DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–BB62

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 47

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

ACTION: Final rule.

SUMMARY: NMFS approves Framework Adjustment 47 (Framework 47) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and implements the approved measures. The New England Fishery Management Council (Council) developed and adopted Framework 47 based on the biennial review process established in the NE Multispecies FMP to develop annual catch limits (ACLs) and revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. This action also implements management measures and revises existing regulations that are not included in Framework 47, including common pool management measures for fishing year (FY) 2012, modification of the Ruhle trawl definition, and clarification of the regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas. This action is intended to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best available scientific information at the time Framework 47 was submitted.

DATES: Effective May 1, 2012.

ADDRESSES: Copies of Framework 47, the draft environmental assessment (EA), its Regulatory Impact Review (RIR), and the draft Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. A supplemental analysis was included with the draft IRFA prepared by the Council in the preamble to the proposed rule for this action. The Final Regulatory Flexibility Act (FRFA) analysis consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of this final rule and Framework 47. The Framework 47 EA/RIR/FRFA is also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The NE Multispecies FMP specifies management measures for 16 species in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout, and large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as ''regulated species,'' are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex.

Amendment 16 to the NE Multispecies FMP (Amendment 16) established a process for setting acceptable biological catches (ABCs) and ACLs for regulated species and ocean pout, as well as for distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established accountability measures (AMs) for the 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 47 is part of the process established in the FMP to set ABCs and ACLs and to revise management measures necessary to achieve the goals and objectives of the FMP. The Council developed Framework 47 to respond to recent stock assessments and updated stock information, as well as to revise management measures after the fishery has operated for more than 1 year under ACLs and AMs. NMFS published a proposed rule to approve Framework 47 and implement its measures on March 27, 2012 (77 FR 18176), and accepted public comments through April 11, 2012. NMFS proposed additional measures not included in Framework 47 to modify the Ruhle trawl definition, clarify regulations for charter/party vessels fishing in groundfish closed areas, modify the conversion rate used to estimate the live weight of fillets and parts of fish landed for home consumption, and implement management measures for the common pool fishery for FY 2012.

Approved Measures

This section summarizes the Framework 47 measures, all of which have been approved, and the measures being implemented by NMFS under the authority of section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which allows the Secretary of Commerce to implement regulations necessary to ensure that fishery management plans or amendments are carried out consistent with the Magnuson-Steven Act. The measures implemented under this authority are necessary to implement changes to the Atlantic Sea Scallop FMP proposed by the Council in Framework 47, and to change regulations that are not part of Framework 47, but that are necessary to clarify existing regulations and achieve the objective of the FMP. This final rule modifies the Rhule trawl definition and clarifies the regulations for charter/party vessels fishing in the groundfish closed areas. This action does not change the conversion rate for home consumption landings, which NMFS had originally proposed, for reasons discussed below. This final rule also implements management measures for the common pool fishery for FY 2012 that are not included in Framework 47, but that are implemented by the Regional Administrator (RA) under authority provided by the FMP.

1. Status Determination Criteria for Winter Flounder and Gulf of Maine Cod

New assessments were conducted for Gulf of Maine (GOM), Georges Bank (GB), and Southern New England/Mid-Atlantic (SNE/MA) winter flounder in June 2011, and a new assessment for GOM cod was completed in December 2011. Based on the results from the 52nd Stock Assessment Workshop (SAW) completed in June 2011, GB winter flounder is no longer experiencing overfishing, and the stock is no longer overfished. SNE/MA winter flounder is still overfished, but overfishing is no longer occurring for this stock. In addition, the overfishing status is no longer unknown for GOM winter flounder, and overfishing is not occurring. However, the overfished status for GOM winter flounder is still unknown. The results of the 53rd SAW completed in December 2011 indicate that overfishing is occurring for GOM cod, and the stock is overfished.

This final rule updates the status determination criteria for the three winter flounder stocks and GOM cod to incorporate the results of the recent stock assessments into the FMP. These changes are based on the best scientific information available. The revised biomass targets for GB and SNE/MA winter flounder is spawning stock biomass at maximum sustainable yield (SSB_{MSY}), and the maximum fishing mortality rate (F) threshold is F_{MSY}. The revised maximum F threshold for GOM winter flounder is F at 40 percent of the maximum spawning potential ($F_{40\%MSP}$). The biomass target for this stock is still undefined. For GOM cod, the biomass target is unchanged from GARM III and is SSB at 40 percent MSP ($SSB_{40\%MSP}$). The maximum F threshold proxy is also unchanged from GARM III and is $F_{40\%MSP}$. Table 1 lists the revised status determination criteria, and the numerical estimates of these criteria are shown in Table 2.

TABLE 1—STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold
GOM winter flounder	Undefined	Undefined	$F_{40\%MSP}$.
GB winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
SNE/MA winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
GOM cod	$SSB_{40\%MSP}$	½ $SSB_{40\%MSP}$	$F_{40\%MSP}$.

TABLE 2—NUMERICAL ESTIMATES OF THE STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target (mt)	Maximum fishing mortality threshold	MSY (mt)
GOM winter flounder	Undefined	0.31	Undefined.
GB winter flounder	10,100	0.42	3,700.
SNE/MA winter flounder	43,661	0.29	11,728.
GOM cod	61,218	0.20	10,392.

2. Rebuilding Program for GB Yellowtail Flounder

GB yellowtail flounder is jointly managed with Canada under the U.S./Canada Resource Sharing Understanding (Understanding). Framework Adjustment 45 to the NE Multispecies FMP (Framework 45) revised the GB yellowtail flounder rebuilding program in 2011, based on the best available scientific information, to rebuild the stock by 2016 with a 50-percent probability of success. This revision extended the rebuilding program to the maximum 10-year rebuilding period allowed by the Magnuson-Stevens Act in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

Under the International Fisheries Agreement Clarification Act (IFACA) enacted into law on January 4, 2011, the Council and NMFS have flexibility in establishing rebuilding programs for stocks that are jointly managed with Canada under the Understanding. IFACA allows the Council and NMFS to consider decisions made under the Understanding as management measures under an international agreement in order to provide an exception to the Magnuson-Stevens Act's maximum 10-year rebuilding period requirement.

Each year, pursuant to the Understanding, the Transboundary Management Guidance Committee (TMGC) meets to consider the scientific advice of the Transboundary Resources Assessment Committee and to make decisions regarding total allowable catch (TAC) recommendations for the upcoming year for each stock managed under the Understanding. The TMGC adopts harvest strategies to guide its annual TAC recommendations. The TMGC's harvest strategy for GB yellowtail flounder is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref}) of 0.25. At its September 2011 meeting, the TMGC reaffirmed its harvest strategy for GB yellowtail flounder to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref}) of 0.25. Based on that harvest strategy, the TMGC developed its 2012 TAC recommendation for GB yellowtail flounder and forwarded the recommendation to the Council for approval (See Item 5 for more information on the 2012 TMGC TAC recommendations).

Given the provisions of IFACA, and that the TMGC decisions regarding a GB yellowtail flounder harvest strategy and annual TAC are considered management measures under an international agreement, NFMS interprets the Magnuson-Stevens Act to allow the rebuilding program for GB yellowtail flounder to exceed 10 years. Therefore, this action revises the rebuilding strategy for GB yellowtail flounder. The revised rebuilding strategy would rebuild the stock by 2032 with at least a 50-percent probability of success. This rebuilding strategy is based on an F of 0.21 and would extend 26 years beyond the rebuilding program start date (2006). The rebuilding time period is as short as possible, taking into account the Understanding and decisions made under it, and the needs of the fishing communities, and will provide more flexibility for negotiating annual catches with Canada.

3. Overfishing Levels and Acceptable Biological Catches

The overfishing level (OFL) for each stock in the NE Multispecies FMP is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). The Council's Scientific and Statistical Committee (SSC) recommends ABCs for each stock that are lower than the OFLs to account for scientific uncertainty. The ABCs are calculated using the estimated stock size for a particular year and are based on the catch associated with 75 percent of F_{MSY} or the F required to rebuild a stock within its rebuilding time period

($F_{rebuild}$), whichever is lower. For SNE/MA winter flounder, the ABC is calculated using the F expected to result from management measures that are designed to achieve an F as close to zero as practicable. For some stocks, the Canadian share of an ABC, or the expected Canadian catch, is deducted from the ABC. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

As part of the biennial review process for the NE Multispecies FMP, the Council adopts OFLs and ABCs for 3 years at a time. Although it is expected that the Council will adopt new catch levels every 2 years, specifying catch levels for a third year ensures there are default catch limits in place in the event that a management action is delayed. Framework 44 specified OFLps and ABCs for each stock for FYs 2010–2012 based on the best scientific information available, and Framework 45 revised the OFLs and ABCs for five stocks for FYs 2011–2012 based on updated stock information. Although Framework 44 and Framework 45 specified catch levels for all stocks through FY 2012, Framework 47 was developed to set catch levels for FYs 2012–2014 and revise the OFLs and ABCs previously adopted for FY 2012 based on updated stock information.

This action sets the OFLs and ABCs for nine stocks (GB, GOM, and SNE/MA winter flounder, pollock, northern and southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish) for FYs 2012–2014 that are assessed with an index-based stock assessment or that have had a recent stock assessment completed. This action also sets the OFL and ABC for FYs 2012–2013 only for GB yellowtail flounder based on updated stock information. Table 3 lists the OFLs and ABCs for these stocks.

For nine other stocks (GB cod, GB haddock, GOM haddock, SNE/MA yellowtail flounder, CC/GOM yellowtail flounder, American plaice, witch flounder, redfish, and white hake), this action adopts the OFLs and ABCs for FY 2012 only, that were previously specified in Framework 44 or Framework 45 (Table 3). OFLs and ABCs are only being set for FY 2012 based on advice from the SSC. At the time the Council was developing Framework 47, these stocks were last assessed at the 3rd Groundfish Assessment Review Meeting (GARM III) in 2008. The SSC determined that projections from the GARM III assessment were not a reliable basis for providing catch advice for these stocks for all three fishing years from 2012–2014. As a result, the SSC recommended that the Council specify ABCs for FY 2012 only based on the ABCs that were previously adopted in Framework 44 or Framework 45. Consistent with the SSC recommendations, the Council adopted the FY 2012 ABCs previously set by Framework 44 and Framework 45 in Framework 47. The Council also requested that the Northeast Fisheries Science Center complete assessment updates for the stocks last assessed at GARM III in order to set catch limits for FYs 2013–2014 for these stocks. The Council made this request with the understanding that these catch limits would be implemented through a subsequent framework that the Council is already developing.

The Council finalized and submitted Framework 47 to NMFS on February 7, 2012. The stock assessment updates to be used for setting FYs 2013–2014 catch limits were not completed until February 13–17, 2012, and the final report for the updates was not published until March 14, 2012. As the Council and the SSC understood while developing Framework 47, these updated assessments were never intended to be incorporated into Framework 47 for the nine stocks for FY 2012 because they would not be available in time for the Council and the SSC to consider them for implementation by the start of FY 2012. Therefore, Framework 47 adopted the OFLs and ABCs for FY 2012 for these nine stocks based on the best scientific information available at the time the Council took final action on Framework 47.

The updated assessments for five stocks (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder), indicate that the FY 2012 ABCs adopted in Framework 47 are significantly higher than those suggested by the assessment updates. For the remaining eight stocks that were updated in early 2012, the FY 2012 ABCs adopted in Framework 47 are virtually the same, or somewhat lower, than those suggested by the assessment updates. Because the stock assessment updates suggest that ABCs might be different than those adopted in Framework 47 for some stocks, and may be significantly lower for the five stocks specified above, one commenter recommended that NMFS disapprove the OFLs and ABCs for these stocks because they are not consistent with National Standard 2, which requires actions to be consistent with best scientific information available. This comment is briefly discussed below to explain NMFS' decision to approve the FY 2012 OFLs and ABCs despite the comment received on this measure.

The National Standard 2 guidelines (50 CFR 600.315) require that each FMP (and by extension amendment and framework) take into account the best scientific information available at the time, or preparation, of an action. The guidelines recognize that new information often becomes available between the initial drafting of an FMP and its submission to NMFS for final review. The guidelines state that this new information should be incorporated into the action, if practicable; but it is unnecessary for the Council to re-start the FMP process based on this information, unless it indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures. This is not a situation in which the Council received information that ''drastic changes'' have occurred in the fishery prior to submission of the action to NMFS. Instead, as was fully understood in developing Framework 47, the assessment updates would not be completed until after the Council took final action on Framework 47 and submitted it to NMFS for review. As a result, there was no practicable way to incorporate this information into Framework 47 without reinitiating the Council process and delaying the action far beyond the start of FY 2012, which begins on May 1, 2012, and is when the ABCs need to be in place. Therefore, NMFS has determined that it is appropriate for the Council to set the OFLs and ABCs in this action based on the best scientific information available at the time the Council took final action and submitted Framework 47 to NMFS for approval. The appropriate response to the new information that became available after submission of Framework 47 is for the Council to consider whether to initiate a new framework or amendment, or to request an emergency or interim Secretarial action, to revise the existing measures or catch limits adopted in this action.

Consistent with the National Standard 2 guidelines, this determination recognizes the need for some certainty as to what information the Council may rely on in taking its final action, and what information NMFS will use to evaluate the approvability of a Council action. Without such certainty, there would be a lack of predictability and confidence in Council actions, which must be developed well in advance of their implementation due to the time it takes to prepare appropriate analyses and documents for submission to NMFS for final review. A lack of certainty about what information will be used to review a Council action could also

seriously undermine the Council process because neither the Council, nor the public, would have confidence that their efforts would not be meaningless. Thus, new scientific information that becomes available after the Council has submitted its final action to NMFS for review should not, based on National Standard 2, be used retroactively to undo recommended actions that had the benefit of the full Council process.

NMFS also considered the practical effect of disapproving the OFLs and ABCs specified in this action. Approving catch limits for these stocks, whose assessments were updated in early 2012, actually results in slightly lower fishing mortality than if they were disapproved and the default measures specified by Framework 44 and Framework 45 went into place. The default catch limits for FY 2012 for the five stocks mentioned earlier (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder) are identical to those specified in this action, except for GB cod, which is 5 percent higher. For the remaining stocks, the default measures are essentially identical or higher than those adopted in Framework 47. Therefore, disapproving the FY 2012 ABCs in Framework 47 would result in almost identical catch limits as those previously specified, but a higher catch limit for GB cod, which could increase overfishing of this stock while the Council develops its next management action to incorporate the new scientific information available.

Approving these catch limits, as explained above, does not reduce the importance of acting on the new information as soon as possible in a new action, but rather emphasizes the importance of analyzing and considering this information through the full Council process. Consistent with the SSC guidance and the Council's understanding during the development of Framework 47, the Council has already started developing a management action that will incorporate the assessment update information and adopt catch limits for the pertinent stocks for FYs 2013–2014. The Council is scheduled to receive and discuss the results of the assessment updates at its April 25, 2012, meeting. A new stock assessment for SNE/MA yellowtail flounder is also scheduled for June 2012, and the results of this stock assessment will be incorporated into the same Council action to set OFLs and ABCs for the stock for FYs 2013–2014. The Council may also use updated information for other stocks to revise the FYs 2013–2014 OFLs and ABCs specified in this action. The Council intends to complete this management action by May 1, 2013, to set catch limits for FYs 2013–2014. NMFS has notified the Council that the updated assessment information must be incorporated as soon as possible, but no later than May 1, 2013. NMFS recommends that, at its June meeting, the Council identify how and when this information will be incorporated and how that process would affect any existing or planned management measures.

Framework 47, as approved by the Council on November 16, 2011, initially proposed to set specifications for GOM cod for FYs 2012–2014 based on the most recent stock assessment, completed in December 2011. The results of that assessment indicate that the stock is overfished and overfishing is occurring, and that GOM cod cannot rebuild by its rebuilding end date (2014) even in the absence of all fishing mortality. Given the final results of the GOM cod assessment, and that rebuilding cannot be achieved within the rebuilding period, NMFS concluded that the NE Multispecies FMP is not making adequate progress toward ending overfishing and rebuilding GOM cod. In a letter dated January 26, 2012, NMFS notified the Council of this determination and that the Council must implement a plan by May 1, 2013, to immediately end overfishing for GOM cod. The Council was also notified that it has up to 2 years to address GOM cod rebuilding. In addition, NMFS indicated that the Magnuson-Stevens Act provides some flexibility for NMFS to only reduce overfishing, rather than end it immediately, during FY 2012 while the Council develops measures to address GOM cod.

At its January 25, 2012, meeting, the Council's SSC met to discuss the GOM cod stock assessment. At the request of the Council, the SSC did not recommend ABCs for GOM cod for FYs 2012–2014. Instead, the SSC reviewed the stock assessment and identified issues that may warrant a closer examination and that may influence the interpretation of the assessment results. Subsequently, at its February 1, 2012, meeting, the Council did not adopt ABCs for GOM cod for Framework 47. The Council requested that NMFS implement an interim action for FY 2012 to reduce overfishing on GOM cod while the Council responds to the new GOM cod stock assessment and develops measures for FY 2013 that will immediately end overfishing. In response to the Council's request, NMFS published an interim action on April 3, 2012, to set catch levels for GOM cod for FY 2012 (77 FR 19944). Therefore, although this action does not include OFLs and ABCs for GOM cod for FYs 2012–2014, it is not deficient regarding GOM cod because of the interim action. The SSC will meet in the future to recommend ABCs for FYs 2013–2014 for GOM cod, and the Council intends to adopt these ABCs in a future management action.

TABLE 3—FYS 2012–2014 OFLS AND ABCS (MT)

Stock	OFL			U.S. ABC		
	2012	2013	2014	2012	2013	2014
GB cod	7,311	.....	.....	5,103	.....	.....
GB haddock	51,150	.....	.....	30,726	.....	.....
GOM haddock	1,296	.....	.....	1,013	.....	.....
GB yellowtail flounder	1,691	1,691	.....	564	564	.....
SNE/MA yellowtail flounder	3,166	.....	.....	1,003	.....	.....
Cape Cod (CC)/GOM yellowtail flounder	1,508	.....	.....	1,159	.....	.....
American plaice	4,727	.....	.....	3,632	.....	.....
Witch flounder	2,141	.....	.....	1,639	.....	.....
GB winter flounder	4,839	4,819	4,626	3,753	3,750	3,598
GOM winter flounder	1,458	1,458	1,458	1,078	1,078	1,078
SNE/MA winter flounder	2,336	2,637	3,471	626	697	912
Redfish	12,036	.....	.....	9,224	.....	.....
White hake	5,306	.....	.....	3,638	.....	.....
Pollock	19,887	20,060	20,554	15,400	15,600	16,000

TABLE 3—FYS 2012–2014 OFLS AND ABCS (MT)—Continued

Stock	OFL			U.S. ABC		
	2012	2013	2014	2012	2013	2014
Northern windowpane flounder	230	230	230	173	173	173
Southern windowpane flounder	515	515	515	386	386	386
Ocean pout	342	342	342	256	256	256
Atlantic halibut	143	143	143	85	85	85
Atlantic wolffish	92	92	92	83	83	83

4. Annual Catch Limits

Unless otherwise noted below, the U.S. ABC for each stock (for each fishing year) is divided into the following fishery components to account for all sources of fishing mortality: State waters (portion of ABC expected to be caught from state waters outside Federal management); other sub-components (expected catch by non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. Currently, the scallop fishery only receives an allocation for GB and SNE/MA yellowtail flounder, the mid-water trawl fishery only receives an allocation for GB and GOM haddock, and the recreational groundfish fishery only receives an allocation for GOM cod and haddock. Once the ABC is divided, sub-annual catch limits (sub-ACLs) and ACL sub-components are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability, monitoring adequacy, precision of management tools, latent effort, and catch of groundfish in non-groundfish fisheries. Appendix III of the Framework 47 EA provides a detailed description of the process used to estimate management uncertainty and calculate ACLs for this action (see **ADDRESSES**).

The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fishery, state waters, and non-groundfish fisheries) are counted against the catch limit for each stock. Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. ACL sub-components represent the expected catch by components of the fishery that are not subject to AMs (e.g., state waters).

This final rule sets ACLs for each groundfish stock except GOM cod (see Item 3 of this preamble), based on the ABCs set by this action. The ACLs for FYs 2012–2014 are listed in Table 4 through Table 7. For stocks allocated to sectors, the commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative Potential Sector Contributions associated with those sectors. The distribution of the groundfish sub-ACL between the common pool and sectors shown in Tables 5 through Table 7 are based on preliminary FY 2012 sector rosters submitted to NMFS as of December 1, 2011, including any PSC updates or corrections that have been made since the proposed rule for this action was published. This distribution differs from the common pool and sector sub-ACLs included in the Framework 47 EA, which were based on FY 2011 sector rosters, and do not reflect updated rosters submitted to NMFS for FY 2012. FY 2012 sector rosters will not be finalized until May 1, 2012, because owners of individual permits signed up to participate in sectors have until the end of the 2011 fishing year, or April 30, 2012, to drop out of a sector and fish in the common pool for FY 2012. NMFS also extended the deadline to join a sector for FY 2012 through April 30, 2012, to provide common pool vessels the opportunity to join a sector due to the potential impacts of the FY 2012 GOM cod catch limits. The sector sub-ACLs listed in the tables below may change due to changes in the sector rosters. If necessary, updated sector sub-ACLs will be published in a future adjustment rule to reflect the final FY 2012 sector rosters as of May 1, 2012.

TABLE 4—FY 2012 ALLOCATIONS TO THE RECREATIONAL GROUNDFISH FISHERY, SCALLOP FISHERY, AND MID-WATER TRAWL FISHERY (MT)

Fishery	Stock	
Recreational Groundfish Fishery	GOM Cod n/a	GOM Haddock. 259.
Scallop Fishery	SNE/MA Yellowtail Flounder 126	GB Yellowtail Flounder. 307.5.
Midwater Trawl Fishery	GB Haddock 286	GOM Haddock. 9.

TABLE 5—FY 2012 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB cod	4,861	4,605	4,523	82	51	204
GB haddock	29,260	27,438	27,306	132	307	1,229
GOM haddock	958	912	648	5	15	22
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
SNE/MA yellowtail flounder	936	760	592	168	10	40
CC/GOM yellowtail flounder	1,104	1,046	1,019	27	35	23
American plaice	3,459	3,278	3,221	57	36	145
Witch flounder	1,563	1,448	1,424	24	49	66
GB winter flounder	3,575	3,387	3,365	22	0	188
GOM winter flounder	1,040	715	691	24	272	54
SNE/MA winter flounder	603	303	na	303	175	125
Redfish	8,786	8,325	8,291	34	92	369
White hake	3,465	3,283	3,256	27	73	109
Pollock	14,736	12,612	12,530	82	754	1,370
Northern windowpane flounder	163	129	na	129	2	33
Southern windowpane flounder	381	72	na	72	39	270
Ocean pout	240	214	na	214	3	23
Atlantic halibut	83	36	na	36	43	4
Atlantic wolffish	77	73	na	73	1	3

TABLE 6—FY 2013 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common Pool sub-ACL	State waters sub-compo-nent	Other sub-compo-nent
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
GB winter flounder	3,572	3,384	3,362	22	0	188
GOM winter flounder	1,040	715	690	25	272	54
SNE/MA winter flounder	672	337	na	337	195	139
Pollock	14,927	12,791	12,707	83	756	1,380
Northern windowpane flounder	163	129	na	129	2	33
Southern windowpane flounder	381	72	na	72	39	270
Ocean pout	240	214	na	214	3	23
Atlantic halibut	83	36	na	36	43	4
Atlantic wolffish	77	73	na	73	1	3

TABLE 7—FY 2014 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB winter flounder	3,427	3,247	3,226	21	0	180
GOM winter flounder	1,040	715	690	25	272	54
SNE/MA winter flounder	879	441	0	441	255	182
Pollock	15,308	13,148	13,062	86	760	1,400
Northern windowpane flounder	163	129	0	129	2	33
Southern windowpane flounder	381	72	0	72	39	270
Ocean pout	240	214	0	214	3	23
Atlantic halibut	83	36	0	36	43	4
Atlantic wolffish	77	73	0	73	1	3

5. U.S./Canada Total Allowable Catches

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are managed jointly with Canada through the U.S./Canada Resource Sharing Understanding. Each year the TMGC, which is made up of representatives from Canada and the U.S., negotiates a shared TAC for each stock based on the most recent stock information and the TMGC harvest strategy. The TMGC's harvest strategy for setting catch levels is to maintain a low to neutral (less than 50-percent) risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality should be further reduced to promote rebuilding. The shared TACs are allocated between the U.S. and Canada based on a formula that considers historical catch percentages and the current resource distribution based on trawl surveys. The U.S./Canada Management Area comprises the entire stock area for GB yellowtail flounder; therefore, the U.S. TAC for this stock is also the U.S. ABC.

In September 2011, the TMGC recommended 2012 shared TACs for eastern GB cod, eastern GB haddock, and GB yellowtail flounder. The TMGC recommended a shared TAC of 675 mt for eastern GB cod, 16,000 mt for eastern GB haddock, and 900 mt for GB yellowtail flounder. However, at its September 2011 meeting, the Council's SSC recommended an ABC of 1,150 mt for GB yellowtail flounder, which was higher than the TMGC recommendation. On September 28, 2011, the Council reviewed the recommendations of the TMGC and the SSC, and approved the TMGC recommendations for eastern GB cod and eastern GB haddock. The Council also approved an ABC of up to 1,150 mt for GB yellowtail flounder, consistent with the SSC's recommendation. The TMGC met by conference call in October 2011 to reconsider its 2012 recommendation for GB yellowtail flounder since the ABC approved by the Council was higher than the shared TAC initially negotiated by the TMGC. At this meeting, the TMGC recommended a shared TAC of 1,150 mt for GB yellowtail flounder for 2012.

The 2012 U.S./Canada TACs and the percentage shared for each country are listed in Table 8. For 2012, the annual percentage shares for each country are based on a 10-percent weighting of historical catches and a 90-percent weighting of the current resource distribution. Any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder U.S. TACs will be deducted from the U.S. TAC in the following fishing year. If FY 2011 catch information indicates that the U.S. fishery exceeded its TAC for any of the shared stocks, NMFS will reduce the FY 2012 U.S. TAC for that stock in a future management action.

TABLE 8—2012 U.S. CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES

TAC	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared TAC	675	16,000	1,150
U.S. TAC	162 (24%)	6,880 (43%)	564 (49%)
Canada TAC	513 (76%)	9,120 (57%)	586 (51%)

6. Incidental Catch Total Allowable Catches and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B Days-At-Sea (DAS) Program), in order to limit the catch of these stocks under each program. Table 9 shows the percentage of the common pool sub-ACL allocated to the special management programs and the FYs 2012–2014 Incidental Catch TACs for each stock. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is counted against the common pool sub-ACL.

The Incidental Catch TAC is further divided among each special management program based on the percentages listed in Table 10. Table 11 lists the FYs 2012–2014 Incidental Catch TACs for each special management program. The FY 2012 sector rosters will not be finalized until May 1, 2012, for the reasons mentioned earlier in this preamble. Therefore, the common pool sub-ACL may change due to changes to the FY 2012 sector rosters. Updated incidental catch TACs will be published in a future adjustment rule, if necessary, based on the final sector rosters as of May 1, 2012.

TABLE 9—COMMON POOL INCIDENTAL CATCH TACS FOR FYS 2012–2014 (MT, LIVE WEIGHT)

Stock	Percentage of common pool sub-ACL	2012	2013	2014
GB cod	2	1.6	n/a	n/a
GB yellowtail flounder	2	0.1	n/a	n/a
SNE/MA yellowtail flounder	1	1.7	n/a	n/a
CC/GOM yellowtail flounder	1	0.3	n/a	n/a
Plaice	5	2.9	n/a	n/a
Witch flounder	5	1.4	n/a	n/a
GB winter flounder	2	0.4	0.4	0.4
SNE/MA winter flounder	1	3.0	3.4	4.4
White hake	2	0.9	n/a	n/a

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program	Closed Area I hook gear haddock SAP	Eastern U.S./CA haddock SAP
GB cod	50	16	34
GB yellowtail flounder	50	n/a	50
SNE/MA yellowtail flounder	100	n/a	n/a
CC/GOM yellowtail flounder	100	n/a	n/a
Plaice	100	n/a	n/a
Witch flounder	100	n/a	n/a

TABLE 10—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM—Continued

Stock	Regular B DAS program	Closed Area I hook gear haddock SAP	Eastern U.S./CA haddock SAP
GB winter flounder	50	n/a	50
SNE/MA winter flounder	100	n/a	n/a
White hake	100	n/a	n/a

TABLE 11—INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM FOR FY 2012–2014 (MT, LIVE WEIGHT)

Stock	Regular B DAS program			Closed Area I hook gear haddock SAP			Eastern U.S./Canada haddock SAP		
	2012	2013	2014	2012	2013	2014	2012	2013	2014
GB cod	0.8	n/a	n/a	0.3	0.0	0.0	0.5	0.0	0.0
GB yellowtail flounder	0.03	n/a	n/a	n/a	n/a	n/a	0.03	n/a	n/a
SNE/MA yellowtail flounder	1.7	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM yellowtail flounder	0.3	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Plaice	2.9	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Witch flounder	1.2	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
GB winter flounder	0.2	0.2	0.2	n/a	n/a	n/a	0.2	0.2	0.2
SNE/MA winter flounder	3.0	3.4	4.4	n/a	n/a	n/a	n/a	n/a	n/a
White hake	0.5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

7. Common Pool Trimester Total Allowable Catches

Beginning in FY 2012, the common pool sub-ACL for each stock (except for SNE/MA winter flounder, windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut) will be divided into trimester TACs. Table 12 shows the percentage of the common pool sub-ACL that is allocated to each trimester for each stock. Once NMFS projects that 90 percent of the trimester TAC is caught for a stock, the trimester TAC area for that stock will be closed for the remainder of the trimester. The area closure will apply to all common pool vessels fishing with gear capable of catching the pertinent stock. The trimester TAC areas for each stock, as well as the applicable gear types, are defined at § 648.82(n)(2). Any uncaught portion of the trimester TAC in Trimester 1 or Trimester 2 will be carried forward to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Overages of the trimester TAC in Trimester 1 or Trimester 2 will be deducted from the Trimester 3 TAC, and any overage of the total sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

Table 13 lists the common pool trimester TACs for FYs 2012–2014 based on the ACLs and sub-ACLs set in this action (see Item 4 of this preamble). As described earlier, vessels have until April 30, 2012, to drop out of a sector, and common pool vessels may join a sector through April 30, 2012. If the final sub-ACLs included in this rule change as a result of changes to FY 2012 sector rosters, the trimester TACs will also change. NMFS will update the common pool trimester TACs in an adjustment rule in early May 2012, if necessary.

TABLE 12—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER

Stock	Percentage of common pool sub-ACL		
	Trimester 1	Trimester 2	Trimester 3
GB cod	25	37	38
GOM cod	27	36	37
GB haddock	27	33	40
GOM haddock	27	26	47
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
CC/GOM yellowtail flounder	35	35	30
American plaice	24	36	40
Witch flounder	27	31	42
GB Winter flounder	8	24	69
GOM Winter flounder	37	38	25
Redfish	25	31	44
White hake	38	31	31
Pollock	28	35	37

TABLE 13—FY 2012–2014 COMMON POOL TRIMESTER TACS

Stock	2012			2013			2014		
	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3
GB cod	20.5	30.3	31.1	n/a	n/a	n/a	n/a	n/a	n/a
GB haddock	35.6	43.5	52.7	n/a	n/a	n/a	n/a	n/a	n/a
GOM haddock	1.3	1.2	2.3	n/a	n/a	n/a	n/a	n/a	n/a
GB yellowtail flounder	0.6	0.9	1.6	0.6	0.9	1.6	n/a	n/a	n/a
SNE/MA yellowtail flounder	35.3	62.2	70.6	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM yellowtail flounder	9.5	9.5	8.1	n/a	n/a	n/a	n/a	n/a	n/a
American plaice	13.7	20.5	22.8	n/a	n/a	n/a	n/a	n/a	n/a
Witch flounder	6.4	7.3	9.9	n/a	n/a	n/a	n/a	n/a	n/a
GB winter flounder	1.8	5.3	15.2	1.8	5.3	15.2	1.7	5.1	14.6
GOM winter flounder	8.9	9.1	6.0	9.1	9.3	6.1	9.1	9.3	6.1
Redfish	8.6	10.6	15.0	n/a	n/a	n/a	n/a	n/a	n/a
White hake	10.1	8.2	8.2	n/a	n/a	n/a	n/a	n/a	n/a
Pollock	23.0	28.8	30.5	23.4	29.2	30.9	24.0	30.0	31.7

* Tri 1 = Trimester 1; Tri 2 = Trimester 2; Tri 3 = Trimester 3.

8. Common Pool Restricted Gear Areas

This action removes the common pool Western GB Multispecies Restricted Gear Area (RGA) and the SNE Multispecies RGA. These RGAs were implemented by Amendment 16 beginning in FY 2010 to help meet the mortality objectives for the common pool fishery, and primarily reduce the catch of flatfish species by common pool vessels. There are sufficient fishing mortality controls for common pool vessels to keep catch within the common pool catch limits. Therefore, the Western GB and SNE Multispecies RGAs are no longer needed to control fishing mortality for the common pool fishery. NMFS expects that removing the Western GB and SNE Multispecies RGAs will facilitate fishing for common pool vessels without risk of exceeding the common pool catch limits. In addition, removing these common pool RGAs will simplify the regulations and avoid confusion with new restricted gear areas included in this action as an AM for common pool and sector vessels (see Item 9 of this preamble).

9. Accountability Measures

AMs are required to prevent overfishing and ensure accountability in the fishery. Proactive AMs are intended to prevent ACLs from being exceeded, and reactive AMs are meant to correct or mitigate overages if they occur. Amendment 16 implemented AMs for all of the groundfish stocks. Upon approving Amendment 16, however, NMFS notified the Council that it was concerned that the AMs developed for stocks not allocated to sectors lacked sector-specific AMs. NMFS recommended that the Council develop appropriate AMs for these stocks in a future action. As a result, Framework 47 intended to revise the AMs for these stocks for common pool and sector vessels.

During the development of Framework 47, there was ongoing litigation on Amendment 16. Oceana, an environmental organization, challenged Amendment 16 partially because it lacked sector-specific AMs for stocks not allocated to sectors. On December 20, 2011, the U.S. District Court for the District of Columbia upheld most of Amendment 16, but found that the Amendment's lack of reactive AMs for those stocks not allocated to sectors (SNE/MA winter flounder, northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish) violated the Magnuson-Stevens Act. The court remanded this single issue to NMFS and the Council for further action. The Council developed the Framework 47 AMs before the Court decided the case, however, and, therefore, did not specifically address this remand in Framework 47. When it proposed Framework 47, NMFS asked for specific comments about the adequacy of sector specific AMs in light of the court's decision and remand.

Ocean Pout and Windowpane Flounder, and Atlantic Halibut

This action adopts reactive AMs for ocean pout, both stocks of windowpane flounder, and Atlantic halibut for sector and common pool vessels that would be triggered if the total ACL is exceeded. NMFS will evaluate total catch of each stock in the year following the pertinent fishing year (Year 2), and if the total ACL for the fishing year (Year 1) is exceeded, the AM will be implemented in the next fishing year (Year 3). For example, if the total ACL for ocean pout is exceeded in FY 2012, NMFS will implement the applicable AM for ocean pout in FY 2014.

The Council decided to implement these AMs in Year 3 out of its concern that final catch information, including final discard estimates, needed to evaluate total catch in the fishery would not be available in time to implement until Year 3.

To determine if the total ACL is exceeded for any of these stocks, NMFS will include catch by the groundfish fishery as well as catch by sub-components of the fishery (e.g., state waters and non-groundfish fisheries). Since these AMs are meant to restrict catch by common pool and sector vessels, sectors cannot be exempt from these AM provisions. Adopting these AMs removes the trimester TAC provision for common pool vessels, which was the previous AM implemented by Amendment 16 for these stocks that would have become effective in FY 2012. Prior to Framework 47, the AMs for these stocks only applied to common pool vessels, and did not include measures to restrict catch by sector vessels should an ACL be exceeded.

Currently, a sub-ACL is only allocated to the common pool fishery for these stocks and catch by common pool and sector vessels is counted against the common pool sub-ACL. If a sub-ACL is specified in the future for other fisheries, and AMs are developed for these fisheries, the AMs for the groundfish fishery or any other fisheries would only be triggered if both the total ACL for the stock and the fishery's sub-ACL are exceeded, including the fishery's share of any overage caused by the other sub-components.

If the total ACL for Atlantic halibut is exceeded in Year 1, landing of Atlantic halibut will be prohibited by common pool and sector vessels in Year 3. If the total ACL is exceeded for ocean pout, northern windowpane flounder, or

southern windowpane flounder in year 1, gear restrictions will apply in the AM areas developed for each stock for both sector and common pool vessels in Year 3. For all three stocks, trawl vessels will be required to use selective trawl gear. Approved gears include the haddock separator trawl, the Ruhle trawl (see Item 14 for description of Ruhle trawl that includes the mid-sized eliminator (or Ruhle) trawl in the definition of this gear type), the rope trawl, and any other gears authorized by the Council in a management action or approved for use consistent with the process defined at § 648.85(b)(6). There are no restrictions on longline or gillnet gear because these gear types comprise a small amount of the total catch for these stocks. If the amount of the total ACL overage is between the management uncertainty buffer and up to 20 percent, the small AM area will be triggered for the pertinent stock. Currently, the management uncertainty buffer is 5 percent; however, this buffer could be modified in the future. If the ACL is exceeded by 21 percent or more, the large AM area will be triggered. The applicable GB AM area will be implemented if the total ACL for northern windowpane is exceeded, and the applicable SNE AM area will be implemented if the total ACL for southern windowpane is exceeded. Both the GB and SNE AM areas will be implemented if the total ACL for ocean pout is exceeded. Sectors may not be exempted from these AM provisions.

Currently, common pool and sector vessels have a one-fish landing limit for Atlantic halibut. Because commercial groundfish vessels can only land one Atlantic halibut per trip, and generally do not target this stock, a zero possession limit, by itself, even if implemented sooner than Year 3, will not likely create a sufficient incentive for vessels to avoid catching this stock should the total ACL be exceeded. Therefore, NMFS finds that the reactive AM for this stock adopted in this action is not adequate, by itself, in light of court's remand described above. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for Atlantic halibut. NMFS requests that the Council take action to ensure that necessary revisions to the reactive AM for Atlantic halibut are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

NMFS is approving the reactive AM for Atlantic halibut because, should the total ACL be exceeded, it will provide some benefit to the fishery as a conservation measure, where currently there is none, and will alleviate perceived inequity between sector and common pool vessels. The AM for this stock adopted in Amendment 16, which would go into place if NMFS disapproved the Framework 47 a.m., only applies to common pool vessels. Common pool and sector catch would count against the common pool sub-ACL, and if the sub-ACL were exceeded, the common pool sub-ACL would be reduced by the amount of the overage in the subsequent fishing year. In FY 2010, sector vessels caught 92 percent of the total commercial catch for Atlantic halibut, and, based on preliminary catch information, sector vessels have caught more than 95 percent of the total commercial catch for Atlantic halibut in FY 2011. Therefore, although NMFS does not find the reactive AM for this stock adopted in this action adequate by itself, in light of court's remand described above, approving this reactive AM as a conservation measure provides some meaningful benefit until a new, or additional, reactive AM can be developed.

With respect to the delayed implementation of these reactive AMs to Year 3, NMFS recommends that these AMs be implemented as soon as possible after the overage occurs, when catch data, including final discard information, reliably show an overage of the catch limit, and not be bound by an AM that only allows implementation in Year 3. The Council recommended a Year 3 implementation because of concerns that final catch data for these stocks, which include catch from state waters and non-groundfish fisheries and discard estimates, could not be reliably available in time to trigger the AM in Year 2, or earlier. As monitoring improves, and discard estimates are more readily available for all components of the fishery, NMFS anticipates that these reactive AMs can, and should, be implemented more quickly.

SNE/MA Winter Flounder and Atlantic Wolffish

Amendment 16 prohibited possession of SNE/MA winter flounder and Atlantic wolffish by commercial vessels. This action adopts the current zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish for commercial vessels. Based on FY 2010 catch information and partial FY 2011 catch information, the Council concluded, before the decision in the Amendment 16 lawsuit described above, that prohibiting possession appears to have kept catch of these stocks well below mortality targets, and that such preventive measures satisfy the AM requirements of the Magnuson-Stevens Act. However, although zero possession may be a sufficient proactive AM for these stocks, the Magnuson-Stevens Act requires reactive AMs. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for SNE/MA winter flounder and Atlantic wolffish. NMFS requests that the Council take action to ensure reactive AMs for SNE/MA winter flounder and Atlantic wolffish are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

Although zero possession does not meet the requirement for a reactive AM for these stocks, NMFS approves these measures because it removes a potential inequity for common pool vessels. Adopting zero possession for SNE/MA winter flounder and Atlantic wolffish, as prescribed by Framework 47, removes the trimester TAC provision for these stocks for common pool vessels established by Amendment 16. Under the default Amendment 16 measures, if the overall sub-ACL for these stocks is exceeded in a year, the common pool's sub-ACL is reduced by the amount of the overage. This AM only applies to the common pool, even if sector vessels cause the overage. Because common pool vessels generally take less than 10 percent of the total commercial catch of these two stocks, there is a potential inequity in only applying the AM to the common pool vessels. Until the Council is able to develop reactive AMs for these two stocks, the zero possession proactive AM will avoid disproportionately penalizing common pool vessels for catch by sector vessels, and will continue to benefit the fishery by keeping catch within allowable levels.

10. Removal of Cap on Yellowtail Flounder Catch in Scallop Access Areas

In 2004, Framework 39 to the NE Multispecies FMP and Framework 16 to the Atlantic Sea Scallop FMP implemented a cap on the amount of yellowtail flounder that could be caught in the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access

Areas. This measure was implemented before ACL and AM provisions were added to the NE Multispecies and Atlantic Sea Scallop FMPs to ensure that yellowtail flounder catches did not exceed the target TACs for yellowtail flounder or exceed the U.S TAC for GB yellowtail flounder. This action removes the 10-percent access area cap for the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access Areas. The scallop fishery is still subject to its GB and SNE/MA yellowtail flounder sub-ACLs, but there is no limit on how much of the sub-ACLs can be caught in the scallop access areas. The yellowtail flounder sub-ACLs limit the amount of yellowtail flounder that can be caught by the scallop fishery, so a catch cap for the access areas in no longer necessary to meet fishing mortality objectives.

11. Implementation of Scallop Fishery Accountability Measure

Each year a portion of the GB and SNE/MA yellowtail flounder ABC is allocated to the scallop fishery as a sub-ACL. If the scallop fishery exceeds its sub-ACL for either of these stocks, the statistical areas with high catch rates of yellowtail flounder are closed to limited access scallop vessels. The duration of the closure depends on the magnitude of the overage. Framework 23 to the Atlantic Sea Scallop FMP (Framework 23) set the yellowtail flounder seasonal closure AM schedule for scallop vessels to ensure that the closures would occur during the months with the highest yellowtail flounder catch rates.

This action modifies when the AM for the scallop fishery is triggered. The scallop fishery AM will be triggered if: (1) The scallop fishery exceeds it sub-ACL for any groundfish stock, and the total ACL for that stock is also exceeded; or (2) the scallop fishery exceeds its sub-ACL by 50 percent or more for any groundfish stock, even if the total ACL for that stock is not exceeded. If the scallop fishery AM is triggered, the corresponding scallop seasonal closure will be implemented according to the seasonal closure AM schedule. Currently, the scallop fishery is only allocated a sub-ACL for GB and SNE/MA yellowtail flounder; however, this measure applies to the scallop fishery AM for any additional groundfish stock that is allocated to the scallop fishery in a future action. This measure is applied retroactively to the 2011 scallop fishing year.

Given the differences in the scallop and groundfish fishing years, complete catch information for GB and SNE/MA yellowtail flounder will not be available until sometime after April 30 (the end of the groundfish fishing year). In addition, inseason catch information is not available for groundfish ACL sub-components, such as state waters catch. As a result, when evaluating the total catch of GB and SNE/MA yellowtail flounder for the purposes of triggering the scallop fishery AM, NMFS will primarily rely on partial catch information to project total fishing year catch of these two stocks from state waters and non-groundfish fisheries. NMFS will also use partial fishing year data to estimate GB and SNE/MA yellowtail flounder catch by the commercial groundfish fishery and will project catch of these two stocks by groundfish vessels for the remainder of the groundfish fishing year. NMFS will add the maximum carryover available to the groundfish fishery to the estimate of total catch when evaluating whether the total ACL has been exceeded for a groundfish stock for the purposes of triggering the scallop fishery AM.

This measure is expected to allow more flexibility in the fishery. The yellowtail flounder allocation to the scallop fishery is based on an estimated catch of yellowtail flounder with the projected scallop harvest for the fishing year. There is uncertainty in the projected yellowtail flounder catch in the scallop fishery, and this measure will help account for that uncertainty without compromising the mortality objectives for GB and SNE/MA yellowtail flounder. In addition, triggering the AM when the scallop fishery exceeds its allocation by 50 percent or more will still ensure accountability in the fishery. The Council did not specifically include how to reference this measure in the scallop regulations in Framework 47; therefore, NMFS adopts these references under its authority in section 305(d) of the Magnuson-Stevens Act.

12. Inseason Re-Estimation of Scallop Fishery GB Yellowtail Flounder Sub-ACL

The allocation of the GB yellowtail flounder sub-ACL to the scallop fishery is based on an estimate of the expected GB yellowtail flounder catch in the scallop fishery. Because there is uncertainty in the initial estimates of projected GB yellowtail flounder catch, it is possible that the initial allocation to the scallop fishery will be too low, which could cause the scallop sub-ACL to be exceeded, or that the initial allocation to the scallop fishery will be too high, which could reduce GB yellowtail flounder yield. This measure creates a mechanism to re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the groundfish fishery sub-ACL for GB yellowtail flounder up to the difference between the original estimate and the revised estimate. Any increase to the groundfish fishery sub-ACL will be distributed to sectors and the common pool. NMFS will not make any changes to the GB yellowtail flounder sub-ACL for the scallop fishery if the revised estimate indicates that the scallop fishery will catch 90 percent or more of its sub-ACL. Consistent with the Administrative Procedure Act, NMFS will notify the public of any changes to the GB yellowtail flounder sub-ACLs. This measure is expected to prevent any loss of GB yellowtail flounder yield that may occur if the initial catch estimate of this stock by the scallop fishery is too high. Re-estimating the expected GB yellowtail flounder catch by the scallop fishery mid-season will allow additional GB yellowtail flounder yield by the commercial groundfish fishery, and will help achieve optimum yield for this stock.

Due to uncertainty associated with the revised estimate of expected GB yellowtail flounder catch, NMFS has the authority to adjust the size of the change made to the sub-ACLs for the scallop and groundfish fisheries. Based on the amount of the uncertainty, NMFS could revise the sub-ACLs by any amount between the initial estimate of expected GB yellowtail flounder catch by the scallop fishery and the revised estimate. Implementation of this measure may be delayed until data are sufficient for NMFS to project GB yellowtail flounder catch and re-estimate the GB yellowtail flounder sub-ACL for the scallop fishery mid-season. Consideration of uncertainty and delay in implementation of this measure will avoid errors in re-estimating the GB yellowtail flounder sub-ACLs if the projected scallop fishery catch is underestimated. Errors in the re-estimation of the scallop fishery sub-ACL could cause the scallop fishery to exceed its sub-ACL if projected catch is underestimated, which may trigger the scallop fishery AM. In addition, if the groundfish fishery catches the additional GB yellowtail flounder allocated mid-fishing year, the U.S. TAC for GB yellowtail flounder could be exceeded.

13. Annual Measures for FY 2012 Under Regional Administrator Authority

The FMP authorizes the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This rule includes management measures for FY 2012 that are being implemented under RA authority. These measures are not part of Framework 47, and were not specifically proposed by the Council, but are included in this final rule because they relate to Framework 47 measures (i.e., ACLs). The RA may modify these measures if current information indicates changes are necessary. Any adjustments to these measures will be implemented through an inseason action consistent with the Administrative Procedure Act.

Table 14 lists the initial FY 2012 trip limits for common pool vessels. These FY 2012 trip limits take into consideration changes to the FY 2012 common pool sub-ACLs and sector rosters, trimester TACs for FY 2012, catch rates of each stock during FY 2011, bycatch, the potential for differential DAS counting in FY 2012, public comments received on the proposed FY 2012 trip limits, and other available information. This action does not change the default cod trip limit for vessels with a limited access Handgear A permit (300 lb (136.1. kg) per trip), an open access Handgear B permit (75 lb (34.0 kg) per trip), or a limited access Small Vessel Category permit (300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined).

NMFS will monitor common pool catch using dealer-reported landings, VMS catch reports, and other available information, and if necessary, will adjust the common pool management measures.

TABLE 14—INITIAL FY 2012 COMMON POOL TRIP LIMITS

Stock	Initial FY 2012 trip limits
GOM cod	650 lb (294.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	1,000 lb (453.6 kg) per trip.
GB haddock	10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	250 lb (113.4 kg) per trip.
GB winter flounder	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB yellowtail flounder	500 lb (226.8 kg) per trip.
SNE/MA yellowtail flounder	1,500 lb (680.4 kg), up to 4,500 (2,041.1 kg) per trip.
American plaice	unrestricted.
Pollock	unrestricted.
Witch flounder	250 lb (113.4 kg) per trip.
White hake	1,500 lb (680.4 kg) per trip.
Redfish	unrestricted.

The FMP also provides the RA the authority to allocate the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (June 1, 2005; 70 FR 31323) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg)). This calculation accounts for the projected catch from the area outside the SAP. Based on the groundfish sub-ACL of 479,946 lb (217,700 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, this action allocates zero trips to the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2012. Vessels can still fish in this SAP in FY 2012 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels are not allowed to fish in this SAP using flounder nets.

14. Mid-Size Ruhle Trawl

This action modifies the definition of the Ruhle Trawl to include the smaller dimensions of the mid-size Eliminator trawl and only include the primary design features of the net design. The following modifications are being made: Replace the minimum fishing circle requirement with a more concise and enforceable measure using the minimum number of meshes at the wide end of the first bottom belly; adjust the mesh configuration in the forward part of the net and the minimum kite area requirements to that of the mid-size Eliminator; and remove the sweep configuration requirements. The sweep requirements have been removed from the definition because this component of the gear is largely based on bottom composition and preference, and is not the primary bycatch reduction device. The primary bycatch reduction device for this gear type is the large meshes located in the forward part of the net. The minimum mesh sizes and minimum kite area are reduced to enable the mid-size Eliminator to meet the Ruhle trawl definition.

The Council requested that NMFS implement a smaller-scale version of the Ruhle trawl (i.e., the mid-size Eliminator Trawl) that should be: (1) Available for use by both sector and non-sector vessels in the Eastern U.S./Canada Haddock SAP and Regular B DAS Program; and (2) assigned a separate gear code but should not be assigned a separate stratum for the purpose of discard information. Expanding this definition will increase fishing opportunity for smaller vessels by allowing them to utilize this smaller-scale trawl, and therefore, have access to the Haddock SAP, as well as the B DAS program. In addition, vessels will be able to operate under the Ruhle trawl gear code, which will result in reduced discard rates for certain species, particularly depleted stocks that may have constraining catch limits.

Vessels fishing in the Regular B DAS Program or the Haddock SAP must use approved trawl gear that has been determined to reduce the catch of NE multispecies stocks of concern. The RA may approve additional gears for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP if a gear meets gear performance standards defined at § 648.85(b)(6)(iv)(J)(*2*). These

gear performance standards were developed to allow the harvest of healthy stocks (e.g., GB haddock) while avoiding the capture of stocks of concern (e.g., GB cod and GB yellowtail flounder). The full-size Eliminator trawl (i.e., Ruhle trawl) was tested in 2006. This experiment demonstrated that it effectively harvested the target species haddock while reducing catches of cod and other stocks of concern. In response to a Council's request, NMFS, approved the Ruhle trawl for use in the B DAS Program and Haddock SAP on July 14, 2008 (73 FR 40186). The current definition of the Ruhle trawl is specific to the experimental net, which was designed for relatively large vessels. The University of Rhode Island (URI) conducted a follow-on study that tested two smaller versions of the Ruhle trawl that could be used by smaller vessels (small-size Eliminator trawl and mid-size Eliminator trawl) to determine if the catch performance of the smaller trawls is similar to that of the full-size trawl. Following a successful peer review in 2010, the Council determined that the mid-size Eliminator trawl effectively meets the pertinent gear performance standards and requested that NMFS approve the use of the mid-size Eliminator trawl by sector and non-sector vessels in the B DAS Program and Haddock SAP.

Vessels participating in the NE multispecies common pool and sector management programs are subject to catch limits, which include discarded catch. Vessel Trip Report (VTR) gear codes, in conjunction with stock area fished and sector, are used to establish discard strata for each NE multispecies stock to ensure these catch limits are not exceeded. Each discard stratum has a particular discard rate associated with each NE multispecies stock based on of Northeast Fisheries Observer Program (NEFOP) and at-sea-monitor (ASM) data. There are currently three commonly used VTR trawl gear codes for groundfish: Bottom fish; haddock separator; and Ruhle trawl. Because the haddock separator trawl and the Ruhle trawl were designed to fish more selectively than a regular bottom fish trawl, trips using these two gear types generally have reduced catch for certain stocks of NE multispecies, particularly flatfish and cod, resulting in a lower discard rate for these species. Due to the similar catch performance characteristics of the mid-size Eliminator and Ruhle trawl, data from both gear types will be pooled for the purpose of assigning discard rates and establishing discard strata.

The Council also requested that NMFS create a new VTR gear code for the mid-size Eliminator Trawl to monitor the catch performance of this net design in the fishery. However, creating a new gear code would not achieve the Council's objective. A mid-size Eliminator trawl can range in size from the experimental net up to the size of the Ruhle trawl. As a result, a vessel may correctly choose the mid-size Eliminator Trawl VTR gear code, but the net size could vary considerably from the experimental net size. This would prevent using the VTR gear code to monitor how the experiment net performs when adopted in the fishery. Instead, NMFS will use foot-rope length and discard data obtained by trips that are accompanied by a NEFOP assigned observer or ASM. Data from observed or monitored vessels that are using a mid-size Eliminator with a sweep that is comparable to the experimental net sweep of 33m (109 ft) will be used to evaluate how the experimental gear is performing in practice.

15. Monitoring of Fillets, Fish Parts, and Fish Landed for At-Home Consumption

In the proposed rule for this action, NMFS proposed to replace the 3:1 counting method with new species-specific conversion factors for the purposes of counting fillets and fish-parts landed for at-home consumption against the pertinent ACLs. However, based on public comments received on this proposed measure, and additional analysis performed, NMFS concluded that the 3:1 counting method is the most accurate for counting fillets and fish parts landed for at-home consumption against ACLs, and that any changes to this conversion factor should go through the Council.

Framework Adjustment 27 to the NE Multispecies FMP (Framework 27) implemented a counting rate of 3:1 for the purposes of ensuring compliance with days-at-sea possession limits. This counting rate was implemented prior to implementation of ACLs and AMs in the FMP. When Amendment 16 was implemented in 2010, the 3:1 counting rate was not extended for quota monitoring purposes to ensure that all catch by common pool and sector vessels is counted and attributed to the appropriate sub-ACL. Therefore, on July 19, 2011, NMFS published an interim final rule correcting the counting method for fillets and parts of fish landed for home consumption (76 FR 42577). The interim final rule applied the 3:1 counting rate to all fillets and parts of fish landed for home consumption by sector and common pool vessels.

For FY 2010 and FY 2011, fish landed for at-home consumption were counted at a 1:1 rate against the common pool and sector sub-ACLs. This was not accurate. Beginning in FY 2012, all fillets and parts of fish landed for home consumption will be multiplied by 3 for quota monitoring purposes. All catch by sector and common pool vessels, including fillets retained by crew for home consumption, count against a sector's ACE for that stock or the common pool sub-ACL for that stock. The 3:1 counting method is consistent with the FMP requirement that all catch by sector and common pool vessels be accounted for, and is also consistent with the 3:1 counting method implemented by the Council in Framework 27. The 3:1 counting rate for fillets and parts of fish will also continue to be used to determine compliance with possession limits for common pool vessels.

16. Charter/Party Vessel Closed Area Letter of Authorization

Framework Adjustment 33 to the NE Multispecies FMP (Framework 33) allowed charter/party and recreational vessels to fish in the GOM Rolling Closure Areas, the Western GOM Closure Area, Cashes Ledge Closure Area, and the Nantucket Lightship Closed Area, provided the vessel is issued a letter of authorization (LOA) from the Regional Administrator. Framework 33 prohibited vessels issued this LOA from selling any fish, except for species that are not managed by the New England Fishery Management Council (NEFMC) or the Mid-Atlantic Fishery Management Council (MAFMC). When NMFS implemented this action, the regulations only provided an exception to the sale of tuna for charter/party vessels issued this LOA. This exception was inconsistent with the Council's intent. In addition to tuna, striped bass and lobster, among other species, are not managed by the NEFMC or the MAFMC, and therefore, should be precluded from the prohibition of sale. This action clarifies the regulations that charter/party vessels issued a LOA to fish in the GOM Rolling Closure Areas, the Western GOM Closure Area, Cashes Ledge Closure Area, and the Nantucket Lightship Closed Area are only prohibited from selling fishing species managed by the NEFMC or the MAFMC.

Comments and Responses on Measures Proposed in the Framework 47 Proposed Rule

NMFS received nine comments during the comment period on the Framework 47 proposed rule from six individuals, one industry group, the Council, and Oceana.

Acceptable Biological Catches and Annual Catch Limits

Comment 1: Oceana commented that NMFS should disapprove the catch limits in Framework 47 because they are not based on the best scientific information available and, therefore, violate National Standard 2. Oceana stated that the stock assessment updates completed in early 2012 should be the basis for setting catch limits in Framework 47, and that NMFS should disapprove the ABCs for the 13 stocks whose assessments were updated in 2012. Oceana also stated that NMFS should take emergency or interim action to revise catch limits for FY 2012.

Response: National Standard 2 guidelines (50 CFR 600.315) require that each FMP (and by extension amendment and framework) must take into account the best scientific information available at the time, or preparation, of an action. The guidelines recognize that new information often becomes available between the initial drafting of an FMP and its submission to NMFS for final review. The guidelines state that this new information should be incorporated into the action, if practicable; but it is unnecessary for the Council to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures. This is not a situation in which the Council received information that ''drastic changes'' have occurred in the fishery prior to submission of the action to NMFS. Instead, as was fully understood in the development of Framework 47, the assessment updates were not completed until after the Council took final action on Framework 47 and submitted it to NMFS for review. As a result, there was no practicable way to incorporate this information into Framework 47 without reinitiating the Council process and delaying the action far beyond the start of FY 2012, which begins on May 1, 2012, and is when the ABCs need to be in place. Therefore, NMFS has determined that it is appropriate for the Council to set the OFLs and ABCs in this action based on the best scientific information available at the time the Council took final action and submitted Framework 47 to NMFS for approval. The appropriate response to the new information that became available after submission to NMFS is for the Council to consider whether to initiate a new framework or amendment, or to request an emergency or interim Secretarial action, to revise the existing measures or catch limits adopted in this action.

Consistent with the National Standard 2 guidelines, this determination recognizes the need for some certainty as to what scientific information the Council may rely on in taking its final action, and what information NMFS will use to evaluate the approvability of a Council action. Without such certainty, there would be a lack of predictability and confidence in Council actions, which must be developed well in advance of their implementation due to the time it takes to prepare appropriate analyses and documents for submission to NMFS for final review. Uncertainty about what information will be used to review a Council action could also seriously undermine the Council process, because neither the Council, nor the public, would be confident their efforts would not be meaningless. Thus, new scientific information that becomes available after the Council has submitted its final action to NMFS for review should not, based on National Standard 2, be used retroactively to undo recommended actions that had the benefit of the full Council process.

NMFS also considered the practical effect of disapproving the OFLs and ABCs specified in this action. Approving the catch limits for these stocks, whose assessments were updated in early 2012, actually results in slightly less fishing mortality than if they were disapproved and the default measures specified by Framework 44 and Framework 45 went into place. The default catch limits for FY 2012 for the five stocks mentioned earlier (GB cod, GOM haddock, CC/GOM yellowtail flounder, American plaice, and witch flounder) are identical to those specified in this action, except for GB cod, which is 5 percent higher. For the remaining stocks, the default measures are essentially identical or higher than those adopted in Framework 47. Therefore, disapproving the FY 2012 ABCs in Framework 47 would result in the same catch limits as those previously specified, and a higher catch limit for GB cod, which could increase overfishing on this stock while the Council develops its next management action to incorporate the new scientific information available.

Approving these catch limits, as explained above, does not reduce the importance of acting on the new information as soon as possible in a new action, but rather emphasizes the importance of analyzing and considering this information through the full Council process. Consistent with the SSC guidance and the Council's understanding during the development of Framework 47, the Council has already started developing a management action to incorporate the assessment update information and adopt catch limits for the pertinent stocks for FYs 2013–2014. A new stock assessment is also scheduled for SNE/MA yellowtail flounder in June 2012, and the results of this stock assessment will be incorporated into the same Council action to set OFLs and ABCs for the stock for FYs 2013–2014. The Council may also use updated information for other stocks to revise the FYs 2013–2014 OFLs and ABCs specified in this action. The Council intends to complete this management action by May 1, 2013, to set catch limits for FYs 2013–2014.

Oceana's comment recommending emergency action is outside the scope of this action and is considered to be an independent request for NMFS to take action addressing the updated stock assessment information. As explained above, this new information should preferably be considered through the full Council process, and NMFS has charged the Council to address this new information as soon as possible. At the time of this rulemaking, the Council has not yet had the opportunity to review and discuss the results of the assessment updates. NMFS believes this information is best incorporated through the Council process, and is waiting on a response from the Council to Framework 47 and the assessment updates. The Council is scheduled to receive and discuss the results of the assessment updates at its April 25, 2012, meeting. NMFS has notified the Council that the updated assessment information must be incorporated as soon as possible, but no later than May 1, 2013. NMFS recommends that, at its June meeting, the Council identify how and when this information will be incorporated and how that process would affect any existing or planned management measures.

Accountability Measures

Comment 1: The Council commented that the use of zero possession has been effective at keeping catches within allowable levels for pertinent stocks. The Council commented that adopting zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish, and as a reactive AM for Atlantic halibut, is the Council's preferred method for ensuring catch levels are not exceeded while also giving industry the greatest possible opportunity to target healthy stocks. Oceana commented that the use of zero possession as an AM is not adequate for

SNE/MA winter flounder, Atlantic wolffish, or Atlantic halibut.

Response: NMFS agrees that zero possession for SNE/MA winter flounder and Atlantic wolffish appears to have effectively kept catches within allowable levels. In FY 2010, total catch of these two stocks was well below the total ACL, and based on preliminary catch information, it appears that total catches will also be below the total ACL in FY 2011. However, as discussed in Item 9 of this preamble, although zero possession may be a sufficient proactive AM for these two stocks, effective reactive AMs remain necessary, and must be developed as soon as possible as a step in the ongoing process to ensure compliance with the with the Court remand. If zero possession continues to be an effective proactive AM, the reactive AM will likely not be triggered. However, should the proactive AM fail, and an overage of the total ACL occurs, a reactive AM will ensure this overage is mitigated, and prevent repeated overages of the ACL. For Atlantic halibut, a zero possession reactive AM, while a step in the right direction, by itself, is not adequate in light of the court's remand. Because commercial groundfish vessels can only land one halibut per trip, and generally do not target halibut, a zero possession limit will not likely create a sufficient incentive for vessels to avoid catching this stock should an ACL be exceeded. NMFS recommends that the Council consider area closures or gear-restricted areas, similar to those adopted for windowpane flounder and ocean pout, as a reactive AM for these stocks. NMFS requests that the Council take action to ensure that effective reactive AMs are developed and implemented as soon as possible, and that significant progress be made on this issue by its November 2012 meeting. NMFS also requests that the Council consider whether these measures could be applied retroactively to FY 2012.

While NMFS recognizes that the AMs approved in this action do not satisfy the court remand, zero possession as a proactive AM for SNE/MA winter flounder, and as a reactive AM for Atlantic halibut, will still provide some benefit to prevent catch from exceeding the ACLs for these stocks, and will reduce a potential inequity between common pool and sector vessels. The initial AMs implemented by Amendment 16 for these stocks only applied to common pool vessels. Catch by common pool and sector vessels counted against the common pool sub-ACL. Based on preliminary FY 2011 catch information, sector vessels have caught more than 95 percent of the total commercial catch for SNE/ME winter flounder, Atlantic wolffish, and Atlantic halibut. Disapproving the Framework 47 AMs for these stocks would result in the same default management measures for SNE/MA winter flounder and Atlantic wolffish (zero possession), no reactive AM for Atlantic halibut, and would disproportionately penalize common pool vessels. Therefore, NMFS has approved zero possession as a proactive AM for SNE/MA winter flounder and Atlantic wolffish, but recognizes that reactive AMs are required for these stocks and must be developed as soon as possible. In addition, NMFS approves the reactive AM for Atlantic halibut because it will provide some conservation benefit while the Council develops a more effective reactive AM for this stock. Approving these AMs will also ensure the common pool vessels are not disproportionately penalized for any overages that may occur.

Comment 2: Oceana disagreed that an AM should be implemented 2 years after the fishing year in which the overage occurred, and stated that this measure is inconsistent with the National Standard 1 guidelines. Oceana suggests that inseason AMs are not impossible and that preliminary data is used for inseason management in other fisheries.

Response: The Council adopted AMs for windowpane flounder, ocean pout, and Atlantic halibut that would be implemented in Year 3 because evaluating total catch includes catch of these stocks in state waters and non-groundfish fisheries. The Council felt that final catch data, including final discard estimates, would not be reliably available in time to implement these AMs earlier than Year 3. Indeed, catch information, including discard estimates, are not readily available inseason for these components of the fishery. While we are approving this measure because it provides a reactive AM for these stocks should an ACL be exceeded, where no AM currently exists, NMFS recommends that the Council reconsider the timing of these AMs. NMFS recommends to the Council that AMs should be implemented as soon as possible, rather than 2 years after an overage occurs, when catch data, including final discard information, show an overage of the catch limit. As monitoring improves, and discard estimates are more readily available for all components of the fishery, NMFS anticipates that these reactive AMs can, and should, be implemented more quickly.

Annual Measures for FY 2012 Under Regional Administrator Authority

Comment 1: One commenter favored an 800 lb per day-at-sea (DAS) trip limit for GOM cod. The commenter stated that this trip limit would make each trip more profitable and would allow hiring one crew member, as opposed to fishing alone.

Response: NMFS proposed a trip limit range for GOM cod of 500 lb-800 lb per DAS. NMFS is implementing an initial FY 2012 trip limit for GOM cod of 650 lb per DAS. NMFS believes this trip limit will allow a more profitable trip than the 500 lb DAS limit in FY 2011. A 650-lb trip limit will likely preserve the GOM cod trimester TAC throughout each trimester and prevent premature closure of the trimester TAC area. If necessary, NMFS will modify trip limits inseason to prevent under harvest or overharvest of the trimester TACs, or the common pool sub-ACLs.

Comment 2: One commenter stated that the common pool fishery does not need the trimester TAC AM because trip limits effectively control fishing mortality during the fishing year and requested that NMFS not implement the trimester TAC AM for the common pool fishery. This commenter also stated that the trimester TAC AM for white hake should not apply to vessels fishing with longline or hook gear. Another commenter stated that the distribution of the common pool sub-ACL to the trimesters should be revisited.

Response: The trimester TAC AM provision was adopted in Amendment 16 in 2010, and is not part of Framework 47. Accordingly, this measure was not proposed in this action. Because this measure was not part of Framework 47, these comments are irrelevant to, and outside the scope of, the measures approved in this final rule.

To provide some background, however, FY 2012 will be the first fishing year that this AM is effective for the common pool fishery. The trimester TAC AM serves as a reactive AM that is triggered if an overage of the common pool catch limit occurs. Sector-specific reactive AMs are required for every groundfish stock. The trimester TAC AM is only one type of reactive AM that the Council may use, and the Council could develop a different AM for the common pool fishery if it chooses. However, any changes to the trimester TAC AM must be developed through the full Council process in another action, and cannot be addressed in this rule. If trip limits continue to be an effective proactive AM that keep common pool catch within allowable levels, the trimester TAC AM will likely not be triggered. However, if inseason management measures fail to keep catch

within allowable levels, the trimester TAC AM will ensure overfishing does not occur and mitigate any overages.

When the trimester TAC AM was developed, the area closures for each stock were applied to any gear types capable of catching that stock. In addition, the distribution of the common pool sub-ACL was based on the distribution of landings and the influence of management measures on landings patterns. NMFS does not have the authority to modify the applicable gear types for the white hake trimester TAC AM or the distribution of the common pool sub-ACL. Any modifications to these measures must be made through the Council process. NMFS recommends that the commenters raise this issue to the Council for possible inclusion in a future management action.

Mid-Size Ruhle Trawl

Comment 1: Two individuals commented that they strongly support the proposed revision to the Ruhle trawl definition because it will provide smaller vessels with increased fishing opportunities. One commenter suggested that eliminating the requirement for a minimum kite area (as opposed to the proposed minimum kite area of 19.3 sq. ft (1.8 sq. m)) would allow more flexibility.

Response: NMFS believes that the minimum kite size is necessary because it will help ensure that the catch performance of the mid-size Ruhle trawl will be more consistent and comparable with the catch performance of the experimental net. The large meshes greatly reduce catch of flounders and cod; however, the experimental net effectively caught other fish, such as haddock, as a result of the relatively high profile of the net. The high profile of the net is due, in part, to the lift provided by the kites. A minimum kite size will also minimize the catch performance differences between kites and headrope floats. Therefore, NMFS retained the minimum kite size requirement.

Monitoring of Fillets, Fish Parts, and Fish Landed for At-Home Consumption

Comment 1: One individual commented that landing fish for home consumption should be prohibited, and that all catch should be counted against the appropriate catch limit.

Response: ACLs and AMs for the groundfish fishery were implemented by Amendment 16 in FY 2010. Allowing home consumption of some fish has been a long-standing provision and was not proposed for elimination. Therefore, this comment is outside the scope of this action. In any event, landings and discards from all fisheries are counted against the catch limit for each stock, including landings by commercial groundfish vessels for home consumption. The proposed rule was intended only to address the appropriateness of the conversion factor for determining the live weight of fillets and parts of fish landed for home consumption. As discussed in the response to the next comment, NMFS decided not to implement a new conversion factor for fish parts landed for home consumption.

Comment 2: One individual and the Council commented that the proposed species-specific conversion factors for home consumption are nearly identical to the conversional factors used for dressed fish, which could underestimate the amount of fish landed for home consumption.

Response: NMFS agrees that the proposed species-species conversion factors are similar to the conversion factors used for dressed fish. Based on additional analysis, NMFS is not implementing the proposed species-specific conversion factors. Beginning in FY 2012, all fillets and parts of fish landed for home consumption will be multiplied by 3 and attributed to the appropriate sector ACE or common pool sub-ACL. Any change to the conversion factor should be considered by Council first.

Changes From the Proposed Rule

NMFS has made three changes from the proposed rule. After further review, the coordinates for several AM areas are revised to correct errors contained in the proposed rule. In addition, the regulations are further revised to reflect the removal of the trimester TAC for the common pool fishery for those stocks whose AMs were revised in this action. NMFS is not implementing species-specific conversion factors in place of the 3:1 counting rate for home consumption landings, as was proposed in the proposed rule for this action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that Framework 47 is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Act, and other applicable law.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. The effective date of this action affects a parallel rulemaking approving sector operations plans for the start of FY 2012 on May 1, 2012. In addition, the effective date of this action affects the scallop fishery AM for FY 2011. Therefore, these actions must be in effect at the beginning of FY 2012 to fully capture the environmental and economic benefits of Framework 47 measures as well as the FY 2012 sector operations plans. Due to unforeseen circumstances related to FY 2012 catch levels for GOM cod, the Council's submission of Framework 47 to NMFS was delayed until February 2012. Due to this constraint, this rulemaking could not be completed further in advance of May 1, 2012. Therefore, in order to have this action effective at the beginning of FY 2012, it is necessary to waive the 30-day delayed effectiveness of this rule.

The waiver of the 30-day delayed effectiveness for this final rule is in the public interest because it is necessary to implement a number of measures by the start of FY 2012 that would benefit the NE multispecies fishery and the Atlantic sea scallop fishery. This action sets catch levels for FY 2012–2014 for most groundfish stocks, adopts U.S./Canada TACs for FY 2012, removes restricted gear areas for common pool vessels, and alleviates the scallop fishery AM trigger to allow the scallop fishery to catch more yellowtail flounder. This rule also includes measures controlling fishing effort by common pool vessels to help prevent the premature or overharvest of the common pool trimester TACs and sub-ACLs during FY 2012. Waiving the 30-day delayed effectiveness of this final rule will ensure that the appropriate catch levels are implemented at the start of FY 2012. Waiver of delayed effectiveness will also ensure that common pool vessels will benefit from the removal of restricted gear areas as soon as possible. This measure will also modify when the scallop fishery AM is triggered to allow the scallop fishery to catch more yellowtail flounder before an AM is triggered. This measure is being applied retroactively to FY 2011, and a waiver of the delayed effectiveness will prevent a premature trigger of the scallop fishery AM.

Failure to waive the 30-day delayed effectiveness would result in the default FY 2012 ABCs, which could be lower or higher than those adopted in this final rule. This could prevent vessels from maximizing the benefit from increased catch limits or result in catch limits that are too high based on the best scientific information available. Failure to waive the 30-day delayed effectiveness of this action could also result in no TACs being specified for U.S./Canada stocks. Without an allocation for Eastern GB

cod or haddock, sector vessels would be unable to fish in the Eastern U.S./Canada Area. Failure to waive delayed effectiveness will delay the removal of the GB or SNE/MA Multispecies Restricted Gear Areas, which would unnecessarily burden common pool vessels and reduce their economic efficiency. Failure to delay could also result in prematurely triggering the scallop fishery AM pending final FY 2011 catch information. Thus, delaying implementation of this final rule would result in short-term adverse economic impacts to groundfish and scallop vessels and associated fishing communities. In addition, delaying implementation of this final rule could increase the risk of excessive catch by common pool vessels, and exceeding a trimester TAC or sub-ACL, if the FY 2012 trip limits included in this rule are not in place at the start of FY 2012. Therefore, a 30-day delay in the effectiveness of this rule is impracticable and contrary to the public interest.

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

This final 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 FRFA was prepared for this action, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA, which includes the summary in this rule and the analyses contained in Framework 47 and its accompanying EA/RIR/FRFA, describes the economic impact the measures adopted in Framework 47 would have on small entities. A description of this action and its objectives and the legal basis for this action are contained in Framework 47 and in the preamble to the proposed rule as well as this final rule; it is not repeated here. All of the documents that constitute the FRFA are available from NMFS (see **ADDRESSES**). This FRFA analyzes expected impacts of the measures in Framework 47, including setting GOM cod specifications based on the new GOM cod assessment. As explained in the preamble, however, the Council did not adopt ABCs for GOM cod in Framework 47. Therefore, the following summary also includes expected impacts of this action in the absence of GOM cod specifications.

No issues were raised by public comments in response to the IRFA or with respect to the economic impacts of this action. As a result, no changes were made from the proposed rule.

Description and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

FY 2010, which is the last full fishing year for which data are available, was used as the baseline period in this analysis to estimate the impacts of this action on regulated small entities. The measures implemented by this action would primarily affect commercial groundfish vessels (in a sector or in the common pool) and commercial Atlantic sea scallop vessels. The primary economic impact of the action is associated with the specification of ACLs and sub-ACLs. The Small Business Administration considers a commercial fishing operation a small entity if it has annual sales of less than $4 million (see North American Industry Classification System code 114111). Multiple vessels may be owned by a single owner, and contrary to the IRFA prepared for Framework 47, data tracking ownership recently became available to determine affiliated entities. However, this FRFA does not analyze the expected impacts of this action using ownership groups (i.e., ownership of multiple vessels by one owner). Therefore, for the purposes of analysis, each permitted vessel is treated as a single entity, except for vessels participating in the sector program, as described below.

In the IRFA prepared for Framework 47, as explained in Section 8.11.2 of Framework 47, sectors were used as the regulated entity for the first time to estimate impacts of this action. Sectors were used as the entity for analysis, in part, because each vessel's Potential Sector Contribution only becomes fishable quota if the vessel is a member of a sector. Since sectors are allocated Annual Catch Entitlement (ACE), based on the cumulative Potential Sector Contribution of each individual sector member, sectors as an affiliated entity provides a useful approach for analyzing the impacts of Framework 47. This approach differs from the approach used to prepare the IRFA for the proposed rule to implement the 2012 sector operations plans and allocate ACE to sectors, as well as other previous groundfish actions. In the past, individual vessels, not sectors, were used as the regulated entity to estimate impacts of measures on vessels participating in the sector program. NMFS determined that deeming a sector as the regulated entity, for the purposes of analysis under the RFA, is a useful alternative to analyzing individual vessels for Framework 47. NMFS believes this analysis should also be completed using the individual vessels as the regulated entity to provide continuity with the RFA analyses of previous actions. Therefore, a supplemental analysis was prepared using individual vessels as the regulated entity to analyze the impacts of Framework 47. This supplemental analysis, which is described below, along with the Framework 47 analysis, gives the public the best description of impacts of Framework 47.

The entities affected by this action would include 7 large and 10 small regulated entities participating in the sector program, and 342 small regulated entities in the common pool. If individual vessels are considered regulated entities for the sector program, this action would affect 740 small regulated entities enrolled in the sector program.

If sectors are considered regulated entities for the purposes of estimating this rule's impacts, this rule would affect 7 large and 10 small regulated entities participating in the sector program in FY 2010. Mean gross sales of fish for the 7 large entities was $13.7 million, and approximately $2 million for the 10 small entities. Under this action, 3 large entities would fall below the threshold of $4 million in sales, which would result in 4 large and 13 small regulated entities. NMFS estimates this action will result in mean gross sales for the large regulated entities of $9.5 million, which is a 30-percent reduction from the baseline period. Mean gross sales for the small regulated entities is estimated at $0.7 million, which is a 62-percent reduction from the baseline period.

There were 343 commercial groundfish vessels in the common pool that had at least $1 in gross sales from fish during FY 2010. All of these were small regulated entities with mean gross sales of $156,000. Of this amount, NMFS estimates that gross sales from groundfish would be approximately $2,600 per vessel, or less than 2 percent of the mean gross sales. Although this action may trigger common pool AMs, which would limit opportunities to fish for groundfish, the impact on small regulated entities would likely be insignificant.

If individual vessels are considered the regulated entities for the purposes of this FRFA, this action would affect substantially more small entities. During FY 2010, for example, 740 vessels enrolled in the sector program, and 607 remained in the common pool. During the baseline period, 446 sector vessels and 343 common pool vessels generated gross sales from any species. Of those vessels, 305 sector vessels and 145 common pool vessels generated gross

sales from groundfish species. No individual vessel generated gross sales in excess of $4 million. Therefore, using individual vessels as the regulated entity, all regulated entities are considered small, and there are no disproportional impacts between small and large entities. Mean gross sales of fish for vessels enrolled in the sector program were $299.9K, and $138.1K for common pool vessels. This action is expected to reduce mean gross sales of fish by 33 percent for sector vessels to $200.1K. Mean gross sales for common pool vessels are expected to decline to $132.6K, which is less than a 5-percent decline.

Potentially affected entities in the scallop fishery would include 347 limited access scallop vessels and 730 general category scallop vessels. All individual vessels in the sea scallop fishery are considered small business entities under the Small Business Administration criteria. Mean gross sales for limited access scallop vessels are approximately $1 million, and are approximately $80,000 for general category scallop vessels. The statistical areas with the highest catch rates of GB yellowtail flounder are 562 and 525. If this action caused one or both of these areas to close beginning on March 1, 2013, fishing effort by scallop vessels would be displaced to other locations, primarily the Mid-Atlantic region. Since more than 75 percent of revenues from the Atlantic sea scallop fishery come from statistical areas south of Georges Bank, the impact of closing statistical areas 562 or 525 is difficult to anticipate. In addition, during FY 2010, less than 1 percent of total revenues in the scallop fishery came from the statistical areas potentially affected by this action. There were no access area trips taken in the scallop fishery during this time. Opening portions of statistical area 562 to access area trips could increase the probability of triggering an AM for the scallop fishery, and could increase the potential for adverse regulatory impacts to lost access area trips or displaced fishing effort. However, the effect on profitability is likely to be minimal, and because all participating vessels are deemed to be small regulated entities, there are no disproportional impacts.

The primary impact of this action is associated with setting ACLs, which includes specification of sub-ACLs of GB and GOM haddock to the Atlantic herring fishery. Because this action decreases the ABCs for GB and GOM haddock, Atlantic herring vessels are potentially affected by this action. In calendar year 2010, 90 vessels were issued a limited access herring permit and two vessels exceeded $4 million in sales. Approximately 17 percent of the haddock ABCs were landed in FY 2010, and similar utilization of the available quota is expected under this action. Therefore, vessels participating in the Atlantic herring fishery are not expected to be affected by this action.

Of the affected entities under this action, only groundfish sectors and vessels are anticipated to be adversely affected. Due to conservation needs, this action would reduce short-term profits for regulated small entities relative to the baseline period. Regulated small sector entities are estimated to be more adversely impacted by this action than large sector entities. Gross sales for small sector entities would be reduced by 63 percent, and gross sales for large entities would be reduced by 30 percent. These are short-term impacts. In addition, reductions in fishing opportunities for some stocks are necessary to ensure rebuilding. The ability to lease quota between sectors and consolidate quota within sectors will help mitigate the adverse effect on profitability. In addition, exemptions included in the 2012 sector rule are expected to mitigate adverse economic impacts. However, using sectors as the regulated entities, this action is likely to have a significant impact on regulated small sector entities under the disproportionality criteria. This analysis was based in part on anticipated decreases in the GOM cod catch limits for FYs 2012–2014 that were initially proposed as part of this action. However, Framework 47 no longer sets the GOM cod catch limits for FY 2012–2014, as explained in the preamble, and, therefore, the expected impacts of this action on regulated small entities are likely to be less.

Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

During the development of Framework 47, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. Proposed actions and alternatives are described in detail in Framework 47, which includes an EA, RIR, and IRFA (available at **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. Reasonable alternatives are limited because of the legal requirements to implement effective conservation measures which necessarily may result in negative impacts that cannot be effectively mitigated. Moreover, the limited number of alternatives available for this action must be evaluated in the context of an ever-changing fishery management plan that has considered numerous alternatives over the years.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates promote stock rebuilding, and as a result, maximize yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term. This final rule implements several measures that enable small entities to offset some portion of the estimated economic impacts. These measures include: extending the rebuilding period for GB yellowtail flounder; removing the Western GB and SNE Multispecies RGAs for common pool vessels; re-estimation of the GB yellowtail flounder sub-ACL for the scallop fishery; eliminating the cap on yellowtail flounder catch in the Nantucket, Closed Area I, and Closed Area II Sea Scallop Access Areas; and revising the scallop fishery AM trigger.

Revisions to the status determination criteria for the three winter flounder stocks and GOM cod primarily affect setting the OFLs, ABCs, and ACLs for these stocks based on these criteria. Over the long-term, the revised status determination criteria limit the potential harvest from the fishery. The MSY values are higher for GB and SNE/MA winter flounder than the previous MSY values which would result in greater potential revenues over the long-term. This action also extends the rebuilding period for GB yellowtail flounder, which allows for greater yellowtail flounder catches and result in larger revenues for groundfish and scallop vessels than if the rebuilding program was not extended beyond 2016. Adopting the U.S./Canada TACs for FY 2012 would have short-term positive economic impacts if no U.S. TACs were specified. Reduced revenue due to decreases in Eastern GB cod and GB yellowtail flounder TACs could be mitigated if vessels are able to maximize Eastern GB haddock catch.

Removing the Western GB Multispecies and SNE Multispecies RGAs for common pool vessels could increase revenues for common pool vessels compared to revenues if this action was not implemented. Removing these RGAs will likely increase common pool landings of some stocks, increase efficiency for common pool vessels, and may reduce costs for common pool vessels because vessel operators would

not be required to purchase selective gear to fish in these areas. The economic impacts of the AMs adopted in this action could be mitigated by using selective gear or fishing in other areas, and will be addressed in a future rulemaking implementing the AMs, if necessary. Given the relatively small size of the AM areas, additional trip costs for fishing in other areas are likely negligible.

Eliminating the 10-percent yellowtail flounder access area caps for the scallop fishery will reduce the incentive for derby fishing, and will likely positively impact on the scallop fishery. In addition, revising the implementation of the scallop fishery AM is expected to mitigate economic impacts that may occur if the scallop fishery exceeds its yellowtail flounder allocation. This measure will prevent the loss of scallop landings, revenues, and increased fishing costs compared to impacts of this measure not being implemented. This measure will also prevent effort shifts to less optimal areas by scallop vessels, as well as effort shifts into seasons with lower meat weights for scallops. Inseason re-estimation of the scallop fishery GB yellowtail flounder sub-ACL will have positive economic benefits for the groundfish fishery. These benefits would only occur in years when the scallop fishery is not projected to catch its initial sub-ACL, and the groundfish sub-ACL is increased mid-fishing year. When additional quota is made available to the groundfish fishery, revenues for the groundfish fishery will increase if groundfish vessels are able to catch additional GB yellowtail flounder.

Modifying the definition of the Ruhle trawl will provide more flexibility for the groundfish fishery in the use of trawl gear that minimizes catch of stocks of concern. This measure will provide small vessels with increased fishing opportunities. The additional exempted gear option will provide vessels a choice of the most cost-effective means of targeting healthy stocks.

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

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This action does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 26, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons stated 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 § 648.14,
■ a. Remove and reserve paragraphs (i)(2)(vi)(B), (i)(2)(vi)(C), and (i)(3)(v)(C);
■ b. Remove paragraph (k)(7)(i)(C)(*4*);
■ c. Revise paragraph (k)(13)(ii)(B); and
■ d. Add paragraph (k)(20).

The revision and addition read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(5) and (6); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(20) *AMs for both stocks of windowpane flounder and ocean pout.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

* * * * *

■ 5. In § 648.60, paragraphs (a)(5)(ii)(C)(*1*) and (*3*) are removed and reserved, and paragraph (g)(1) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

■ 6. In § 648.64, paragraph (a) introductory text and paragraphs (b)(1) and (c)(1) are revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. Unless otherwise specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations, the sub-ACLs for the 2011 through 2013 fishing years are as follows:

* * * * *

(b) * * *

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
GBYT AM 1 ...	41°50′	66°51.94′
GBYT AM 2 ...	40°30.75′	65°44.96′
GBYT AM 3 ...	40°30′	66°40′
GBYT AM 4 ...	40°40′	66°40′
GBYT AM 5 ...	40°40′	66°50′
GBYT AM 6 ...	40°50′	66°50′
GBYT AM 7 ...	40°50′	67°00′
GBYT AM 8 ...	41°00′	67°00′
GBYT AM 9 ...	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1 ...	41°50′	66°51.94′

* * * * *

(c) * * *

(1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery

is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

* * * * *

■ 7. In § 648.81:

■ a. Revise paragraphs (c)(2)(ii)(B), (f)(2)(iii)(B), and (n); and

■ b. Remove paragraph (o).

The revsions read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(n) *GOM Cod Spawning Protection Area.* (1) Except as specified in paragraph (n)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the RA upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. latitude	W. longitude
CSPA1	42°50.95′	70°32.22′
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (n)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

■ 8. In § 648.82:

■ a. Revise paragraphs (n)(2)(i)(A), (n)(2)(ii) introductory text, and (n)(2)(ii)(L) through (N); and

■ b. Remove paragraphs (n)(2)(ii)(O) and (n)(2)(ii)(P).

The revisions read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(n) * * *

(2) * * *

(i) *Trimester TACs.* (A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of 4 months in duration, beginning at the start of the fishing year (i.e., Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows):

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM cod	27	36	37
GB cod	25	37	38
GOM haddock	27	26	47
GB haddock	27	33	40
CC/GOM yellowtail flounder	35	35	30
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
GOM winter flounder	37	38	25
GB winter flounder	8	24	69
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER—Continued

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
White hake	38	31	31

* * * * *

(ii) *Stock area closures.* If the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

* * * * *

(L) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′

REDFISH TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

* * * * *

■ 9. In § 648.85:
■ a. Revise paragraphs (b)(5) and (b)(6)(iv)(J)(*3*)(*i*) through (*v*); and
■ b. Remove paragraphs (b)(6)(iv)(J)(*3*)(*vi*) and (c)(1) through (3).

The revisions read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for

these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) * * *

(iv) * * *

(J) * * *

(*3*) * * *

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (× 2), top wing, bottom wing, wing side panels (× 2), bunt, square, square side panels (× 2), first top belly, first bottom belly, first belly side panels (× 2), and second bottom belly.

(*ii*) The top and bottom jibs, jib side panels, top and bottom wings, and wing side panels, bunt, and first bottom belly (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first top belly, and first belly side panels must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the first top belly and second bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have at least 15 meshes (240 cm each) at the wide end of the first bottom belly, excluding the gore.

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 19.3 sq. ft. (1.8 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible, used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

* * * * *

■ 10. In § 648.86, revise paragraph (c) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part, unless otherwise specified in § 648.90(a)(5)(i)(D)(*2*).

* * * * *

■ 11. In § 648.87, revise paragraph (c)(2)(i) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: 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.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

■ 12. In § 648.89, revise paragraphs (e)(1) and (e)(3)(ii) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area*—(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

* * * * *

(3) * * *

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

* * * * *

■ 13. In § 648.90, revise paragraph (a)(4)(iii)(C) and add paragraphs (a)(5)(i)(D), (a)(5)(i)(E), and (a)(5)(iv) to read as follows:

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

* * * * *

(a) * * *

(4) * * *

(iii) * * *

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D

of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. Based on information available, NMFS shall re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(E)(*1*) of this section.

* * * * *

(5) * * *

(i) * * *

(D) *AMs for both stocks of windowpane flounder, ocean pout, and Atlantic halibut.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, or Atlantic halibut was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in the second fishing year after the fishing year in which the overage occurred, consistent with the Administrative Procedure Act. For example, if NMFS determined the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014.

(*1*) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(*1*), by any amount between the management uncertainty buffer and up to 20 percent, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. 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 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 § 648.81(n)(3)(i)(A); or any other gear approved consistent with the process defined in § 648.85(b)(6). 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 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.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
NWS1	41°10′	67°40′
NWS2	41°10′	67°20′
NWS3	41°00′	67°20′
NWS4	41°00′	67°00′
NWS5	40°50′	67°00′
NWS6	40°50′	67°40′
NWS1	41°10′	67°40′

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. latitude	W. longitude
NWL1	42°10′	67°40′
NWL2	42°10′	67°20′
NWL3	41°00′	67°20′
NWL4	41°00′	67°00′
NWL5	40°50′	67°00′
NWL6	40°50′	67°40′
NWL1	42°10′	67°40′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
SWS1	41°10′	71°30′
SWS2	41°10′	71°20′
SWS3	40°50′	71°20′
SWS4	40°50′	71°30′
SWS1	41°10′	71°30′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 1

Point	N. latitude	W. longitude
SWL1	41°10′	71°50′
SWL2	41°10′	71°10′
SWL3	41°00′	71°10′
SWL4	41°00′	71°20′
SWL5	40°50′	71°20′
SWL6	40°50′	71°50′
SWL1	41°10′	71°50′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. latitude	W. longitude
SWL7	(1)	73°30′
SWL8	40°30′	73°30′
SWL9	40°30′	73°50′
SWL10	40°20′	73°50′
SWL11	40°20′	(2)
SWL12	(3)	73°58.5′
SWL13	(4)	73°58.5′
SWL14	40°32.6′ (5)	73°56.4′ (5)
SWL7	(1)	73°30′

[1] The southern-most coastline of Long Island, NY at 73°30′ W. longitude.

[2] The eastern-most coastline of NJ at 40°20′ N. latitude, then northward along the NJ coastline to point SWL12.

[3] The northern-most coastline of NJ at 73°58.5′ W. longitude.

[4] The southern-most coastline of Long Island, NY at 73°58.5′ W. longitude.

[5] The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to point SWL7.

(*2*) *Atlantic halibut.* If NMFS determines the overall ACL is exceeded for Atlantic halibut, any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies Category K 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.

(E) *AMs for SNE/MA winter flounder and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies charter/party 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 SNE/MA winter flounder, as specified in § 648.86(l), as a proactive AM to prevent the overall ACL for these stocks from being exceeded.

* * * * *

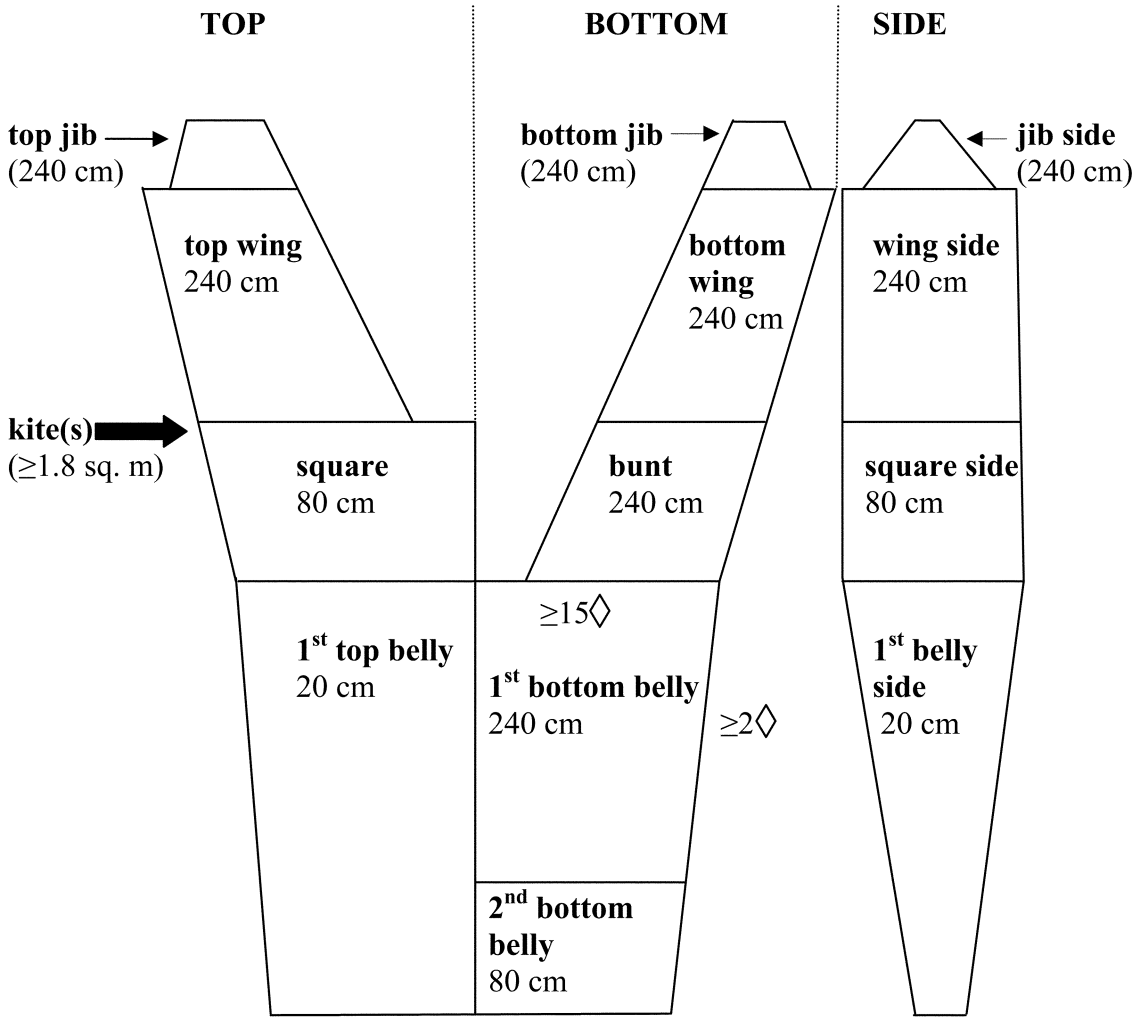
(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate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

* * * * *

■ 14. In part 648, revise Figure 1 to read as follows:

BILLING CODE 3510–22–P

Figure 1 to Part 648



Nomenclature for Ruhle Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
80 cm = 31.5 inches;
240 cm = 7.9 ft

[FR Doc. 2012–10526 Filed 5–1–12; 8:45 am]
BILLING CODE 3510–22–C