to this rule and analyses contained in Framework 52 and its accompanying EA/RIR/IRFA. The IRFA describes the economic impact that this proposed rule would have on small entities, if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 52, the beginning of this section (**SUPPLEMENTARY INFORMATION**) in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

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

A detailed description of the small entities that may be affected by this action can be found in the Framework 52 Environmental Assessment in section 8.11.2.4. Small entities include “small businesses,” “small organizations,” and “small governmental jurisdictions.” The U.S. Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters, commercial shellfish harvesters, other commercial marine harvesters, for-hire businesses, marinas, seafood dealers/wholesalers, and seafood processors.

A small business is defined by the SBA as one that is:

- Independently owned and operated;
- not dominant in its field of operation (including its affiliates);
- has combined annual receipts not in excess of
  - \$20.5 million for all its affiliated operations worldwide for commercial finfish harvesting;
  - \$5.5 million for all its affiliated operations worldwide for commercial shellfish harvesting; or
  - \$7.5 million for other marine harvesters, for-hire businesses, and other related entities; and
- has fewer than
  - 500 employees in the case of seafood processors; or
  - 100 employees in the case of seafood dealers.

A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, boroughs, counties, towns, townships, villages,

school districts, or special districts, with population of fewer than 50,000.

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

#### *Limited Access Groundfish Fishery*

The limited access groundfish fisheries are further sub-classified as those enrolled in the sector allocation program and those in the common pool. Sector vessels are subject to sector-level stock-specific allocations that limit catch of allocated groundfish stocks. AMs include a prohibition on fishing inside designated areas once 100 percent of available sector allocation has been caught, as well as area-based gear and effort restrictions that are triggered when catch of non-allocated groundfish stocks exceeds the catch limits. Common pool vessels are subject to various days-at-sea and trip limits designed to keep catches below the limits set for vessels enrolled in this program. In general, sector-enrolled businesses rely more heavily on sales of groundfish species than common pool-enrolled vessels. All limited access multispecies permit holders are eligible to participate in the sector allocation program; however, many permit holders select to remain in the common pool fishery.

As of May 1, 2014 (beginning of fishing year 2014) there were 1,046 individual limited access multispecies permits. A total of 613 of these permits were enrolled in the sector program and 433 were enrolled in the common pool. Of these 1,046 limited access multispecies permits, 767 had landings of any species and 414 had groundfish landings in fishing year 2013.

#### *Ownership Entities*

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships or economic dependency. For the purposes

of this analysis, ownership entities are defined as those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Ownership entities are identified on June 1st of each year based on the list of all permit numbers, for the most recent complete calendar year, that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2013 permits and contains average gross sales associated with those permits for calendar years 2011 through 2013.

Matching the potentially impacted permits described above (fishing year 2014) to the calendar year 2013 ownership data results in 868 distinct ownership entities. Of these, 855 are categorized as small and 13 are categorized as large entities per the SBA guidelines.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50 percent of gross sales from sales of regulated species associated with a specific fishery, we are able to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, we find that 114 entities are groundfish-dependent, all of which are small and all of which are finfish commercial harvesting businesses. Of the 114 groundfish-dependent entities, 102 have some level of participation in the sector program and 12 operate exclusively in the common pool.

#### *Economic Impacts of the Proposed Measures and Alternatives*

The proposed action is expected to have generally positive economic impacts, and we do not expect the action to put small entities at a

competitive disadvantage relative to large entities. Impacts on profitability from the proposed action are likely to positively affect both small and large entities in a broadly similar manner.

This IRFA analysis is intended to analyze the impacts of the alternatives described in section 4.1 of Framework 52 on small entities. The proposed action alters the criteria for triggering AMs for windowpane flounder, and may result in either smaller AM gear restricted areas (i.e., duration or size) in the Southern New England or Georges Bank gear restricted areas or an increased likelihood that a triggered AM in either/both areas could be removed in-season once catch information from the previous year is made available. These provisions are expected to positively impact profitability of small entities regulated by this action.

The proposed action is expected to result in either a lower probability of an AM remaining in place for a given year or a smaller gear restricted area (i.e., duration or time). In all cases, the proposed action is expected to have positive economic impacts to small groundfish-dependent entities relative to the no action alternative. A more detailed discussion of the expected economic and social impacts can be found in sections 7.4 and 7.5 of the Framework 52 environmental assessment.

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

The Framework 52 proposed rule is not expected to create any additional reporting, recordkeeping or other compliance requirements.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 6, 2014.

#### **Samuel D. Rauch III,**

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

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

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

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

■ a. In § 648.90, revise paragraphs (a)(5)(i)(D)(1), (a)(5)(i)(D)(2) and (a)(5)(i)(D)(3), add paragraphs (a)(5)(i)(D)(1)(i) and (a)(5)(i)(D)(1)(ii), to read as follows:

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

\* \* \* \* \*

- (a) \* \* \*
- (5) \* \* \*
- (i) \* \* \*
- (D) \* \* \*

(1) *Windowpane flounder and ocean pout*—Unless otherwise specified in paragraphs (a)(5)(i)(D)(1)(i) and (ii) of this section, if NMFS determines the total catch exceeds the overall ACL for either stock of windowpane flounder or ocean pout, as described in this paragraph (a)(5)(i)(D)(1), by any amount greater than the management uncertainty buffer up to 20 percent greater than the overall ACL, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section consistent with the Administrative Procedure Act. If the overall ACL is exceeded by more than 20 percent, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section consistent with the Administrative Procedure Act. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If an overage of the overall ACL for southern windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5 inches (12.7 cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If an overage of the overall ACL for southern windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(2) of this section, the applicable AM area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for southern windowpane flounder is as a result of overages of both the groundfish fishery

and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

**NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA**

Point	N. Latitude	W. Longitude
1 .....	41°10'	67°40'
2 .....	41°10'	67°20'
3 .....	41°00'	67°20'
4 .....	41°00'	67°00'
5 .....	40°50'	67°00'
6 .....	40°50'	67°40'
1 .....	41°10'	67°40'

**NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA**

Point	N. Latitude	W. Longitude
1 .....	42°10'	67°40'
2 .....	42°10'	67°20'
3 .....	41°00'	67°20'
4 .....	41°00'	67°00'
5 .....	40°50'	67°00'
6 .....	40°50'	67°40'
1 .....	42°10'	67°40'

**SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA**

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°30'
2 .....	41°10'	71°20'
3 .....	40°50'	71°20'
4 .....	40°50'	71°30'
1 .....	41°10'	71°30'

**SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA 1**

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°50'
2 .....	41°10'	71°10'
3 .....	41°00'	71°10'
4 .....	41°00'	71°20'
5 .....	40°50'	71°20'
6 .....	40°50'	71°50'

**SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA 1—Continued**

Point	N. Latitude	W. Longitude
1 .....	41°10'	71°50'

**SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2**

Point	N. Latitude	W. Longitude
1 .....	( <sup>1</sup> )	73°30'
2 .....	40°30'	73°30'
3 .....	40°30'	73°50'
4 .....	40°20'	73°50'
5 .....	40°20'	( <sup>2</sup> )
6 .....	( <sup>3</sup> )	73°58.5'
7 .....	( <sup>4</sup> )	73°58.5'
8 .....	40°32.6' <sup>5</sup>	73°56.4' <sup>5</sup>
1 .....	( <sup>1</sup> )	73°30'

<sup>1</sup> The southernmost coastline of Long Island, NY, at 73°30' W. longitude.

<sup>2</sup> The easternmost coastline of NJ at 40°20' N. latitude, then northward along the NJ coastline to Point 6.

<sup>3</sup> The northernmost coastline of NJ at 73°58.5' W. longitude.

<sup>4</sup> The southernmost coastline of Long Island, NY at 73°58.5' W. longitude.

<sup>5</sup> The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southernmost coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(i) *Reducing the size of an AM.* If the overall northern or southern windowpane flounder ACL is exceeded by more than 20 percent and NMFS determines that: The stock is rebuilt, and the biomass criterion, as defined by the Council, is greater than the most recent fishing year's catch, then only the respective small AM may be implemented as described in paragraph (a)(5)(i)(D)(1) of this section consistent with the Administrative Procedure Act.

(ii) *Reducing the duration of an AM.* If the northern or southern windowpane flounder AM is implemented in the third fishing year following the year of an overage, as described in paragraph (a)(5)(i)(D) of this section, and NMFS subsequently determines that the applicable windowpane flounder ACL was not exceeded by any amount the year immediately after which the overage occurred (i.e., the second year), on or after September 1, the AM can be removed once year-end data are complete. This reduced duration does not apply if NMFS determines during year 3 that a year 3 overage of the applicable windowpane flounder ACL has occurred.

(2) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(2), by any amount greater than the management

uncertainty buffer, the applicable AM areas shall be implemented and any vessel issued a NE multispecies permit or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(j)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and there are AMs for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

**ATLANTIC HALIBUT TRAWL GEAR AM AREA**

Point	N. Latitude	W. Longitude
1 .....	42°00'	69°20'
2 .....	42°00'	68°20'
3 .....	41°30'	68°20'
4 .....	41°30'	69°20'

**ATLANTIC HALIBUT FIXED GEAR AM AREA 1**

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°20'
2 .....	42°30'	70°15'
3 .....	42°20'	70°15'
4 .....	42°20'	70°20'

**ATLANTIC HALIBUT FIXED GEAR AM AREA 2**

Point	N. Latitude	W. Longitude
1 .....	43°10'	69°40'
2 .....	43°10'	69°30'
3 .....	43°00'	69°30'
4 .....	43°00'	69°40'

(3) *Atlantic wolffish.* If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(3), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by more than 20 percent, the applicable AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb

lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(j)(3); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

**ATLANTIC WOLFFISH TRAWL GEAR AM AREA**

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°30'
2 .....	42°30'	70°15'
3 .....	42°15'	70°15'
4 .....	42°15'	70°10'
5 .....	42°10'	70°10'
6 .....	42°10'	70°20'
7 .....	42°20'	70°20'
8 .....	42°20'	70°30'

**ATLANTIC WOLFFISH FIXED GEAR AM AREA 1**

Point	N. Latitude	W. Longitude
1 .....	41°40'	69°40'
2 .....	41°40'	69°30'
3 .....	41°30'	69°30'
4 .....	41°30'	69°40'

**ATLANTIC WOLFFISH FIXED GEAR AM AREA 2**

Point	N. Latitude	W. Longitude
1 .....	42°30'	70°20'
2 .....	42°30'	70°15'
3 .....	42°20'	70°15'
4 .....	42°20'	70°20'

\* \* \* \* \*

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