

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 651**

[Docket No. 960216032-6138-03; I.D. 021296E]

RIN 0648-A194

Northeast Multispecies Fishery; Amendment 7

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) including a resubmitted part of the amendment. These regulations: Establish an annual target Total Allowable Catch (TAC) for regulated species; accelerate the current days-at-sea (DAS) effort reduction program; eliminate most of the exemptions to the effort control program and revise the requirements for taking time out of the fishery; add new closed areas; restrict fisheries in the Gulf of Maine/Georges Bank (GOM/GB) and Southern New England (SNE) regulated mesh areas having more than a minimal bycatch of regulated species; establish the current experimental Nantucket Shoals dogfish fishery as an exempted fishery; modify the permit categories; establish restrictions on charter/party and recreational vessels; and revise and expand the existing framework provisions. The intended effect of this rule is to rebuild multispecies stocks. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Copies of Amendment 7, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the Final Supplemental Environmental Impact Statement (FSEIS), and copies of the resubmitted part and its supporting documents, are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Sentaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906-1097. Comments regarding the collection-of-information requirements contained in

this final rule should be sent to Andrew A. Rosenberg, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in Amendment 7 to the multispecies FMP which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on May 16, 1996. Three measures contained in Amendment 7, as originally submitted, were disapproved by NMFS on behalf of the Secretary when they were submitted and consequently were not a part of the proposed rule published on March 5, 1996 (61 FR 8540). Reasons for disapproval of those measures were given in the proposed rule and are not repeated here. Two of these measures, a provision that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category and a 300-lb (136.1-kg) possession limit when fishing in an exempted fishery with 8-inch (20.32-cm) mesh, were resubmitted by the New England Fishery Management Council (Council). The latter measure was again disapproved.

The provision that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category was contained in a proposed rule published on April 18, 1996 (61 FR 16892). During the public comment period, no comments were received. This measure was approved by NMFS on behalf of the Secretary on May 17, 1996, and is also implemented by this rule.

Details concerning the justification for and development of Amendment 7 were provided in the notice of proposed rulemaking (61 FR 8540, March 5, 1996) and are not repeated here.

In that notice, NMFS requested the public to comment on all proposed measures, but to focus on several measures of concern in particular. After NMFS reviewed the amendment and the public comments received relative to the amendment and the proposed rule, NMFS disapproved three additional measures based on its determination that they are inconsistent with one or more of the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) or other applicable law. These measures are: A call-in requirement for charter/party vessels; counting DAS for gillnet vessels by the amount of time that

gillnet gear is in the water; and a winter flounder possession allowance when fishing in the Mid-Atlantic regulated mesh area.

Disapproved Measures

Amendment 7 imposes new restrictions on charter and party vessels. Such vessels may, under certain circumstances and criteria, fish under either the recreational or commercial requirements of these regulations. A call-in requirement for charter/party vessels was proposed by the Council to provide a way for law enforcement officers to discern which of these requirements a vessel was subject to. This measure has been disapproved because NMFS believes that sufficient means exist to distinguish recreational and commercial activities. Further, the U.S. Coast Guard (USCG) and NMFS Office of Law Enforcement have recommended against adoption of this measure because it would not improve enforceability of the charter/party restrictions. This recommendation led the Council, in their comments on the proposed rule, to also recommend against adoption of this measure. Because this requirement would place a significant administrative burden on the call-in system with no discernable benefit, it is neither consistent with National Standard 7 nor Executive Order 12866 and is disapproved.

The second disapproved measure proposed counting gillnet DAS as time when gear is in the water, rather than time when the vessel is away from the dock. The Council proposed this measure in an attempt to resolve perceived inequities in the DAS accounting methods for fixed gear versus mobile gear. However, the proposal did not adequately resolve enforcement difficulties of monitoring the amount of time gear was in the water or the administrative problems in determining baseline allocations for gillnet Individual DAS category vessels. Moreover, the Council itself has expressed concern with this measure and has initiated the process to reconsider the method for counting gillnet DAS structure. Because the administrative burden of establishing a method of accounting and allocating DAS is extensive, the efficiency standards of E.O. 12866 and National Standard 7 would be compromised by the almost immediate change to the system that the Council is contemplating. Disapproval of this measure means that DAS for gillnet vessels will be counted in the same way that DAS are counted for all other vessels, as time away from port.

The measure that would have allowed a bycatch of winter flounder by vessels fishing in the Mid-Atlantic regulated mesh area (10 percent by weight of all other species on board or 200 lb (90.7 kg), whichever is less) has also been disapproved. The most recent assessment of winter flounder advises that fishing mortality should be reduced immediately to the lowest possible level. Therefore, there is no justification for treating this regulated species any differently than others in similar condition. Although the cap on the allowed catch would discourage vessels from targeting winter flounder, this measure would reduce the beneficial conservation effect of the DAS program on the winter flounder resource and is, therefore, inconsistent with National Standard 1.

Approved Measures

Amendment 7 establishes a procedure for setting annual target TAC levels for specific cod, haddock, and yellowtail flounder (CHY) stocks (GB CHY, SNE yellowtail flounder, and GOM cod), and an aggregate TAC for the other regulated species (pollock, redfish, white hake, witch flounder, American plaice, winter flounder and windowpane flounder). The procedure would be used annually to set target TACs, with the exception of target TACs for the 1996 fishing year (May 1, 1996, through April 30, 1997), which are set as follows:

TABLE 1.—1996 TAC SPECIFICATIONS

Species/area	1996 Target TACs (metric tons)
Georges Bank cod	1,851
Georges Bank haddock	2,801
Georges Bank yellowtail flounder ...	385
Gulf of Maine cod	2,761
Southern New England yellowtail flounder	150
Aggregate for remaining regulated species	25,500

DAS allocations are reduced in two equal increments at the start of the 1996 and 1997 fishing years from current levels to the full 50 percent reduction called for originally in the final year of Amendment 5 to the FMP. In addition, because the effective date of this rule is 2 months after the start of the 1996 fishing year, which commenced on May 1, 1996, 1996 DAS allocations are prorated based on the amount of time remaining in the 1996 fishing year, or 83 percent (10 months/12 months).

Amendment 7 eliminates the current exemptions to the DAS program (vessels 45 ft (13.7 m) and less, limited access

Hook-Gear and Gillnet vessels) and allocates either Individual DAS or Fleet DAS to these vessels, except for vessels 30 ft (9.1 m) or less in length. Limited access vessels 30 ft (9.1 m) or less in length may choose either to fish under the DAS program or be restricted to a possession limit of CHY up to a maximum combined weight of 300 lb (136.1 kg).

This rule eliminates the existing requirement for vessels in the Fleet DAS category to take blocks of time "out of the multispecies fishery." It also eliminates the layover days currently required after completion of a multispecies trip. However, all vessels subject to the DAS effort control program are required to take one 20-consecutive-day block of time out of the multispecies fishery between March 1 through May 31. Vessels 30 ft (9.1 m) or less in length issued a Small Vessel permit and vessels issued an open access Handgear permit are not allowed to fish for, possess, or land regulated multispecies between March 1 and March 20.

The existing time/area closures to sink gillnet vessels specified to reduce harbor porpoise bycatch are now also closed to other gear types as part of the effort reduction program. These areas are known as the Northeast Closure Area, the Mid-Coast Closure Area, and the Massachusetts Bay Closure Area. Because Small Mesh Area 1 lies entirely within the Mid-coast Closure Area, the season termination date for this exemption is changed from November 15 to October 31, which coincides with the closure of the Mid-coast area.

This final rule prohibits vessels from fishing in the GOM/GB and SNE regulated mesh areas, unless they are fishing in an authorized multispecies fishery, under a scallop DAS, or in an exempted fishery. An exempted fishery is one in which it has been determined that there is a minimal bycatch of regulated species.

The existing Nantucket Shoals experimental dogfish fishery has been found to meet the criteria for this exemption. This rule permanently exempts that fishery from June 1 through October 15.

Because the exemptions to the DAS program are removed by the amendment, some limited access permit categories have been eliminated and vessels in those categories have been reassigned to an appropriate category. A new category is established for vessels in the current Hook-Gear open access category and an opportunity to qualify for a new limited access Hook-Gear permit under specified criteria is granted. New limited access permit

categories are also established for vessels electing to fish with large mesh. Vessels reassigned as a result of this rule will have 45 days from the date of publication of this rule to change their 1996 permit category.

Three new open access permit categories established are Handgear, Charter/Party and Scallop Multispecies Possession Limit, each with specific possession and gear restrictions.

This rule imposes several new restrictions for recreational and charter/party vessels, including a 20 inch (50.8 cm) minimum fish size for cod and haddock for the first year of the plan, increasing to 21 inches (53.3 cm) in the second year, a prohibition on the sale of multispecies finfish, and a 10 fish possession limit on cod and haddock, combined, for individual recreational anglers.

The FMP's existing framework provisions are revised to remove the 10 percent cap on annual reductions in fishing mortality and to allow implementation of measures to protect right whales and other marine mammals through the framework process. An annual process to set target TACs, review progress towards fishing mortality goals and to make any necessary changes in the management program is also established.

The Mid-Atlantic regulated mesh area is redefined to include all New York and Connecticut state waters.

Vessels fishing in the SNE regulated mesh area are authorized to retain a bycatch of skate or skate parts up to 10 percent of the total weight of other fish possessed on board.

A provision is added that allows the costs of observer coverage to be funded by sources other than NMFS.

The haddock possession limit is increased from 500 (227 kg) to 1,000 lb (453.6 kg) for vessels fishing under a multispecies DAS. The tote and box volumetric equivalency measure for determining the weight of possession limits is eliminated, instead, compliance with possession limits will be determined by shoreside weighing. However, vessels will be required to carry one tote on board for use by USCG boarding parties to estimate possible excessive catches.

Comments and Responses

Written comments were submitted by the Associated Fisheries of Maine, Offshore Mariners Association, Inc., Gloucester Fishermen's Wives Association, Massachusetts Fishermen's Partnership, Gloucester Fishermen's Committee, Maine Department of Marine Resources (DMR), Wildlife Habitat Preservation Association, Inc.,

Senator Judd Gregg, Senator Bob Smith, Senator Olympia J. Snowe, Senator William S. Cohen, Congressman Patrick J. Kennedy, Seafarers International Union of North America, Conservation Law Foundation, Mass Audubon Society, The Groundfish Group of Associated Fisheries of Maine, Associated Fisheries of Maine, Maine Fishermen's Wives Association, Federation of Inshore Seafood Harvesters, Darling Marine Center of the University of Maine, New Bedford Seafood Coalition, Massachusetts State Senator Bruce Tarr, Gloucester United, Vessel Services Inc., the New England Fishery Management Council (NEFMC), Center for Marine Conservation, Environmental Defense Fund, Cape Cod Commercial Hook Fishermen's Association, Resource Trading Co., King & Sons Fishing Co., Inc., Cape Ann Gillnetters' Association, Action, Inc., Wellspring House, Inc., Massachusetts Lobstermen's Association, Inc., Connecticut Department of Environmental Protection (DEP), the Marine Mammal Commission, and approximately 290 individuals.

1. Comments in Favor of Approval of Amendment 7

Comment 1: An association and several environmental organizations stated that Amendment 7 should be approved, and 136 individuals stated that Amendment 7 should be approved without change. Many commenters expressed concern for the health and viability of the resource and urged the Secretary not to give in to pressure to weaken, modify or otherwise deviate from the plan.

Response: Most of the measures proposed in Amendment 7 have been approved.

2. Comments on Elimination of the Open Access Possession Limit and Hook-Gear-Only Permit Categories

Comment 2: Several commenters opposed elimination of the Possession-Limit permit category and/or the 500-lb (226.8-kg) allowance of regulated species associated with this permit. These comments are summarized as follows:

A commenter stated that he invested in his vessel while fishing under the 500-pound (226.8-kg) possession limit in the open access category and that under Amendment 7, he will lose his right to do so, due to the elimination of the open access possession limit permit.

An association stated that vessels in the Possession Limit permit category that may have qualified for a limited access permit under Amendment 5 should be allowed to prove their

eligibility and move into a DAS category. The commenter further explained that a few vessels opted for a Possession Limit permit though their history would have qualified them for a limited access permit under the DAS program. The association further stated that it would have been impossible for these vessel owners to know that this permit category would be eliminated at some future date.

Another commenter stated that elimination of the Possession Limit permit category denies him access to the whiting fishery. He stated that his two vessels surrendered their limited access multispecies permits during 1996, because he lengthened his vessels beyond the upgrade restrictions of the multispecies FMP to maximize their productive capacities before the effective date of Amendment 5 to the Atlantic Mackerel, Squid and Butterfish FMP (which allows no increase in size after implementation). He stated that since the vessels only fished a few months each year for whiting, he had planned to continue to do so under the Possession Limit category.

Another commenter stated that under Amendment 7 those fishers formerly fishing for whiting and other small mesh species in the experimental whiting grate fishery, to use as bait under the Possession Limit category will not be able to continue this practice. He stated that this gives bluefin tuna fishers with a limited access multispecies permit an unfair advantage.

Congressman Patrick J. Kennedy (RI) forwarded an association's petition containing 98 signatures and 23 individual letters, all concerned with the elimination under Amendment 7 of the possession limit of regulated species bycatch allowed when fishing for non-regulated species out of the DAS effort reduction program. The association also forwarded the petition and letters directly to the Director, Northeast Region, NMFS (Regional Director). They further stated that the marketable bycatch of regulated species would be wastefully discarded. Twenty-three of the commenters stated that they would have to fish day and night to fully utilize the full 24 hours of the groundfish day DAS. They all sought reinstatement in Amendment 7 of the possession limit of regulated species when fishing for non-regulated species out of a DAS effort control program.

Another commenter stated he does not qualify for the new limited access hook permit, because he did not land 500-lb (226.8-kg) of regulated species during the qualifying year, which is one of the qualifying criteria. He said that it is arbitrary and unfair to make just that

permit category meet certain criteria. He further asked whether any consideration was given for illness or investments. He added that the labor intensive, environmentally sound hook-fishery had no negative impacts on the control of future effort.

The Maine DMR commented favorably on the open-access handgear-only permit category provision of Amendment 7. It added that this permit category provides a lowcost, egalitarian point of entry for new participants in the fishery within sensible conservation rules.

The Maine DMR commented in opposition to the eligibility requirements for vessels desiring to qualify for the new limited access hook-gear permit-category, specifically, the requirement that applicants must have filed logs for their vessels by January 26, 1996 for the period June 1, 1994-June 1, 1995. It stated that since NMFS has allowed logbook filers to file late this year as part of a well-publicized education effort designed to achieve high compliance by next year, it is unreasonable and inequitable to disallow the same extension to those in the open access hook permit category, which was less intensively regulated under Amendment 5. It explained that participants in this category are less likely to have understood and complied with log requirements.

Response: The Council and NMFS are aware that certain participants in the groundfish fishery may be affected by the elimination of the open access possession limit permit category, but NMFS has determined that conservation needs outweigh the negative impact on certain individual fishers.

The 500-lb (226.8-kg) regulated species catch allowance is eliminated by this rule. The control date for entry into the multispecies fishery was February 21, 1991, at which time the public was put on notice that future entry into the fishery could be limited and that those investing in the fishery after that date were doing so at risk. The condition of the stock complex has declined since that time and more restrictive measures have been implemented in Amendments 5 and 6 to the FMP. Amendment 7 eliminates the 500-lb (226.8-kg) possession allowance in part because of its open-access nature. While Amendment 7 imposed significant restrictions on the directed multispecies fleet through DAS reductions, allowing a potentially unlimited number of vessels to land 500 lb (226.8 kg) of regulated species per trip would be inconsistent with the goals of the FMP.

Regarding the commenter's concerns about being "shut out" of the whiting

fishery as a result of disapproval of the Limited-Access Possession Limit permit category, NMFS disapproved that category because of several flaws that were described in the proposed rule. The Council has reconsidered the disapproval of this category and will resubmit a revised proposal that, if approved, would allow open access to the non-regulated multispecies fisheries, i.e., whiting, red hake and ocean pout. One of the improvements made to the permit proposal by the Council is the designation as an open access permit, which exempts vessels in this category from the upgrade requirements.

As to eligibility requirements for the new limited-access hook-gear permit category, Amendment 7's deadline for filing logs for the period June 1, 1994–June 1, 1995 was established as January 26, 1996, for purposes of qualifying into the fishery. This deadline is much more liberal than the Council's requirement that all logs be filed in a timely manner, i.e., within 15 days of the fishing trip. Additionally, those applicants denied a new limited-access hook-gear permit may appeal any denial under the multispecies regulations.

And finally, the commenter concerned about qualifying for the Hook-Gear-Only permit will have two options: (1) A vessel owner may elect to fish with hand-held gear only and land up to a total of 300 lb (136.1 kg) of CHY, or (2) a vessel owner may elect to apply for the hook-only limited access permit and, if denied, may appeal the denial on the basis that circumstances beyond the applicant's control prevented attainment of the qualifying criteria.

3. *Comment on the Framework Provision for Annual Adjustments to TACs and Restrictions*

Comment 3: The Maine DMR stated that a 2-year adjustment process, with frameworks in the interim, would provide a more constructive and science-based process than the annual adjustment process.

Another commenter stated that the tight timeline established in the framework adjustment process that provides only 1 month prior to the beginning of a fishing year to adapt to the adjusted measures is insufficient.

Response: The changing conditions of fish stocks warrant that frameworking occur at least annually, while considering factors such as the most recent landings data as it compares with the previous year's target total allowable catches. The timeline established for the framework adjustment process was decided on after consideration of comments and public input during public hearings on the Amendment.

Similarly, the adjustments that may be proposed as a result of the framework process will undergo a public participation period, during which sufficiency of notice prior to the fishing year can be factored in as the Council deliberates on the adjustments. The alternatives to this timeframe are to reduce the time period for public input or, to begin the adjustment process earlier in the year. This latter alternative is not desirable because important data and information about the fishery that should be considered will most likely be unavailable earlier in the year.

In addition, while a final rule may be published 1 month prior to its effective date, this process begins 6 months in advance of the next fishing year to allow the public several opportunities to participate in development of measures, to become aware of changes that would result from implementation, and to prepare for implementation in its final form.

Comment 4: An environmental organization stated that the process for annual review and adjustment of management measures described in § 651.40(a) of the proposed rule is too open-ended and likely to result in a stalemate between the Council and the Regional Director. Under § 651.40(a)(6), if the Council fails to submit a recommendation to the Regional Director that meets the FMP goals and objectives, and the Council also rejects all other options developed by the Multispecies Monitoring Committee, then the Regional Director must resort to emergency regulations and/or a Secretarial amendment.

The commenter recommended that § 651.40(a) be disapproved (in whole or in part) until it includes default annual adjustments that reflect how the actual catch compares to the target TACs or target catch rates. It opines that the catch of at least cod and yellowtail flounder in the 1996 fishing year is likely to far exceed the target TACs, so that DAS reductions initially assigned for the 1997 fishing year would be grossly inadequate to reduce fishing mortality to $F_{0.1}$. The commenter included suggested language for a default annual adjustment specification, which it feels is needed because the Council has a history of being unable to make decisions quickly for conservation purposes that are unpopular with commercial fishermen.

Response: If the resource continues to decline in the short-term, NMFS expects the Council to be confronted with difficult decisions regarding adjustments to measures, just as it was confronted by difficult options for this Amendment. The framework provision

of the FMP was approved because NMFS believes the Council will submit an appropriate recommendation even if those of the Monitoring Committee are rejected. The default mechanism, in terms of overall resource protection, is to keep present restrictions in place. To disapprove this measure would leave no adjustment mechanism in place.

4. *Comments on the Need for Amendment 7 and the Scientific Basis for the FMP*

Comment 5: A commenter stated that the proposed rule identifies only a GB and SNE yellowtail flounder stock in Table 1 of its specification of 1996 TACs. He points out that NMFS, in its "Status of Fishery Resources off the Northeastern U.S. Technical Memorandum-NMFS-NE-108," continues to identify and characterize a Cape Cod and mid-Atlantic stock as well. His concern is that this omission may lead to inappropriate catches based solely on the status of the GB and SNE stocks. He recommends that NMFS issue a separate TAC for at least the Cape Cod stock of yellowtail flounder for 1996 and that the Northeast Multispecies Monitoring Committee consider continuing this practice in subsequent TAC specifications.

Response: Tagging studies and geographical patterns of landings and survey data indicate discrete yellowtail stocks in GB, SNE, Cape Cod and the Mid-Atlantic. However, the Middle Atlantic and Cape Cod yellowtail stocks have historically been very small relative to the SNE and GB stocks, respectively. While NMFS recognizes that this may no longer be the case, the TACs specified are conservative. The quality of available assessment data for the Mid-Atlantic and Cape Cod stocks is insufficient to permit a quantitative estimate of stock abundance, exploitation rates or TACs. The status of all of these stocks is essentially the same, in that they are all overexploited. Therefore, it is appropriate to include yellowtail flounder from Cape Cod with the Georges Bank TAC for that species and yellowtail flounder from the Mid-Atlantic with the Southern New England TAC for that species for management purposes. The Council will have the option of including these stocks within existing TACs or to specify a separate TAC for the Cape Cod stock, if necessary. At present there seems to be little incentive for directed fishing on these stocks because of their low abundance.

Comment 6: An organization stated that Amendment 7 is unnecessary at this time, and, in fact, Amendment 5 is

working and needs more time to reach the goals of the Council and NMFS.

Response: Amendment 5 was designed to correct the overfished condition on the Multispecies Fishery by a 50 percent reduction of fishing mortality over a 5 to 7-year period. However, by the time this amendment took effect (in 1994), spawning stock biomass levels for GB cod, haddock and yellowtail were at or near historic lows and reductions in fishing mortality of more than 50 percent were needed immediately to arrest further declines of GB cod and yellowtail (advisory presented at the August 1994 Stock Assessment Review Committee (SARC) plenary). By 1993, landings for GB cod, haddock and yellowtail had declined to 30 percent of MSY; 1994 landings were projected to decline to 23 percent of MSY; and further declines were projected for 1995. As reported at the Plenary, GB haddock and yellowtail stocks have collapsed—and it remains clear that to avert stock collapse for GB cod, and to begin the rebuilding process, greater reductions in fishing mortality over a shorter period of time are necessary than provided for in Amendment 5.

Comment 7: Senator Olympia J. Snowe (ME) and Senator William S. Cohen (ME) requested that the Secretary establish an independent panel to review the science that is the basis of this plan. They further suggested that such a review should be conducted during the first year of the plan's implementation, and its results used as adjustments for the second year of the plan are formulated. Additionally, they requested that the peer review include a reassessment of the science that supports the FMP and specifically, they would require that scientific research must address the effectiveness of different management tools including seasonal area closures and gear modifications like mesh size.

Response: An intensive peer-review process already exists, through the Stock Assessment Workshop (SAW). Assessments are prepared by subcommittees including scientists from state and Federal agencies and academic institutions, reviewed by the Stock Assessment Review Committee (SARC), and presented to managers at SAW Plenary sessions. Industry or other interested parties are welcome to participate. The SARC, and the Multispecies Monitoring Committee (MMC), created under the terms of Amendment 7, will be available for periodic reviews of the science including evaluations of the relative effectiveness of different management tools. The Council can instigate such a

review through its Science and Statistical Committee.

Comment 8: An environmental organization stated that the measures specified in the proposed rule cannot result in the 80-percent reduction in fishing mortality rate (F) that is needed to reach the Amendment's target of $F_{0.1}$, because the DAS reduction specified in § 651.22(b) for the 1997 fishing year is only 50 percent from the initial baseline. The F reduction that will result from a 50-percent reduction in DAS is certain to be less than 50 percent because of compensatory increases in other aspects of fishermen's efforts. It added that no analyses were presented to the Council during development of Amendment 7 that suggested that other existing or proposed management measures for groundfish (including the closed areas) would accomplish the remaining required reduction in F.

Response: NMFS understands that the DAS reduction target is 50 percent at the end of a 2-year timeframe. Analyses of the effects of the closed areas implemented by this rule were presented to the Council which projected that an additional 30 percent reduction in F would be realized through modifications which have been made to time/area closures and inclusion of additional vessel classes under DAS limits. Also, the Council will adjust the target TAC (upward or downward) as stock size changes are observed and will adjust the management measures as needed to keep catches below the target.

Comment 9: An environmental organization stated that improvements in spawning stock biomass (SSB) expected under the assumptions built into the proposed rule should be clearly predicted, and used as a secondary yardstick for the performance of the overall program. Any time actual estimated SSBs fall significantly below predicted SSBs, reanalysis of SSB and population projections should occur, and emergency measures should be adopted to restore progress toward threshold SSBs. For this purpose of establishing a trigger for reanalysis and emergency measures, "fall significantly below" should be defined precisely in advance as a percentage shortfall as low as possible approaching 10 percent, but above the statistical margin of error.

Response: Such questions would fall within the purview of the SARC and the MMC. NMFS expects that the relative effectiveness of different measures will be examined routinely as part of the monitoring process for Amendment 7.

Comment 10: An environmental organization stated that tests should be designed to measure the efficacy of each

important management measure, such that its contribution to the overall mortality reduction program can be determined, and that such additional mortality reduction measures can be implemented with greater certainty when target TACs are exceeded. Examples include the seasonal closure of certain areas, which will likely reduce seasonal mortality, but which may or may not reduce annual fishing mortality, and which may or may not enhance spawning success and recruitment to the overall population.

Response: Again, such questions would fall within the purview of the SARC and the MMC.

Comment 11: An environmental organization stated that GOM cod stocks remain overexploited and are inadequately addressed in the proposed rule. It added that the proposed rule establishes a biological reference point for GOM cod with fishing mortality equal to F_{max} —potentially too high for this stock, especially in light of the uncertainty in the relationship between fishery management practices and actual fishing mortality—and a target TAC that is very high.

Response: Fishing at F_{max} (0.27) for GOM cod would represent a 70-percent reduction in fishing mortality from 1993 levels, and is in fact below the overfishing definition level ($F_{20\%}=0.35$) for this stock. NMFS believes, based on the best scientific information, that specification of a TAC corresponding to the F_{max} level for this stock is appropriate as a first step in the rebuilding process. Effects and implications would be subject to review by the MMC.

5. Comments on the Area Closures and Time Periods

Comment 12: The Maine DMR stated that the GOM closures should be replaced with targeted closures of specified areas based on spawning, pre-spawning and juvenile fish habitats. DMR added that the proposed GOM closures are unfocused and a relatively ineffective conservation tool that will have serious impacts on its industry.

Senator Olympia J. Snowe (ME) and Senator William S. Cohen (ME) urged that any additional closures be carefully targeted to protect specific areas with value as spawning, pre-spawning, and juvenile fish habitats.

A commenter stated that the November and December (Mid-coast) closure may have validity for gillnets as pertains to harbor porpoises, but that draggers have zero interaction with harbor porpoises.

A commenter stated that the November and December closure time

period would cause New Hampshire day boats (trawlers) to tie to the dock during this 2-month period.

Another commenter stated that the Mid-coast closure area is subject to an additional 30-day timeframe as compared to the other two closure areas. The Mid-coast small vessel fleet thus bears an additional burden when compared to other areas with 30-day closures.

Response: The GOM closures were adopted as a default mechanism to meet Amendment 7 goals while other possible closed areas were investigated. Because the purpose of the GOM closed areas is to reduce fishing mortality by the shortfall created when DAS reductions alone were insufficient (and not solely to protect harbor porpoises), the impacts on the industry are acknowledged and incorporated into the analysis of impacts of Amendment 7. The GOM closures, which were previously in place to protect harbor porpoises, now serve a dual purpose until alternative areas are identified. A Council subcommittee has been assigned to examine alternative areas having equivalent or greater value in reducing fishing effort and will consider changing the area closures through the framework adjustment process.

Amendment 7 does not require vessels to tie to the dock during the closure periods, but many smaller vessels are not able to fish safely offshore, beyond the GOM area closures. Again, the purpose of the closed areas is to reduce fishing effort by the shortfall created when DAS alone were insufficient.

An alternative to the closed areas was to reduce DAS further, but that alternative was rejected by the Council based, in part, on public and industry comment which indicated a preference for flexibility.

During the GOM closures, small vessel owners have the option of tying to the dock, seek alternative ports or alternative fisheries. In regard to the 2-month time period, although this closure is for a longer period of time, it occurs at a time of the year when weather is a factor and fishing activity is limited. Thus, to achieve equivalent conservation benefit, a longer period of time is necessary as compared to a closure occurring in the spring, summer or early fall months.

Comment 13: A commenter stated that the larger vessels, which account for the most groundfish harvesting capacity and production, have the capability to merely exit the area closures and fish outside the boundaries thus not contributing to any effort reduction or fishing mortality reduction. The

commenter further stated that the inshore and small boat sector thus bears the most burden of the closures and added that most of these vessels must now enroll in the DAS program due to elimination of the 45-ft (13.7-m) exemption. The commenter summarized that this is unfair and inequitable amongst users and participants and creates an unfair allocation circumstance.

Response: Amendment 7 implements a broad set of measures affecting all sectors of the industry necessitated by severe overfishing on cod, haddock and yellowtail flounder. Larger vessels, unlike small inshore vessels, contribute to the effort reduction goals because they are subject to additional closed areas offshore where concentrations of multispecies are traditionally found. Unlike the inshore areas, which are closed for limited periods, these offshore areas are closed permanently. Amendment 7 eliminates some of the exemptions from the DAS program that were established by Amendment 5 to ensure that all vessels contribute toward the rebuilding goals. Amendment 5 tried to alleviate some of the burden on small vessels, but it is no longer possible to do this without sacrificing the more rigorous conservation objectives of Amendment 7.

Comment 14: A commenter noted that Amendment 7 does not exempt mid-water trawls from the closed areas, but authorizes their exemption at some future time based on the analysis of observer data. The commenter added that in a report given by the Regional Director to the Council, the Regional Director stated that preliminary data showed zero bycatch of groundfish in mid-water trawls. If the final analysis bears this out, the commenter requested that mid-water trawls be exempt from the closed areas. The commenter added that such an exemption would not only address the high cost of riggering but would also address the possibility of being precluded from large areas of potential herring catch grounds. The commenter indicated a willingness to alleviate any enforcement concerns by placing Vessel Monitoring Systems (VMSs) on all of its catcher vessels.

The Maine DMR strongly urged NMFS not to exempt mid-water trawl gear from Amendment 7 without first determining that this gear cannot be fished to take significant quantities of groundfish. It added that it had enough anecdotal evidence to suggest that skilled skippers with sophisticated net-monitoring technology can fish these nets very close to the bottom. It reiterated that its concern is not that mid-water trawls can be fished very cleanly but that they may

have the potential to direct on regulated species.

Response: Amendment 7 does not specifically exempt mid-water trawl gear from the GOM area closures, but allows this gear to be exempted in the future. Even if mid-water trawlers were allowed in the closed areas, they would not be allowed to possess any regulated species, therefore they would have no incentive to direct on regulated species.

6. Comments on Minimum Mesh and Fish Sizes

Comment 15: A commenter stated that minimum fish sizes are responsible for the collapse of the New England stocks of cod, haddock and other species of groundfish. He added that prior to minimum size regulations, quotas and trip limits worked quite well and all that was needed to maintain the stocks was 5½-inch (13.97-cm) square mesh and no minimum sizes.

Response: Many members of the industry and the public favor minimum sizes because allowing fish to grow to a particular size prior to harvest can increase yields and enhance spawning. The need for fishing mortality reductions is paramount, however, and minimum size limits do not necessarily translate into such reductions. Possession limits and quotas were considered during the development of Amendment 7 and were put forth in the public hearing document under Alternative 4. Public response during the hearing phase was opposed to the use of quotas and trip limits.

Comment 16: The Maine DMR stated that Amendment 7 does not address increased mesh and fish sizes, and suggests that these options should be integrated more fully into the plan, including new conservation engineering. It said that NMFS' concern about the lack of selectivity studies for mesh larger than regulation size (6 inches or 15.24 cm) may be somewhat allayed by Canadian studies showing an approximately linear relationship between mesh and fish sizes. It added that it is reasonable to assume that this relationship holds for the slightly larger meshes at issue here (7-inch (17.8-cm) gillnets and 8-inch (20.3-cm) codends).

Another commenter stated that if 7-inch (17.8-cm) square mesh were used exclusively for regulated species, there would be no need for diamond mesh and possibly no need for a minimum fish size, resulting in no discards.

A third commenter stated his concern that the provision pertaining to adjustments of minimum fish size, originally contained in Amendment 5, has never been adopted despite "reports of high flatfish discard rates in

management areas where use of square mesh is mandatory.”

Response: Increased mesh sizes and increased fish sizes were addressed and discussed as an option in the draft public hearing document but were not adopted by the Council. Amendment 7 continues the established minimum fish sizes, except for some increased fish sizes for recreational and charter/party vessels not fishing under a DAS.

Increased mesh and fish sizes can be accomplished under this plan through framework action. The use of mesh size as the sole measure to control fishing mortality is problematic for a variety of reasons. One reason is the wasteful and unlawful practice of using small mesh liners or other devices to circumvent conservation regulations. Another is the likelihood that a net will become clogged during long tows, rendering the mesh increase ineffective. Nevertheless, 7-inch (17.8-cm) mesh would contribute toward conservation and Amendment 7 includes incentives to use larger mesh.

Use of square mesh is required in juvenile protection areas where concentrations of small cod and haddock are usually found. Square mesh is designed to allow round-shaped fish to escape but it is not as effective an escapement mechanism for flatfish. Several research experiments on gear conservation methods (some financed by the Saltonstall-Kennedy Grant program administered by NMFS) are underway to devise a net configuration that will enhance escapement of both juvenile flat and roundfish. Meanwhile, the Council has the option of increasing minimum fish and mesh sizes through framework actions, and may elect to do so in the future.

7. Comments on the TACs

Comment 17: An association stated that TACs should differentiate between hook fisheries and other commercial fisheries, and that one TAC should be established for the longline and jig fishery and another TAC should be established for the other commercial groundfish fisheries.

Response: The public hearing document did consider allocating DAS by gear group. Note that DAS can be considered an extension of quotas, by gear. This alternative was rejected by the Council; however, it may be reconsidered at a later time.

Comment 18: Senator Bob Smith (NH) stated that TAC levels have been set unrealistically low. He and other commenters argued that such low levels provide larger vessels with the opportunity to consume the TAC prior to the small-vessel fleet having an opportunity to use their DAS.

Senators Olympia J. Snowe (ME) and William S. Cohen (ME) stated their concern about equity for smaller vessels and added their concern that Amendment 7 goes too far, too fast.

An association stated that the only way a target TAC could alleviate a “derby-style” fishery and give the same opportunity to all size class vessels throughout the year would be to allow fishing to continue after the target is reached. The association asked how this achieves conservation?

A commenter stated that the proposal of allowing extra days for using larger mesh while the majority uses regulated mesh makes no sense when a TAC is in place. He added that the vessels selecting this large mesh alternative in all likelihood will never get to use extra days assigned them.

Another commenter stated that large vessels would have access to three different TACS under Amendment 7 while most of the New Hampshire small-vessel fleet would have access to only the GOM TAC.

Response: TAC levels were established based on the Council’s Amendment 7 objective to reduce fishing mortality to $F_{0.1}$, which translated to the established TACs. Additionally, Amendment 7 establishes a target TAC system rather than one with absolute TACs. Should a target TAC be exceeded, the Council will respond by adjusting the management measures in the following fishing year to keep catches below the target. Fishers should understand that should the TACs be reached during the fishing year, the fishery will not necessarily close, but rather, adjustments to the measures will be made for the following fishing year taking into account the impact of the adjustments on different sectors of the industry. “Target” TACs rather than an absolute TAC were adopted in part to provide equity and fairness to the different types of participants in the fishery. It allows the Council to take into account impacts of adjustment measures on different sectors of the industry. The Council will adjust the target TAC (upward or downward) as stock size changes are observed and will adjust the management measures as needed to keep catches below the target. This should alleviate a “derby-style” fishery and give the same opportunity to all size class vessels throughout the year. Also, the small-vessel fleet is not restricted by Amendment 7 to fishing in any one area but may move vessels to areas where different TACs apply.

Comment 19: An environmental organization stated that the $F_{0.1}$ target and resulting 1996 TAC for GB haddock

are too high for the rebuilding needs of the stock and should be reduced. It said that at this fishing rate, the probability of GB haddock reaching the spawning stock threshold within 10 years is calculated to be only 22 percent. It added that the 1,000-lb (454-kg) trip limit for haddock, contained in § 651.27(a) of the proposed rule, is more restrictive because it is not expected to result in landings as high as the specified TAC for this stock. Thus, a discrepancy exists between the 1996 TAC for this stock and the management measures, as well as between the 1996 TAC and the rebuilding goal. It urged NMFS to correct this discrepancy by determining a fishing mortality rate for GB haddock that is likely to achieve the spawning stock threshold within ten years, and then to respecify the 1996 TAC for this stock. It further stated that if this is not done, the 1996 TAC will be used to argue for less restrictive management measures that will not achieve the rebuilding goal of Amendment 7 for this stock. It opined that future TACs will be set too high if the F target for this stock is not reduced.

Another environmental organization opposed the increase in trip limits for haddock from 500 lb (226.8 kg) to 1,000 lb (453.6 kg). It added that the GB haddock fishing mortality target and target TAC are set significantly too high and that a specific (and lower) fishing mortality target and target TAC should be set for GOM haddock. It reasoned that a higher trip limit simply increases the incentive to continue fishing when and where haddock bycatch occurs and at some level creates an incentive to fish specifically to target haddock to catch the trip limit.

The organizations made these specific points:

(a) The $F_{0.1}$ fishing mortality target and the resulting 2,800 mt 1996 target TAC for GB haddock are unacceptably high. Moreover, these targets result in only a 22 percent probability of rebuilding to the 20-percent SSB level within 10 years (NEFMC, 1995, Draft Proposals for Amendment 7 to the Northeast Multispecies Plan, p.12). The answer to the Council’s perceived “problem” that the haddock trip limit may be too low to allow the fleet to catch the entire GB haddock target TAC is to reduce the GB haddock fishing mortality target and target TAC to much lower levels that would allow at least a 50 percent probability of rebuilding of this stock to the 20 percent SSB levels within a minimum of ten years.

(b) Given the extremely poor condition of the GOM haddock stock, a specific and very low fishing mortality target and initial target TAC should be

set for this stock that allows a similar rebuilding timetable and probability. The 21st SAW Advisory Report on Stock Status concluded that GOM haddock biomass declined to nearly undetectable levels over the last two or three decades (p.28). Under this circumstance, it is inappropriate to manage GOM haddock with other regulated groundfish under an aggregate fishing mortality target of $F_{0.1}$ and a single aggregate target TAC of 25,500 mt in 1996.

Response: These issues were addressed at the April, 1996 meeting of the New England Fishery Management Council by both the Council and the Regional Director. The 1996 TAC for this stock is a maximum, not a quota to be achieved, and NMFS feels that coupled with other haddock conservation measures, the haddock trip limit and TAC are not inconsistent. Under the annual frameworking provision, NMFS and the Council will reconsider whether various measures related to the haddock fishery are sufficient to meet the objectives of Amendment 7.

NMFS is advocating very conservative management strategies for this stock to promote prospects for stock rebuilding, i.e., to restore SSB to certain levels. The haddock trip limit was established as a disincentive to target this species on a trip or tow. NMFS believes that an increase from 500 lb (226.8 kg) to 1,000 lb (453.6 kg) is not effectively an increase, considering that the former measurement by totes has been eliminated. That volumetric measure, in practice, allowed vessels to land more than the 500-lb haddock trip limit because volumetric equivalent measures proved to be too generous. Any additional increase beyond 1,000 lb (453.6 kg) in the haddock trip limit would have to be accompanied by compensatory measures. A trip limit will remain in place unless and until alternative restrictions that achieve the same result are developed and implemented.

Comment 20: An environmental organization stated that the aggregate TAC for the remaining regulated species (other than cod, haddock, and yellowtail flounder) as specified in the proposed rule is set too high to prevent overfishing of at least some of the other regulated species. It said that the aggregate TAC was set "at levels corresponding to recent fishing mortality rates to ensure that effort is not redirected to these stocks." It argued that the report of the 21st SAW indicates that pollock, GB winter flounder, and both stocks of windowpane flounder are currently at

or near record low levels of abundance and biomass, while redfish have continued to fail to rebuild. It said that this indicates that recent fishing mortality rates have been too high on at least these four additional species. Therefore, continued fishing at recent rates will fail to prevent overfishing and to allow overfished stocks to rebuild. At a minimum, it argued, the aggregate TAC for the remaining regulated species needs to be recalculated to consider the conservation needs of these other species.

It further questioned the advisability of including overfished species in an aggregate TAC.

Response: NMFS has been and remains concerned about the conservation of each stock for a given species within this species complex but Amendment 7 addresses the species rebuilding needs of CHY and deals with the remaining multispecies as a stock complex, in the aggregate. The national standards require that overfishing definitions have to be addressed for each species of the multispecies complex, so that the Council should reconsider the issue annually. It is possible that additional measures will be required on a species by species basis, after further analyses later (e.g., analysis of data from one or two fishing years after implementation of Amendment 7 begins). The MMC will be charged with the responsibility for addressing this issue and for making appropriate management recommendations to the Council.

Comment 21: An environmental organization stated that the final rule should establish in advance the specific improvements in management programs that would be implemented if target TACs are exceeded by 10 percent or more.

Response: Any specific improvements in management programs to be made if target TACs are exceeded would be tailored to the situation requiring such actions. Because of the combination of factors that would need to be considered, it would be difficult to establish a fixed action in advance. Any future action should be subject to comment from the public at the time it is under consideration.

8. Comments on the DAS Program

Comment 22: An association stated that additional DAS should be offered as an inducement to vessels converting to hook fishing.

Response: Increases for DAS for individual gear types were considered in the public hearing document, but rejected by the Council. The Council and NMFS recognized the possible

benefits of hook fishing by allowing for a permit in the new, hook-only limited-access category. The commenter's option was not specifically addressed by the Council but could be considered by the Council as a framework adjustment measure.

Comment 23: In a joint correspondence two associations stated that Amendment 7 incentives that offer additional DAS for use of larger mesh are not equal across gear type. They added that fishing effort restriction must not favor one gear type over another; otherwise anticipated conservation benefits could be negated by gear conversion.

Response: The Council recently clarified that the proposed measure to increase fishing time (DAS) for the Large Mesh Individual DAS option would apply to all vessels using large mesh, whether they are trawl vessels or gillnet vessels. This resubmitted measure of Amendment 7, was described in a notice of proposed rulemaking published in the Federal Register on April 18, 1996 (61 FR 16892), and is designed to promote conservation by providing an equitably applied incentive to use nets constructed of mesh that are larger than the minimum size. NMFS approved the resubmitted measure on behalf of the Secretary on May 17, 1996.

Comment 24: A commenter stated that Amendment 7 does away with the "layover provision," which would have done some good for the resource. He added that it was eliminated to placate the large boat sector. He stated that, without this provision, large boats could engage in back-to-back trips to the detriment of the resource.

Response: Both the layover day provision and the fleet blocks of time out of the fishery have been eliminated under the preferred alternative. Given the 50 percent reduction in DAS allocation, the possibility of back-to-back trips undermining mortality reduction goals does not appear to be significant. The layover day provision would not be effective and would be difficult to enforce under the reduced DAS allocations implemented by this rule and were removed. In addition, removal of this provision is intended to encourage some vessels to move out of groundfishing for significant portions of the year.

Comment 25: A commenter stated that vessels in the Fleet DAS permit category are at a disadvantage when compared with vessels in the individual DAS category, because it gives them less access to the resource and most of them are smaller, more weather dependent boats.

Response: These categories were established by Amendment 5 after a lengthy public hearing process and are not changed by this rule. The principle behind the individual DAS program is to provide those vessels that primarily direct their operations on multispecies a baseline allocation of DAS that reflects actual fishing. All other vessels were allocated a general average of the fleet (Fleet DAS). The Fleet DAS program was established, in part, as a default type allocation for vessels that could not prove their actual DAS, vessels that did not wish to purchase vessel monitoring devices and other vessels that may not have had sufficient DAS in the groundfish fishery. Vessels that could demonstrate that they fished more than the fleet average could apply for an Individual DAS permit. Individual DAS vessels received a higher allocation of DAS because, historically, they fished for DAS more than the average of the fleet. In any event, smaller vessels that traditionally engage in day trips will essentially be allowed twice the number of allocated DAS because their trips will be allocated on an hourly basis. That is, a day trip that lasts only 12 hours will only use up one-half of a DAS.

Comment 26: A commenter stated that the Council acknowledged that the method used to calculate the DAS for the gillnet sector of the fleet was wrong. He stated that the Council assumed it would be corrected by a framework adjustment. He stated that the framework adjustment process was not intended to be used to correct deficiencies recognized prior to implementation. He suggested that Amendment 7 should be disapproved on this basis alone.

Response: One of the disapproved measures of the amendment was the measure that counts gillnet DAS as time when gear is in the water, as referenced by the commenter. NMFS' Office of Law Enforcement also cited difficulties in monitoring gear in the water. Moreover, the Council submitted a comment on the proposed rule stating that it is seeking alternatives to the gillnet DAS structure through framework action. Until such time, the DAS counting method will be the same as that for other DAS categories, i.e., the time spent away from port.

Comment 27: A commenter stated that management's use of DAS as effort reduction raises questions of equity and fairness. In support of his statement, he asked the following questions: (1) Does a vessel's past history of DAS show whether it was away from the dock for 10 or 24 hours? (2) Can a day boat that fished 300 10- or 12-hour days in the years that are being credited with DAS

apply those days to the current DAS regulations? (3) Can this vessel now take his allotted DAS and apply them to fishing offshore with 24-hour days? (4) Can a day boat that historically fished 120 12-hour days now be entitled to 278 days in year 1 and 176 days in year 2, if he makes all 12-hour trips? (5) Are these 12-hour day boats benefiting with twice the days as boats that fish full days? (6) Should a gillnet fleet from Cape Cod be penalized because the practice of "soaking" nets is not acceptable to the majority of the fishing fleet?

Response: To question (1) Yes, for vessel trips where captains were interviewed by a port agent, the hours away from the dock are recorded, however, other records are usually needed to augment NMFS' data because submission of vessel trip reports was not mandatory and not every trip could be interviewed; (2) yes, if a vessel can show 300 DAS, it can be allocated, as a baseline, that many DAS; (3) yes, used DAS are counted in hourly increments; (4) the vessel would be subject to a 120 DAS baseline with a 10-percent reduction for 1994 and 1995, an additional 15 percent reduction for 1996 and a final reduction of another 15 percent for 1997; (5) DAS used is computed in hours, therefore, any vessel using less than 24 hours in a DAS is on record for that portion of the day used in hours away from the dock; (6) DAS for gillnetters is based on time away from the dock, which should reflect their actual fishing time.

Notwithstanding the possibility that vessels that fish only partial days may be able to fish more "days" than their DAS allocation appears to allow, NMFS has determined that the overall effort reduction measures are adequate in achieving mortality reduction goals. If it appears that such measures are not effective they can be adjusted through framework measures.

9. Comments on the Socio-economic Analysis

Comment 28: In a joint correspondence two associations stated that the socio-economic statement for Amendment 7 states that class 3 and 4 vessels will not be financially viable in year 2. They further stated that other fleet sectors will be viable, because the regulations have been skewed to make it so. They added that the Magnuson Act, specifically, National Standard 4, clearly states that all user groups are to be treated equally. They further added that the socio-economic statement was drawn up several weeks prior to the adoption of major segments of Amendment 7 and that its accuracy was

questioned on numerous occasions. They stated that the Regional Director had also indicated publicly his concern about it being a solid appraisal of the future.

Response: The requirements of the Magnuson Act require that fisheries regulations do not discriminate against residents of different states and that any allocation of fishing privileges to fishers be fair and equitable to all such fishers, that the allocation be calculated to promote conservation and that no particular entity acquire an excessive share of such privileges. The Council and NMFS considered these factors in developing Amendment 7 and concluded that the measures adopted were the best suited to provide fair and equitable fishing opportunities to all sectors of the fishery. As to the accuracy of the socio-economic impact statement (SIA), there were some changes to specific details of various Amendment 7 regulations after the broad-scale analyses such as the cost-benefit analysis, the sector analysis, and the break-even analysis in the SIA were completed. However, the sector analysis and the break-even analysis in the SIA are not affected by these changes because the analyses are based on broad effort reduction goals, (i.e., 50-percent and 80-percent reductions in fishing effort). The cost-benefit analysis is also based on total levels of effort reduction (independent of how the reductions are achieved) and on projected landings. These broad-based analyses did not change in the final weeks, nor did the general characterizations of the fleet change, such as are found in the "Human Environment" Chapter.

If the comment alludes to specific discussions of particular measures, such as some of the comments in the SIA, all changes up to and including those made at the January 25-26, 1996 Council meeting, which included the vote to send Amendment 7 to the Secretary, were analyzed. Analyses to minor changes to measures were encompassed in the broad scale analyses.

Any and all limitations to the data and analyses are discussed in the FSEIS. However, NMFS stands behind the stated quality of the data used and academic rigor of the analyses performed. It is true that the analyses may be insufficient to pinpoint precise impacts, especially for a given individual vessel. The test of the EIS specifically states this. The analyses do, however, give an accurate general picture of the range of likely impacts.

Comment 29: A commenter stated that the only way to rebuild the stocks is to do away with big fleet boats 60 ft and

greater in length, which caused the stock damage in the first place.

Sen. Judd Gregg (NH) added his concern that the amendment inequitably treats the interests of the small-vessel fleet relative to the large-vessel fleet or corporate trawler fleet operating in the GOM. He stated that without appropriate modification, Amendment 7 threatens the economic viability of the New England small-vessel fleet and argued that it has a relatively small interaction with the groundfish population. He further stated that the FMP failed to appropriately focus management measures on the industry segment responsible for pressuring the resource.

Response: The amendment is intended to be constructive in the long term, that is, to rebuild the resource by equitably applying reductions in fishing effort and to allow vessel owners to individually maximize their abilities within a fair set of constraints. Individually, large vessels do tend to have greater fishing power and consequently can exert more fishing pressure on the stocks than do smaller vessels. Smaller vessels in the 31 to 45 ft (9.5 m to 13.7 m) class (approximately 46 percent of all limited access permits) can cumulatively exert a significant amount of fishing effort as well as individual vessels 60 ft and greater in length. Because of the large reductions in effort needed to rebuild severely depleted groundfish stocks, all vessels that are greater than 30 ft (9.1 m) in length, and all other vessels formerly exempted from the DAS effort reduction program (Hook-Gear and Gillnet vessels), are brought under the DAS program. Moreover, given the variability and types of vessels and gear used in this fishery, it would not be possible to design management measures with precisely equal impact on all participants. In approving Amendment 7, NMFS has concluded that the overall conservation benefit of the measures outweigh the hardship on individual vessels.

Comment 30: In a joint correspondence two associations stated that the socio-economic analysis of Amendment 7 regulations does not include any additional monitoring and enforcement costs, yet the document suggests that these are likely to exceed the projected benefits. The analysis must factor in the cost of adding all the previously exempted vessels to the DAS call-in system, the cost of the vessel tracking system (VTS) to boats and to the Government for the monitoring hardware and software, and the United States Coast Guard's (USCG) costs for monitoring and enforcing DAS, closed

areas, gear restrictions and trip limits. They added that the Federal Government has committed \$25 million to the Fishing Capacity Reduction Program. This is either a pure cost, or the cost-benefit must be analyzed. The loss of revenue from monkfish landings, constrained by management measures to reduce landings of regulated species, is not included. They further stated that market loss due to foreign substitutes, and the recent policy changes in the bid process for military fish supply, are not included and market rebuilding costs are not estimated.

The associations stated their understanding that these costs, and others yet to be anticipated, are difficult to predict and quantify but added that effort must be made to do so, as these costs have the potential of negating any estimated benefits.

Response: The FSEIS submitted by the Council as part of Amendment 7 contains a discussion of other costs (Appendix X, E.7.2.3.8). The FEIS document states that many other costs of the nature referred to by the commenter were not considered because they are only marginally different from the status quo in Amendment 5 or because the information is unavailable, as the commenter concedes. For instance, the marginal cost of adding vessels to the DAS call-in system is expected to be insignificant because the system is in place and can easily be upgraded to receive an increased volume of phone calls, if necessary.

Additional costs associated with installation of VTS systems on individuals vessels were not considered since Amendment 7 does not change which vessel categories would be required to install a VTS. Thus, VTS costs to vessels are not affected by Amendment 7 relative to the status quo (SQ).

The USCG's estimate of potential costs of Amendment 7 assumes that much of the enforcement effort would be conducted at-sea. Because of the comparatively high-cost of at-sea enforcement, NMFS believes that enforcement efforts will necessarily be land-based. During implementation of Amendment 7, NMFS encourages increases in sea-based support to improve the overall effectiveness of programs implemented under Amendment 5, e.g., DAS compliance, gear restrictions, etc. However, although such costs may occur during Amendment 7, they actually represent programmatic improvements that could also be expected to be made in the out years of the status quo amendment.

Appropriate analyses of the \$25 million Fishing Capacity Reduction

Program will be conducted once it has been approved.

Losses from landings of associated species as a result of conservation actions directed at the regulated groundfish species are acknowledged in the plan. The benefits derived from foregoing monkfish landings in order to conserve groundfish stocks are deemed positive. There is no way to distinguish whether trips in which monkfish is landed along with regulated groundfish constitute a monkfish trip or a groundfish trip with monkfish bycatch. Fisheries where it is shown that bycatch (in weight) of regulated species is less than 5 percent are permitted to operate under Amendment 7. This is not the case for any monkfish fishery. A Monkfish plan or amendment is under development, and it is generally acknowledged that monkfish stocks are overexploited.

Losses in market as a result of reduced landings under Amendment 7 are recognized. NMFS undertook a study of the impacts of landings reductions under Amendment 5 on intermediate markets (Georgianna, Dirlam and Townsend), results of which were commented on in the FSEIS. The costs of the steeper reduction in landings as a result of the more rapid effort reduction will be higher still. The Council took the qualitative step to modify the reduction schedule from 1 to 2 years with exactly these impacts in mind. This will provide time for diversification into other marine products that would result from shifted effort. Similarly, the Council chose among the alternatives it considered, the effort reduction process (DAS reduction) least disruptive to shore-side activities. Again, the reduction schedules discussed are relevant to groundfish only.

Changes in procurement contracting is nationwide and encourages competition within the United States among fish producers. The intention is to achieve greater value for dollar of procurement. Our analyses suggests that prices to groundfish landings will not be significantly impacted by the removal of a price floor in the early years of the plan. In later years, as occasions of congested landings occur, the removal of this support might lower that day's prices somewhat from what they might have been. However, this procedural change would have been in effect under either Amendment 7 or its default, Amendment 5 as modified.

Comment 31: In a joint correspondence, two associations stated that the DAS reduction objectives are based on the hypothesis that a 50-percent reduction in DAS will achieve

a 50-percent reduction in fishing mortality. They argued that a 50-percent reduction in DAS is more likely to achieve a much higher reduction in mortality as large number of vessels exit the fishery because of insufficient DAS to remain economically viable.

Response: That economic viability will be a problem for the average trawler as the DAS are reduced was acknowledged in the plan and particularly in the break-even analysis, which analysis dealt with groundfish days only. Lack of data on individual vessel costs and effort precluded prediction of the number that would find conditions intolerable. To compensate, a yearly adjustment mechanism was established to attempt to reconcile the DAS reductions with the desired fishing mortality trajectory. Where vessels exit the fishery and do not exercise their DAS allocation, the effect may result in an easing of the reduction schedule for the remaining vessels. This would not occur without a lag of about 1 year. Much of this uneven distribution of impacts might be alleviated by programs which permit transfers of DAS, e.g., through consolidation. These were not included in Amendment 7 but may be considered in the future.

Comment 32: A commenter, on behalf of nine offshore lobster vessels, stated that Amendment 7 should not be implemented until the impacts of redirection of trawler effort on the depletion of the lobster resource and on gear conflicts are adequately addressed. He stated that section E.7.1.1.2, Impact on other fisheries, on p. 204 of the FSEIS is totally inadequate and ignores substantial Council comment and deliberation on the issue of impact on other fisheries, and also ignores the experienced re-directed effort that is evident from Amendment 5 and from similar restrictions on fishing days in the sea scallop FMP.

The commentator also stated that it is completely disingenuous for the EIS to say that "there is no practical way to predict where the effort from groundfishing will go and what the impact of the proposed action on other fisheries will be." He argued that NMFS has a great deal of data on the trends in fishing effort, the productivity of various fisheries, and the impacts evident from the trends in shifting fishing effort. He cites as sources NMFS information on the value of fishing gear lost to conflicts with trawlers over the past few years, the analysis of the shift in effort to the monkfish fishery, the Fishing Industry Grant program and USCG data.

An attorney representing a group of offshore lobstermen mirrored the above concerns and added that the Council stated, in support of the emergency action for gear conflict in southern New England, that the gear conflicts were related to additional regulations on the groundfish industry which forced vessels to fish in areas for nontraditional species. Another commentator finds it inconsistent that the Council can make this statement in support of an emergency action request and then, in support of Amendment 7, state that the impact cannot be quantified.

Response: As stated in the analysis of impacts on other fisheries, the degree to which trawlers may redirect fishing effort onto the lobster resource cannot be estimated at this time. NMFS believes that such redirection would be mitigated by the exemption program in the GB/GOM area, which requires all fisheries outside of the DAS program to meet the 5-percent bycatch limitation for regulated species.

Comment 33: A commenter stated that a NOAA study of critical socio-cultural issues is presently underway for the New England fishing industry. The commenter added that the final report from this study of the Northeast fishery is due by June 15, 1996, and that such analysis of the fishery is required by the Magnuson Act and no plan amendment should be implemented prior to this report.

Response: The report mentioned by the commenter contains baseline information about the fishing industry that could be used for future framework actions or FMP amendments. It was not ready in time for the Council to consider for Amendment 7. Amendment 7 included analyses based on the best information available to date.

Comment 34: An association stated that under E.O. 12866 the Agency must submit to the Office of Information and Regulatory Affairs (OIRA), with respect to any significant action, the text of proposed regulatory action, an assessment of the costs and benefits of the action, an assessment of alternatives, and an analysis as to the reasons for selecting the preferred alternative (PA). It added that the Agency must provide the public the information provided to OIRA, and the changes between the draft submitted to OIRA and the subsequent action. It stated that it is not clear what documents were submitted to OIRA and what analysis was reviewed.

Response: NMFS complied with the requirements of E.O. 12866. All public hearing documents, as well as the scientific, economic, and social impact analyses, and comments to public comments on the DSEIS, were provided

to OIRA along with a copy of the proposed rule and its preamble. No changes were made to the proposed rule at the suggestion or recommendation of OIRA.

Comment 35: An association stated that NMFS failed to consider a wide range of costs associated with the PA.

Response: The economic analysis considered all relevant currently available data. The availability of information on the full range of economic activities associated with commercial fishing is quite limited. Economic data on many shoreside activities such as offloading, processing, and sales of inputs to commercial fishing vessels is simply not available. Given this lack of data many of the referenced economic factors could not be incorporated into the economic analysis. However, had these factors been included, it is not a foregone conclusion that they would be economic costs. The benefit-cost analysis must consider benefits to the Nation as a whole. This has two ramifications. First, losses in one region may be offset by gains in others, leaving National income unchanged. This might be the case if vessels and/or crew were to leave the Northeast and move to other regions. Second, in over-capitalized fisheries, reductions in resources that are devoted to fishing may be viewed as a net gain from a National perspective. Given the lack of adequate economic data, it was not possible to determine the extent to which economic dislocations such as crew share losses, impacts on suppliers and processors, or the impacts of bankruptcies might be considered transfer payments, national economic gains, or net losses in National income.

Comment 36: An association stated that all the biological and economic estimates for analyses contained in Amendment 7 occurred outside the public's view. It said that it is impossible for experts to replicate any of the sets of projections set forth in the supporting analysis.

Response: All of the recruitment simulator results that included landings streams were described at several Plan Development Team meetings at the Council offices and subsequently at Council Groundfish Oversight Committee meetings. Both types of meetings are attended by the public. In addition, the public hearing document and an extensive draft EIS document were made available to the public months ahead of the Council vote to adopt Amendment 7. An explicit description of the economic information used in the final EIS was contained in the latter.

Comment 37: An organization stated that the IRFA of the impacts of Amendment 7 should contain a description of any significant alternatives to the proposed rule that accomplish the stated objective and that minimizes any significant economic impacts of the proposed rule on small business. The organization further stated that the final regulatory flexibility analysis (FRFA) should provide a summary of issues raised by the public in response to the initial analysis, along with a description of each significant alternative to the rule consistent with the objective of minimizing economic impact, and a statement of why any alternative was rejected.

An association stated that under the Regulatory Flexibility Act (RFA), an agency must assess the impact of new regulations on small business. It said that the NMFS has failed to comply with its obligations. It argued that the Small Business Administration (SBA) had been largely omitted from the process. The intent of the statute is to limit regulatory actions having a significant impact on small business. It argued that this particular preferred alternative (PA) is specifically designed in such a way that trawl vessels will not be allocated sufficient DAS to break even during year 2. This extremely harsh anticipated result flies in the face of the statutory intent of the RFA.

Response: Amendment 7 contains an IRFA that incorporates supporting analyses and portions of the amendment that provide the public with information on the effects on small entities of the PA and any other alternatives considered by the Council, including those that minimize the impacts on small entities. The classification section of the proposed rule for Amendment 7 also contains a statement regarding the probable effects of the PA on small entities and an initial determination under the RFA.

NMFS transmitted a copy of the Amendment 7 and its initial determination that the amendment would have a significant economic impact on a substantial number of small entities to the SBA shortly after NMFS' receipt of the amendment, following standard procedure for all new FMPs and FMP amendments under Secretarial review.

The preamble to this final rule contains a summary of the comments received by NMFS in response to the notices of proposed rulemaking, including comments on the IRFA, NMFS' responses to those comments, and any changes made to the rule as a result of those comments. The IRFA as submitted by the Council, together with

the summary of the comments received and NMFS' responses thereto, in this preamble, constitutes the FRFA. Alternative actions were not taken in response to comments on the IRFA. NMFS believes that the responses in this preamble to the public comments adequately explain why NMFS did not adopt alternatives having less of a significant economic impact on small entities compared to those measures in Amendment 7 that NMFS approved.

NMFS disagrees that the final rule violates the intent of the RFA. The intent of the RFA is not to limit regulations having adverse economic impacts on small entities, rather the intent is to have the agency focus special attention on the impacts its proposed actions would have on small entities, to disclose to the public which alternatives it considered to lessen adverse impacts, to require the agency to consider public comments on impacts and alternatives, and to require the agency to state its reasons for not adopting an alternative having less of an adverse impact on small entities.

The Council and Center performed "break-even" analyses, apart from the benefit-cost analysis, specifically to assess the financial viability of small business fishing vessels. Where a quantitative assessment was not possible, qualitative comments noting sectoral impacts were offered.

The differential impact of Amendment 7 on trawlers was noted. The cost-benefit analysis is designed to analyze net national benefits of the action affecting many gears and component fisheries. A single sector analysis is inappropriate. NMFS agrees that trawlers will be more heavily impacted than hook vessels and possibly gillnetters (though this latter is unclear since final gillnet framework measures have not been established).

Without better cost-earnings, labor response and alternative employment options data, NMFS is limited in the precision of vessel and fleet level economic/financial impact assessments it can make for such gear-based allocations. Further, additional data on family structure and community social structure would be required for a stronger, more comprehensive social impact assessment of such measures.

Comment 38: An association stated that the NMFS is required, under E.O. 12866, to seek the involvement of those who are intended to benefit and those who are intended to be burdened by any regulation. It added that the Agency must also use consensual mechanisms for developing regulations, including negotiated rulemaking.

Response: The Council process by its nature involves representatives of groups that benefit and are burdened by the management process, either directly as members of the Council, or indirectly as persons with access to the public process at the Council, oversight committee and plan team meeting level. Negotiated Rulemaking is not required.

Comment 39: An association stated that the RIR understates the impact on the trawl vessels and fails to highlight the speculative nature of the benefits of the preferred alternative (PA) in years 9 and 10.

Response: NMFS disagrees. The RIR adequately covers economic impacts. Estimates of economic benefits in years 9 and 10 are seldom as precise in this kind of analysis as are the estimated benefits and costs in earlier years.

Comment 40: An association stated that the PA (Amendment 7) will result in the insolvency of an entire sector of the fishing industry in the Northeast. It commented that the Agency has selected the alternative that causes that result even though the benefits of that plan over the status quo (SQ) (Amendment 5) are questionable and even though the SQ would achieve the same results with respect to stock replenishment over a slightly longer period of time while preserving all segments of the fleet.

Response: The statement does not accurately portray the key difference in objectives for Amendment 5 and Amendment 7. The stock rebuilding objective for Amendment 5 is to reduce fishing mortality on CHY to halt the decline in spawning stock biomass. Rebuilding of spawning potential under Amendment 5 is limited to levels that would reduce the risk of recruitment failure, but would still leave the fishery in an overfished state. By contrast, the objective of Amendment 7 is to rebuild SSB to levels that would exceed minimum threshold levels for the three key species. The differences between the stock replenishment scenarios of Amendments 5 and 7 are clearly illustrated on pages 195-199 of Amendment 7. In every instance, Amendment 7 results in substantially greater levels of SSB as compared to Amendment 5. Thus, the contention that Amendments 5 and 7 result in the same level of stock replenishment cannot be supported.

Comment 41: An association attached a study entitled "Evaluation of the Economic Impacts of the Proposed Action (Section E.7.2)." The study, by Dr. Andrew Plantinga and Dr. James Wilson from the University of Maine, acknowledged that NMFS' methodological approach to its socio-economic

analysis is well-accepted within the field of economics and is applied in an appropriate manner. It stated that some of the specific assumptions employed in NMFS' analysis, however, are unconventional and highly questionable. The purpose of the study is to reconsider the economic impacts of the proposed action under a more plausible set of assumptions.

Response: (1) Issue—*Treatment of Imports.* Holding imports constant is standard practice in economic analysis of fisheries management, and reflects uncertainty over how trading partners will manage their resources within the ten-year time horizon. Holding price constant ignores dramatic increases in groundfish prices over the next two decades. Finally, the constant price analysis offered by the commentators still demonstrates a superior result for Amendment 7 compared to Amendment 5, in fact, even more so than for an assumption of constant imports.

(2) Issue—*Treatment of crew costs.* Since labor employed in a fishery is a resource that would otherwise be employed in another activity, it has a resource cost. Given the lack of data on the opportunity cost of this labor, the entire value of crew share is used in some analyses as an economic benefit. However, this approach is inappropriate in overcapitalized fisheries, which is the case for this fishery.

(3) Issue—*Time horizon.* A 10-year horizon is standard practice in bio-economic analyses of northeast fisheries, reflecting the time period necessary for stock recovery. Uncertainty is addressed through the simulation model, which is a more rigorous approach than arbitrarily dropping two years from the analysis.

A more detailed discussion in terms of a response to this comment is available upon request from the Regional Director.

10. Comments Related to National Standards

Comment 42: An association commented that Amendment 7 is inconsistent with National Standard 1 which requires the NMFS to prevent overfishing while achieving an optimum yield from each fishery. It added that the varying mesh requirements from fishery to fishery fly in the face of National Standard 1. Moreover, NMFS' failure to consider the unique factors of different segments of the fleet and different fisheries conflicts with the goals of National Standard 1.

Response: NMFS has determined that the provisions of Amendment 7 not disapproved are consistent with National Standard 1. Allowing different

meshes for several small fisheries in the overall groundfishery reflects the effort to incorporate unique factors of each of these fisheries. Mesh regulations reflect area, gear and species concerns. Small mesh fisheries are allowed to operate once bycatch effects have been considered. A single mesh applied to all fisheries would constrain more opportunities. Benefits to other fisheries are foregone in the closed areas included in the plan.

Comment 43: An association stated that National Standard 4 prohibits discrimination among the residents of states. It added that the regulated species constitute a much lower percentage of overall groundfish landings in Maine than in any other of the states impacted by the PA. Moreover, the GOM cod stocks have been determined to be healthier than GB stocks. NMFS' failure to account for differences in local factors results in an exaggerated detriment to the commercial fishermen in a region where the problem is less pronounced. The association added that this failure also violates National Standard 6, which requires NMFS to consider variations in fisheries, resources and catches.

In a joint correspondence, two other associations stated that regulations designed to rebuild stocks of CHY will exact a higher economic burden for Maine than for other New England states. They stated that Maine's industry supports 22,000 fishing and fishing-dependent jobs. They added that Maine is a rural state with few alternative employment opportunities. The associations said that the percentage of CHY in the overall groundfish landings of Maine vessels is much less than that of other New England states. However, Amendment 7 fishing restrictions will greatly constrain landings of other regulated species, which comprise the largest percentage of Maine's overall groundfish landings. They stated that GOM stocks were determined to be healthier than GB stocks, yet all fishing vessels, regardless of fishing region, must take the same direct effort reductions as measured by DAS.

Response: NMFS recognizes that ports in some states may be affected differently than ports in other states. However, National Standard 4 states that management measures shall not discriminate between residents of different states. None of the measures discriminates between residents since all are treated similarly, and thus the amendment is consistent with National Standard 4. The amendment is also consistent with National Standard 6, because the Council and NMFS have considered variations in fisheries

resources and catches in attempting to recognize all sectors of the industry through numerous exemptions and special provisions.

The white hake fishery is of increasing importance to many vessels in the GOM. A white hake provision in the amendment allows the Regional Director, upon consideration of the exempted bycatch criteria, to allow a directed fishery on white hake outside of the DAS program.

Comment 44: An association stated that National Standard 5 requires NMFS to promote efficiency and National Standard 7 requires NMFS to minimize costs and avoid unnecessary duplication. It asserted that NMFS has failed to consider less drastic steps, that could be taken to achieve the same result. It argued that regulations should include procedures to relax restrictions quickly. It said that the amendment's analysis also fails to consider heightened enforcement costs.

Response: Amendment 7 is consistent with both of these national standards. The Council and NMFS considered alternatives and included special provisions designed to minimize to some degree the impact of management measures. NMFS notes it is consistent with both standards to take actions only "where practicable." Both harvesting and enforcement costs were less for the DAS reduction program alternative than for several other alternatives under discussion. For the most part the systems necessary were adopted under Amendment 5. Other alternatives included strict quotas with the likely result of fishing derbies, an extensive closed area grid requiring enforcement features far beyond the capability of the region's USCG, and complete closure of all fisheries taking groundfish.

The rebuilding trajectory was modified from a single year reduction in fishing effort, to 50 percent of recent levels, to a two-year reduction schedule. In addition, an annual review process will examine the deviation of the actual from desired rebuilding trajectories. Adjustments (increases or decrease in fishing effort) in DAS or other management measures will occur as they become necessary, upon annual review of the target TACs and actual fisheries data for a given year.

Comment 45: An association stated that Amendment 7 violates National Standards 2, 4, 5, and 6 because: It uses poor, untimely and incomplete information; it is not fair and equitable to all fisheries; it is not reasonably calculated to promote conservation, but rather downsizes fishing fleets as they once were; it unfairly puts concerns of one fishery over another; it discards in

favor of expediency and it does not account or allow for variations of the fisheries.

Response: NMFS disagrees. As discussed above, the provisions of Amendment 7 that were not disapproved comply with the national standards and other applicable laws discussed in response to other comments. As discussed above, NMFS has determined that the measures are based on the best available scientific information (National Standard 2), do not discriminate between residents of different states (National Standard 4), and are fair and equitable and reasonably calculated to promote conservation. NMFS notes that National Standard 5 requires fishery management plans to promote efficiency in utilization of resources "where practicable," as discussed elsewhere in response to comments; in a fishery as severely overfished as Northeast multispecies the "where practicable" caveat is a constraining factor. NMFS has approved measures that include several exemption programs and management measures tailored to account for contingencies (geographic, seasonal) as specified in National Standard 6.

11. Comments on the Procedural Aspects of Amendment 7

Comment 46: In a joint correspondence, two associations stated that it is the responsibility of the regional fishery management councils to see that the intent of the Magnuson Act is carried out so all parties concerned are treated fairly and equally, that public input be allowed and comments be seriously considered in making major decisions. The associations added that such has not been the case in the development of Amendment 7 by the Council.

Response: The industry has been actively involved in the plan process, and their viewpoints were solicited and taken quite seriously. In addition to its regularly scheduled meetings, the Council held a large number of committee meetings during the development of the alternatives proposed in the public hearings. Notice of these meetings was sent to everyone who indicated an interest in receiving such notice. Furthermore, these meetings, as well as public hearings, were open to the public and provided an opportunity for representatives from all the different sectors of the fishery to be heard. As the Council developed Amendment 7, the severity of measures under consideration was widely publicized in trade and general publications. The Regional Director

personally met repeatedly with fishing industry groups, including those associations whose comment this responds to, both during Council meetings and in their home ports. Furthermore, most of the proposals made in the associations' position paper of September 19, 1995, were incorporated in some form in Amendment 7. These include the removal of layover day provisions, the elimination of exemptions for vessels under 45 ft (13.7 m), and the closure of areas to maximize recruitment, as well as the continued use of DAS as a primary management tool.

Comment 47: In a joint correspondence, two associations stated that the fisheries management process failed its Magnuson Act obligation to involve the Groundfish Industry Advisory Committee in the development of Amendment 7.

Response: Members of the Groundfish Industry Advisory Committee were notified of each scheduled Groundfish Committee meeting and were well represented and actively participated at most of them. Furthermore, from representative membership on the Council, through the scoping process and both formal and informal opportunities to be heard, industry representatives were involved in the development of Amendment 7 from its inception through implementation.

Comment 48: A commenter stated that none of the alternatives to Amendment 7 presented by New Hampshire fishers at public hearings (such as mobile gear night closures and gillnet restrictions) was considered by the Council.

Response: In fact, such issues were considered by the Council. The Council is continuing its consideration of additional gillnet restrictions for implementation by the Amendment 7 framework adjustment process. The Council continues to receive testimony regarding night closures for mobile gear, but has not developed a proposal to implement this measure.

Comment 49: An environmental association urged NMFS to waive the Administrative Procedure Act's (APA's) 30-day delay in effective date and implement Amendment 7's conservation measures immediately upon publication of the rule.

Response: The APA allows the 30-day delay in effective date requirement to be waived if there is good cause to do so. While the commenter seeks such a waiver in order to provide immediate conservation benefits, NMFS believes that it would not be reasonable to require compliance with management measures of this complexity on an immediate basis. The 30-day delay in

effectiveness will provide NMFS an opportunity to inform the public about the new requirements. It will also provide the industry with the time required to make the necessary adjustments to fishing activities and gear.

12. Comments on Enforcement of the Amendment

Comment 50: The Council submitted comments addressing enforceability issues associated with the proposed regulations. Their comments are as follows:

They noted that there was an error in § 651.22(g) with respect to the requirement to take 20 days out of the multispecies fishery during the spawning season. Their suggested revision is incorporated.

They identified a mesh size measuring procedure to be used for gillnets and suggested that implementation of this procedure be delayed until October 1996. These recommendations were adopted.

They requested a revision of the definition for "Port" to clarify when a vessel must call under the call-in requirements. This change is incorporated.

NMFS notes that it has made some changes in the final rule in response to concerns raised by the Council (see changes from the proposed to final rule).

13. Miscellaneous Comments

Comment 51: The Maine DMR stated, as regards NMFS concerns expressed in the preamble to the proposed rule about the availability of open-access handgear-only permits to party/charter vessels and the resulting administrative and monitoring burden about what set of rules party/charter boats are operating under, that this burden could be reduced by requiring that such vessels only call in upon embarking on a commercial groundfish trip. At other times, party/charter vessels would be presumed to be fishing under recreational rules.

Response: The Council commented that the call-in requirement for charter/party vessels would not enhance enforcement and should be disapproved. NMFS agrees and the measure has been disapproved.

Comment 52: An environmental organization stated that the phrase, "FMP goals and objectives," is used in some places in § 651.40(a) while in other places the phrase, "FMP objective," is used. It believes that the former phrase should be used throughout the section both because it reflects the Council's intention and because it is important to assure that

future management decisions will be guided by the need to reach specified spawning stock thresholds as well as by the fishing mortality rates that the Council hopes will achieve those thresholds.

Response: NMFS agrees and the commenter's suggestion has been adopted.

Comment 53: The Maine DMR stated that DAS program results in compensations by fishermen to maintain their revenues in the face of reduced fishing time for regulated species. In addition to subtle increases in fishing power, this also results in displacement of effort onto other species and into other regions.

It added that large mobile gear vessels that had fished long trips on offshore grounds are shifting their effort to nearshore and inshore grounds to maximize landings from fewer DAS. This not only concentrates effort in areas known to be important spawning and juvenile habitat but is responsible for a sharp escalation in mobile/fixed gear conflicts as dragnets and gillnetters compete for the same grounds.

Response: The habitat question raised is responded to in Section 13, "Comments on Protection of Habitat." The Council is aware of the gear conflict issue raised and is presently discussing resolution of the problem. Any such resolution may be effected through the framework adjustment process.

Comment 54: Two environmental associations opposed the proposed exemption that could allow a directed fishery for a regulated species (white hake) outside of DAS restrictions. They stated that NMFS classifies the white hake stock as fully-exploited and at a medium biomass level. They recommended that increased fishing effort on white hake should be discouraged, not promoted.

The Maine DMR added that the white hake exemption should only be implemented if management is confident that this stock is under-exploited and sufficient sea-sampling data is available to determine that this fishery can meet the 5 percent rule throughout the fishing year.

Response: NMFS recognizes that this species is fully exploited. The measure would allow the Regional Director to exempt such a fishery in consultation with the Council, which may be an option if recruitment and biomass remain stable. Any such exemption cannot be granted if it jeopardizes FMP goals and objectives, including not allowing overfishing on white hake.

Another commenter stated that any new participants to the dogfish trawl fishery implemented by Amendment 7 should

be monitored to assure conformity with the present gear.

The commenter cautioned that any deviation from the gear used could negatively alter the fishery and increase the regulated species bycatch. He suggested that a level of sea sampling be mandated so that the fishery does not proceed unmonitored to assure that those who developed this fishery do not see its conservation benefit compromised.

Comment 55: An environmental organization added that it supports the dogfish trawl fishery on Nantucket Shoals as long as skate bycatch restrictions are maintained and as long as periodic review indicates that: (1) Bycatch rates do not escalate, and (2) appropriate contributions to overall fishing mortality for multispecies targets due to this fishery are recognized.

Response: NMFS will monitor the dogfish trawl fishery through sea sampling, as possible. No skate bycatch is allowed. Should the situation warrant, the Regional Director has discretion to cancel the exemption for the fishery.

Comment 56: The Maine DMR stated that it favored inclusion of two state representatives and an industry member on the Multispecies Monitoring Committee.

An environmental association recommended that membership on the technically based MMC proposed by Amendment 7 (61 FR 8546, March 5, 1996) include an environmental representative and meet for purposes in addition to the annual review (61 FR 8559, March 5, 1996). It added that the MMC should meet when appropriate, including whenever data suggests that target TACs for any population are or may be likely to be overrun by more than 10 percent during any fishing year.

Response: The MMC is formed by the Council. NMFS will forward the suggestions of these commenters to the Council.

Comment 58: A commenter stated that the Council's mandate, as defined by the Magnuson Act, is to take immediate action to conserve and manage the fishery resources. He added that while Amendment 7 purports to be a conservation measure, it is rather a measure that redirects fishing effort. He explained that it addresses the groundfish problem in a manner that ignores the fishery as a whole. He said that Amendment 7 will, in meeting its objective, create and prolong existing problems in the remaining fisheries. Specifically:

1. DAS that place passive (i.e., fixed) gear in the same category of effort with mobile dragnets and scallopers grossly

discriminates against the passive gear fisherman. For example, an average gillnet fisherman with 120 nets in the water will utilize 6 nautical miles (nm) of bottom and occupy 0.41 acre. A dragger towing at 5.5 nm per hour will drag over 132 miles in 24 hours of towing and with a net sweep of 205 ft will drag over 3,864 acres. Therefore, if DAS are used to manage the multispecies fishery, then DAS should be separate for passive and mobile gear, and DAS for passive gear should be greater than that assigned to the mobile gear sector.

2. The proposed bycatch of lobster (in the mobile gear sector) should be eliminated. The lobster fishery must reduce lobster landings by 20 percent over 5 years. A 200 count lobster bycatch allowance leaves the door open for high grading and for non-reported landings. The value of 200 lobsters will result in a directed fishery by those vessels fishing outside of any DAS restrictions for non-regulated species. (The monetary value of the lobster is greater than the monetary value of their directed catch.) Finally, the lobster can be returned unharmed to the sea, which eliminates the wasteful discard argument.

3. Dealers should report their purchases from all fishermen in a manner that allows a cross check on the mandated vessel reporting systems.

Response: (1) Fishing mortality is not a function of the amount of area covered by the catch per unit of effort—a rough equivalent is a DAS. In theory, if each vessel gives up a DAS, each vessel experiences a 1/365th reduction in effort. As discussed in response to other comments, NMFS has disapproved the proposed measure for counting gillnet DAS in an effort to put that gear sector on the same basis as other gear sectors. Also, the Council is continuing to explore other alternatives for the gillnet sector.

(2) The lobster bycatch allowance is not established as a means to conserve lobsters, but rather to reflect a legitimate bycatch in a fishery that may target for multispecies. If further lobster conservation measures are needed, they would more appropriately be addressed in management measures designed to protect that species.

(3) NMFS has implemented a vessel reporting system that can be cross-checked to the dealer reporting system.

Comment 59: The Maine DMR commented favorably on Amendment 7's exemption for fisheries certified by the Regional Director as having less than a 5 percent bycatch of regulated species. It noted with concern, however, that the procedures for identifying candidate

fisheries for exemption and the methodologies for establishing certification are not yet specified or in place. It urged the Regional Director to develop and set forth the requirements for application and certification as a matter of high priority.

Response: Application procedures are in place and this rule establishes exemption procedures for the newly impacted large mesh fishery. Applicant must submit a written request to the Regional Director. The request must at least describe the area in which the fishery would operate, the period in which it would operate, the gear it would use, the approximate number of vessels likely to participate, and the species it would target, retain and land. Any evidence of the likelihood of such a fishery succeeding should be included with the request. The request will be reviewed by the Regional Director and a letter sent to the requestor explaining the process, which follows. The request will be analyzed to determine whether such a fishery would meet the 5 percent regulated species bycatch standard which, under Amendment 7, has been revised to reflect the Council's intent that it is an absolute maximum (other restrictions on fishing gear and/or seasons may also be considered to reduce bycatch). The completed analysis will be forwarded, along with the request, to the Council, which will place the request for a large mesh exemption on the agenda of the next scheduled Council meeting.

Comment 60: A commenter stated his concern that the majority of the small vessels fishing off of Cape Cod fish primarily in the same area that is designated for the small mesh dogfish fishery. He said that these small vessels fish exclusively for codfish and 80 percent of the fishing occurs from June through October. He stated that the small mesh used combined with less than 100 percent observer coverage raises the potential for large cod bycatches. The commenter recommends that regulated mesh or larger be required. He added that permitting a small mesh size in the dogfish fishery simply because the dogfish are difficult to remove from the net and does not justify the potential harm to stocks of CHY. He concluded that allowing vessels to use small mesh to target dogfish in the area can only lead to high discarding of regulated species as well as juvenile dogfish.

Response: The Nantucket Shoals experimental dogfish fishery was monitored by the Massachusetts Division of Marine Fisheries for two seasons. During the first year of the program, 17 trips were observed and

bycatch of regulated multispecies was less than one-half of 1 percent. This program can be terminated if the Regional Director determines that bycatch of regulated species is excessive.

Comment 61: An association commented that Amendment 7 data confirms that commercial hook fishing is labor intensive. It stated that based on Council data, small longline boats catch only 300 lb (136.1 kg)/man/day as compared to large draggers, which catch 880 lb/man/day. Amendment 7, Vol. I, Table E.6.4.1.1.4 b & e. The commenter added that commercial hook fishing should thus be encouraged to reduce employment losses.

An association commented that restoring habitat already destroyed by draggers would be another means of overcoming Amendment 7's employment dislocation with an eye toward rebuilding stocks in the future. The commenter suggested that displaced draggermen could be temporarily employed building artificial reefs ashore and towing them out to GB and the Great South Channel to enhance stock recovery. It concluded that even buy-back vessels could be sunk offshore to provide groundfish gardens.

Response: NMFS is not opposed to any organization encouraging hook fishing. For NMFS' position on habitat protection, see Section 14, "Comments on Protection of Habitat."

Comment 62: The Connecticut DEP commented that it shares NMFS' concern about the condition of the winter flounder resource (as stated in the preamble to the proposed rule) but does not agree that eliminating the winter flounder possession limit in the Mid-Atlantic (MA) Regulated Mesh Area (RMA) will measurably improve the stock. The commenter cited the 21st SAW report, which states that only about 18 percent of the SNE and MA area winter flounder landings are from fisheries in the MA RMA. He added that, "(w)hatever increased management effort the Atlantic States Marine Fisheries Commission (ASMFC) and the Council adopt in response to the SAW advice will be more critical to successful flounder rebuilding than whether or not the 10 percent/200 lb (90.7 kg) exemption exists during the 1996 fishing season."

Response: NMFS' concern about the winter flounder resource is not unfounded. Winter flounder are currently overexploited, at low biomass levels, and in need of fishing mortality that is reduced to as low a level as possible. As the winter flounder stock begins to rebuild, the Council may want

to reconsider the MA RMA exemption at a later time.

Comment 63: In response to NMFS' reservations expressed in the preamble to the proposed rule, the Connecticut DEP commented that likely changes in winter flounder management during 1996 will make more of a difference than the availability of state waters winter flounder exemption programs. It stated that the value of the program is that it allows a state to choose not to participate or withdraw. It said that participating states have been in compliance with the ASMFC plan but expects that, by summer, most states will (by review and revision of the plan) be out of compliance because the current SAW advice indicates a more pessimistic condition of the stock than did the previous SAW. The DEP raised the issue of whether disapproval of this exemption program outweighs the problems that may arise of a jurisdictional nature. It suggested that the program is better off preserved and opportunity should be provided through ASMFC and the Council to develop a more aggressive winter flounder conservation program, which also preserves the states' right to manage fisheries within their jurisdiction in accordance with approved plans.

The Connecticut DEP further commented that both Connecticut and New York question the rationale of new § 651.20(j)(7), the 500-lb (226.8-kg) possession limit when fishing in the State Waters Exemption Program (SWP) and not fishing under the DAS program. It explained that under Amendment 5, vessels enrolled in the SWP and not fishing under DAS could retain 500 lb (226.8 kg) of winter flounder, consistent with the exclusive economic zone (EEZ) fishermen not fishing under their DAS. Under Amendment 7, however, the possession limit of regulated species for EEZ fishermen when not under DAS is zero. The commenter stated that Connecticut and New York believe that fishermen under the SWP should be using their DAS when in possession of winter flounder, that when in the SWP and not on DAS, that possession of winter flounder should be prohibited. The Connecticut DEP argued that there is no indication that the Council intended to allow 500 lb (226.8 kg) of winter flounder in the SWP when not fishing under DAS, while prohibiting EEZ fishermen from any possession of winter flounder when not fishing under DAS.

Response: NMFS has not disapproved the State Waters Winter Flounder exemption program. NMFS believes the Council intended to allow the 500-lb (226.6-kg) limit when it voted to keep

current exemption programs in place. The 500-lb (226.8-kg) allowance was established by Amendment 5.

Comment 64: The Connecticut DEP commented that the proposal to move the boundary of the MA area may create an enforcement problem in Block Island Sound. It stated that there is no longer a territorial sea within 3 miles north and west of Montauk, due to a supreme court decision in the 1980's that had the effect of changing New York's "baseline" and consequently, the location of the New York territorial sea. It suggested that the matter could be resolved by revising the location of the line as follows:

Section 651.20(d) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline at Watch Hill, RI southwesterly through Fishers Island, NY, to Orient Point, NY, and from Orient Point southeasterly to the intersection of the 3-nautical mile line east of Montauk Point, southwesterly along the 3-nautical mile line to the intersection of 72°30' W. Long, and south along that line to the intersection of the outer boundary of the EEZ.

In support of the above, the commenter stated that the problem with the northern terminus of the line in the proposed rule is that it would bisect the shoreline along the Rhode Island south shore, an area in which Connecticut, Rhode Island, and New York vessels commonly trawl. It said that it is inadvisable to have a mesh separation line fall in the middle of an area commonly trawled, for enforcement reasons. The commenter stated that its suggested revision resolves the original problem of splitting Long Island Sound into two mesh management areas (the original 72°30' line) and avoids splitting Block Island Sound into two mesh management areas. The Connecticut DEP added that its proposal has been confirmed to be acceptable to Rhode Island, New York, and the USCG.

Response: NMFS has adopted the Connecticut DEP's suggested revision as requested by the States of Connecticut, Rhode Island and New York, and by the Council.

Comment 65: An association commented that the elimination of a proposed 100-lb (45.4-kg) groundfish allowance for lobster trap fishermen is unnecessary. It added that this would prohibit a lobster fisherman from bringing home a legal size codfish for dinner. It further noted that if a lobster fisherman has a multispecies permit and his vessel is more than 30 ft (9.1 m)

long, he may not qualify for a DAS allowance, and would still be unable to land a (legal size) codfish.

The association added that the proposed rule says that no groundfish may be taken without a groundfish permit and while no more permits will be issued, those vessels with permits that are over 30 ft (9.1 m) (many of the association's lobster vessels are in the 31- to 42-ft range (9.5 m to 12.8 m)) must prove groundfish landings of at least 500 lb (226.8 kg) to renew their permits. The association expressed concern that these vessels would actually lose their permits. The association stated that some allowance should be permitted if only for personal use. Further, no restrictions are in place to keep groundfish fishermen from taking lobster.

The association suggested that some small incidental groundfish catch be allowed for all lobstermen with a groundfish permit or that an incidental bag limit permit be established to accommodate these circumstances.

Response: This issue was raised and considered by the Council. The Council decided to disallow a regulated species bycatch in the lobster fishery, because the TACs are set so low and Amendment 7 focuses on eliminating regulated species bycatch in fisheries capable of taking a bycatch of regulated species.

Comment 66: An association commented that it presumes that restrictions on possession of groundfish by lobstermen do not include possession of "groundfish racks" that were purchased for use as bait. It suggests that some wording be inserted into Amendment 7 to recognize "groundfish racks" as legal bait possessed by lobster vessels.

Response: The Northeast Multispecies regulations apply to fish and fish parts, and as such, "groundfish racks" must meet the minimum size established by the multispecies regulations. Furthermore, a Northeast Multispecies permit is required to possess "racks" of multispecies finfish.

Comment 67: An association commented that it strongly opposes the total absence of any restrictions that would control the targeting of lobsters by groundfish vessels. It further stated that the absence of any wording regarding the subject allows the unrestricted targeting of lobsters while fishing both during DAS and outside of DAS. The commenter said that this omission encourages a redirection of effort onto the lobster resource.

The association suggested that some significant controls on the targeting of

lobsters by groundfish vessels be included in the plan.

Response: Such a restriction is within the purview of the American Lobster FMP and is not, as such an Amendment 7 issue.

Comment 68: A commenter stated that under Amendment 7 (and acknowledged under Amendment 5 as well), a vessel's length, gross registered tonnage, and net tonnage may be increased only once, not exceeding 10 percent of its previous size. He asserted that, in light of encouragement to pursue underutilized species such as herring which are usually high-volume fisheries, some vessels were rigged for mid-water trawling. As a result, he stated that his vessel is often loaded to the point of being unsafe. He stated that he has already experienced a swamping and suggested that such vessels be allowed to increase hold capacity, i.e., length and tonnage. He stated that the restriction on horsepower is an adequate control on the vessel's fishing power and, therefore, limiting the vessel's other dimensions is not necessary.

Response: This issue relates to the provisions for vessel upgrades as established by the regulations implementing Amendment 5 and which are unchanged by this rule. The purpose of the upgrade restrictions is to prevent limited access multispecies permit holders from increasing the fishing power of their vessels, exacerbating overcapitalization and overfishing issues in this fishery. Horsepower alone is not a sufficient limitation of vessel fishing power, especially where the current horsepower of the vessel may allow the other dimensions to be increased. Moreover, a vessel that wishes to fish for herring and other mid-water trawl fisheries not regulated under the Northeast Multispecies FMP may elect to give up their limited access permits thereby avoiding vessel upgrade restrictions.

Comment 69: The Marine Mammal Commission stated that to make meaningful progress towards meeting the Council's revised harbor porpoise goal and requirements of the Marine Mammal Protection Act (MMPA), the network of time-area closures for the coming year should be expanded. The Marine Mammal Commission suggested that the Council's Harbor Porpoise Review Team (HPRT) meet in time to implement any recommendations it might make for the summer-fall fishing season off the coast of central and northern Maine. It also recommended, to better cover the potential periods of high bycatch in the Mid-coast area as reflected by current observer data, that the Council and/or NMFS consider

expanding the effective dates for the Mid-coast closure to include the months of September through December and April through May. It added that it believed that it would be reasonable to allow fishing with acoustic deterrents in the extended closure periods recommended above provided evidence continues to indicate their effectiveness.

Response: The Council's HPRT met in May to discuss additional expansion of time-area closures. The HPRT recommendations were scheduled for presentation to the Marine Mammal Committee in late May so that measures could be considered by the full Council at its June meeting. This will allow any approved measures to be effective in the mid-coast area by September. Continued use of acoustical devices in these closed areas will be considered based on the results of recently concluded experimental fisheries held this spring and the recommendations of the Harbor Porpoise Take Reduction Team, expected to be available later this summer.

Comment 70: The Marine Mammal Commission stated that as the number of northern right whale calves counted in 1995 is exceeded by the 3 percent mortality reported for the past 12 months, action must be taken to exclude gillnet gear in times and areas where right whales are known to occur in greatest numbers. It added that these areas include the Great South Channel from April through June, and Cape Cod Bay from February through May. It said that action taken by the Council to reduce entanglement threats has been limited, i.e., it has prohibited gillnet fishing in parts of one area (the Great South Channel) that are important for groundfish spawning during part of the peak period of right whale occurrence.

The Marine Mammal Commission acknowledged that Amendment 7 proposes expanding the scope of the Council's framework adjustment procedure to include possible closures to protect right whales and other endangered whales, however, no further measures are proposed in Amendment 7 in this regard and it is unclear whether or when the Council might use this authority.

Therefore, the Marine Mammal Commission recommended that NMFS either expand Amendment 7 or take separate action under authority of the Endangered Species Act (ESA) and MMPA to prohibit the use of gillnets from April through June in the Great South Channel area, which is designated as critical right whale habitat).

In addition, the Marine Mammal Commission recommended that NMFS

consult with the Commonwealth of Massachusetts to develop measures for gillnets and other fishing gear capable of entangling right whales from February through May in the Cape Cod Bay right whale critical habitat.

Response: The issues raised in this comment can be addressed under the framework actions, provided for in the final rule. The NEFMC did not forward a recommendation to expand the Area 1 closure to include the entire right whale critical habitat in time for implementation this spring. In order for NMFS to issue a regulation under the ESA, to be effective by April 1997, NMFS would need to publish a proposed rule within the next few months. NMFS is considering regulatory options to accomplish this.

NMFS will soon sign a Cooperative Agreement with the Commonwealth of Massachusetts to enter into a coordinated state-Federal effort to protect and recover the endangered and threatened marine fauna of Massachusetts, including the right whale. Once signed, both parties will begin discussion of several endangered species issues within the Commonwealth, including additional protection for the right whale critical habitat area in Cape Cod Bay.

Comment 71: An association stated that under the MMPA, NMFS classifies the sink gillnet fishery as a Category I and bottom trawl, longline, and hook and line fisheries as Category III. However, Amendment 7 states "it should be noted that the bottom trawl fishery has incidental takes of striped dolphins, coastal bottlenose dolphins and pilot whales." The commenter suggested that based on this finding alone, the bottom trawl fishery ought to be moved to Category II.

Response: This comment relates to MMPA requirements and is not relevant to Amendment 7. In any event, most of the few takes observed in this fishery were determined to have been dead before being taken. In addition, because the observer coverage was low, the estimated serious injury and mortality levels extrapolated from those few data points is statistically weak. Therefore, it was determined that the "North Atlantic Bottom Trawl" fishery would remain as a Category III fishery under the MMPA in the final rule to establish the 1996 List of Fisheries (60 FR 67063, December 28, 1995).

Comment 72: An association stated that closed areas should be opened to low-impact hook fishing during non-spawning periods.

Response: One reason for the existence of closed areas is to halt fishing mortality during the period of

closure. Any type of fishing would defeat the purpose of the closure.

14. Comments on Protection of Habitat

Comment 73: Many comments were submitted raising issues related to the impact of certain fishing gears on marine habitat and, in some cases, proposing restrictions on this gear and providing incentives for other gear types. The major points of all habitat-related comments are summarized below, with emphasis on comments from the Darling Marine Center at the University of Maine and the Cape Cod Commercial Hook Fishermen's Association, because they are representative of issues raised in the majority of the other comments received.

One said NMFS should be an active partner with the Council in identifying areas of critical concern and investigate the use of intensive gear, and if necessary, restrict or prohibit particular gear use. There was general disagreement that additional studies would be a sufficient management approach and further disagreement with the decision not to include trawl gear restrictions at this time.

One group stated that trawling and dredging activities have the capability of altering structurally complex bottom communities, principally through the removal of biomass, and that these alterations will result in completely different bottom communities occupying these locations.

In discussing the legal standards of the Magnuson Act and the APA, this group stated that an international consensus is emerging that management agencies should apply a precautionary approach to fisheries management. It was emphasized that it would be more prudent to protect some of these areas as soon as possible by establishing marine reserves to protect specific habitat features such as habitat complexity. Increased complexity would result in increasing survivorship of postlarval and early juvenile size classes, thus increasing recruitment to harvested populations. Given the particular relevance of the precautionary approach to the numerous uncertainties involved in managing fisheries, it would seem to be incumbent upon managers and research scientists alike to prevent long-term damage to ecosystems from occurring while their theories are being tested.

An association contends that Amendment 7 fails the following national standards for the reasons mentioned: National Standard 1, by ignoring gears' differential habitat and selectivity impacts; National Standard 2,

because best science demonstrates landings approximate catch only in the hook fishery and also demonstrates that heavy dragger gear damages groundfish habitat, diminishing stocks; National Standard 3, by ignoring management units based on types of gear and similar fishing practices; National Standard 4, since allocation is necessary to discourage dragging on hard bottom and encourage conversion to hook fishing; National Standard 5, as Amendment 7 does not promote long-run efficiency since fishing power is not reduced absent dragger gear restrictions; and National Standard 6, by ignoring fishing practices and by wrongly incorporating the "fair and equitable" standard into analysis of this national standard.

An association disputed the amendment's statement that, as currently drafted, "(t)he Magnuson Act limits the Council's role to commenting on proposals that would affect fishery resources and their habitats." In fact, the commenter notes that beyond merely commenting, the Council is empowered to "make recommendations concerning any activity . . . that, in the view of the Council, may affect the habitat of a fishery resource * * *." 16 U.S.C. section 1852(I)(1)(A).

Response: There is growing interest and research into trawling and dredging effects on bottom habitat and benthic communities. Research to date indicates that mobile gear is having observable effects on the bottom in some areas and little discernable effect in other areas. The causes for differing effects have not yet been identified. In addition, the ecological impacts of mobile gear on commercially important stocks remain largely unknown. NMFS does not believe that the scientific information currently available is adequate to show that placing restrictions on mobile gear would result in benefits for commercially important stocks. NMFS does not intend to wait for "full scientific certainty" before making a recommendation that might restrict the use of mobile gear in certain areas, but rather is cautious in instituting such restrictions with uncertain and inadequate data. To seek resolution of this issue, the NMFS and the Council support additional research on this topic so that future management measures can account more for the effects of fishing gear, especially if additional research indicates that recruitment could be enhanced by reducing the amount of disturbance to benthic habitat. Currently the Stellwagen Bank National Marine Sanctuary and NOAA's National Undersea Research Program are among

those proposing research into the effects of bottom gear on groundfish habitat.

While NMFS and the Council are not advocating specific management measures to avoid or reduce the effect of mobile fishing gear on bottom habitat, it is worth noting that Amendment 7 does include measures such as closed areas and overall effort reductions that will reduce the amount of trawling and thus reduce the frequency of disturbance to bottom habitat used by multispecies stocks. Although these effort reductions will not include permanent marine reserves that are off-limits to trawling and dredging gear, they might provide opportunities to investigate whether reduced pressure on habitat from bottom gear may over time enhance the structural complexity of the bottom in some areas and increase survivorship of early life stages of commercially important species.

Regarding the role of the Council in respect to habitat, the commenters raise some valid points. Fishery management plans prepared by the Council or Secretary include habitat sections that identify the habitat needs of the species. NMFS works with developers and permitting agencies to avoid, minimize and mitigate the anticipated habitat impacts from a proposed activity. Fishery management plans are one tool NMFS and the Council can use to identify habitat essential to commercial stocks.

The commenters disagree with the Council's approach taken in Amendment 7 that concentrates on achieving reductions in fishing mortality through controls on fishing effort. The supporting analyses for Amendment 7 referenced by the commenters demonstrates that the Council and NMFS realize that the recovery of severely depleted fish stocks can be enhanced by incorporating more comprehensive scientific information into management decisions. In particular, NMFS is committed to conducting additional research into the habitat requirements and life histories of multispecies stocks so that future management actions can focus on those measures that will be most effective in enhancing recruitment. For Amendment 7, NMFS and the Council used available information to develop a suite of management measures, including closed areas and effort reductions, that will reduce fishing pressure on the stocks as well as their habitat. NMFS acknowledges that more work is needed in this area to tailor future management actions to the biological needs of target species, which include habitat requirements.

As discussed throughout this document, NMFS has determined that Amendment 7 is consistent with the national standards, which conclusion is supported by the record of decision.

Comment 74: The Maine DMR stated that the science (both data and theory) supporting management must change and that the importance of such parameters as fish size and the qualitative differences of habitat protection at different seasons should be more effectively integrated into the analysis.

Response: The Council acknowledges, in its discussion on research to support fishery habitat protection (Volume I of Amendment 7), the need to conduct research to determine which habitats are most important to support groundfish stocks throughout their life history stages and to understand factors essential for sustained fisheries production. As stated earlier, habitat protection and conservation is an integral component of fishery management; NMFS strongly supports the advancement of marine research to improve its understanding of the relationship between species and habitat during various life stages. Such information will be incorporated into fishery management plans as it becomes better understood and defined.

Comment 75: An association commented that the national standards dictate a differentiation between hook fishing and other commercial groundfishing, just as has occurred in other regions of the country. It added that the Council predictably relies on the fair and equitable argument to defend its failure to distinguish the commercial hook fishery; however, a Magnuson Act guideline states: "An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits."

An association discusses Norwegian studies that documented how longlining is a more size-selective fishing method than trawling. The commenters pointed out that these studies further proved that yield and employment effects were greater in the longline fishery as compared to the trawl fishery.

Another association commented that the Council rejected the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) plan because it had no measurable objectives, only covered a limited region, and had direct allocation effects on a particular sector of the industry. The association said that the reasons for rejection are without support and invalid as they are contrary

to the administrative record already submitted to the Council.

Response: Gear selectivity was discussed in the development process of Amendment 7 but rejected as an option in the final outcome. In making this decision, the Council and NMFS determined that the management regime should, to the extent practicable, preserve the multifaceted nature of the Northeast Multispecies fishery. The Council could revisit this issue at a later time through the expansive framework capability under Amendment 7.

Comments on Enforceability Issues

The USCG and NMFS Enforcement requested that a vessel operator be required to retain on board all DAS confirmation numbers for the current fishing year. The Council decided that this was an unnecessary burden on the industry and recommended instead that they be required to retain numbers for the current and immediately prior trips. The Council's recommendation is adopted here.

They requested that the current provision requiring a vessel to have a standard tote on board the vessel be retained. This provision was inadvertently deleted in the proposed rule and is reinserted here.

They commented that the call-in requirement for charter/party vessels would not enhance enforcement and should be disapproved. The measure has been disapproved.

They requested a change to require a vessel operator when hailed by an authorized officer via VHF-FM radio, to respond to such hail. This change has been incorporated.

The Council requested a revision to the definition for the "Multispecies Monitoring Committee" to clarify their intent with respect to membership. This change is incorporated in the final rule.

The Council suggested an addition to the qualification criteria for Hook-gear limited access permits to clarify how recreational landings should be handled. This change is incorporated. Additional comments of enforcement concern follow.

Comment 76: The USCG stated that Amendment 7 cannot be successful without a fully integrated approach between its at-sea efforts and NMFS Enforcement shoreside activities. It stated that it is prepared to assign a high priority to enforcement concerns.

A commenter stated that Amendment 7, without enforcement, will not affect that segment of the fleet that systematically uses small mesh liners inside the regulated mesh size codend. The commenter added that during the lag time between assessment and final

judgment of those perpetrators that are caught, the perpetrators still fish, contract debt and shelter revenue. He stated that at-sea enforcement must be fast and without warning to be effective and justice should be swift. He added that a port reporting and enforcement system that effectively detects misreporting or no reporting of catch is also needed.

Another commenter stated that some kind of incentive to follow the rules is needed. He implied that some people who will be left in the fishery will not follow the rules.

An association stated that TACs encourage non-compliance in the form of under-reporting and high-grading and are costly to enforce.

Response: NMFS Northeast Region enforcement personnel and the USCG First District Commander have integrated their planning to ensure that there is an effective USCG-NMFS enforcement strategy in place to support Amendment 7. NMFS Law Enforcement continues to work toward effective implementation of the effort control and monitoring measures in the Multispecies fishery and will explore ways to improve compliance with existing regulations in partnership with the USCG and natural resources divisions of each coastal state. NMFS Law Enforcement and NOAA General Counsel work cooperatively to investigate and bring to a conclusion, all cases involving violation of the conservation regulations. NMFS Law Enforcement believes in the concept of voluntary compliance and is actively pursuing education as a means to attainment of voluntary compliance. This effort, combined with penalties as appropriate, provide the incentives to adhere to conservation regulations.

Comment 77: A commenter stated that the present vessel call-in system to monitor DAS is obsolete and recommends instituting a basic VTS without messaging capability or a magnetic card system with PIN number verification.

Response: Under Amendment 7 approximately 800 additional vessels operating in the Northeast Multispecies Fishery will be required to report their departures and arrivals from and to port via telephone under applicable effort reduction reporting provisions. A magnetic card system is not logistically feasible as it would require installation of a magnetic card reader device in every operating port on the Northeast seaboard. When a basic VTS system is adopted, the final performance standards for all VMS identify two-way messaging capability as a fundamental performance requirement for any VMS

system approved by NMFS. A VTS requirement was established in Amendment 5, but is awaiting testing and vendor certification procedures to be complete before it becomes fully implemented.

Changes in the Final Rule From the Proposed Rule

As discussed above, some changes from the proposed rule were necessary to respond to a review of the amendment by NMFS Office of Law Enforcement, the Council's Law Enforcement Committee and the USCG. Other changes made are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 651.2, the definition for "DAS (Days-at-Sea)" is revised to remove the disapproved provision to count DAS for gillnet vessels as time when gear is in the water.

In § 651.2, the definition for "Multispecies Monitoring Committee" is revised to clarify that the number of representatives from the affected coastal states appointed by the ASMFC is limited to two.

In § 651.2, definitions "Prior to leaving port" and "Upon returning to port" are added to clarify when a vessel must begin and end a multispecies DAS trip under the call-in requirement.

In § 651.2, the definition for "Standard box" is no longer necessary and is removed.

In § 651.2, the definition for "Sink gillnet" is revised for clarification.

In § 651.4, paragraph (b)(1)(ii)(A) is revised to clarify the qualification criteria for limited access Hook-Gear permits for recreational vessels that recorded landings by number and not by weight.

In § 651.4, paragraph (f)(3) is revised to clarify that a vessel has only one opportunity to change its permit category in 1996 during the 45-day time period after implementation of this rule and that this 45-day opportunity will be available each fishing year.

In § 651.9, paragraph (a)(3) duplicated (a)(4) in the proposed rule and is removed, paragraphs (a)(4) through (a)(13) are redesignated as (a)(3) through (a)(12), respectively.

In § 651.9, paragraph (b)(4), the prohibition on possession limits is revised to reflect changes in § 651.27 due to the disapproval of the possession limit for winter flounder.

In § 651.9, paragraph (b)(8), which referenced a disapproved provision, is removed, and paragraphs (b)(9) through

(b)(12) are redesignated (b)(8) through (b)(11), respectively.

In § 651.9, paragraphs (c)(4) and (d)(4) are added to enhance enforcement of the provisions in § 651.33(a) and (c).

In § 651.9, paragraph (e)(8), a reference to § 650.20 is corrected to read § 651.20.

In § 651.9, paragraphs (e)(12), (e)(13), (e)(14), and (e)(15), are revised by being made more explicit.

In § 651.9, paragraph (e)(17) is revised by eliminating the reference to § 651.20(d)(3), a reference to the disapproved winter flounder exemption in the Mid-Atlantic regulated mesh area.

In § 651.9, paragraph (e)(22) is made more explicit.

In § 651.9, paragraph (e)(32) is made more explicit.

In § 651.9, paragraph (e)(38) is added to reflect the requirement to have a standard tote on board when fishing under a possession limit restriction.

Section 651.10 is revised, as requested by the Council, NMFS Enforcement and the USCG, to include a requirement that a vessel operator respond if hailed by an authorized officer via VHF-FM radio.

In § 651.20, paragraphs (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii) are revised to include cross references to the Large Mesh Individual DAS Category in § 651.22(b)(7) approved under the resubmitted portion of Amendment 7.

In § 651.20, paragraph (d)(2) is revised to remove the reference to paragraph (d)(3), the disapproved winter flounder possession limit.

In § 651.20, paragraph (d) the definition of the "Mid-Atlantic Regulated Mesh area," is slightly revised as a result of comments from and an agreement between the states bordering the area, the USCG and NMFS enforcement.

In § 651.20, paragraph (d)(3) is removed to reflect the disapproval of the winter flounder possession limit in the Mid-Atlantic regulated mesh area.

In § 651.20, paragraph (g) is revised to clarify that the net measurement procedure described referred to all nets with the exception of gillnets. Paragraph (g)(4) is added to include net measurement procedures for gillnet gear. Implementation of this procedure is delayed to allow the gillnet fleet time to adjust to this new procedure.

In § 651.20, paragraph (i) is revised to clarify that scallop vessels possessing multispecies permit issued under this part.

In § 651.20 (i) and (j)(7), § 651.27, and § 651.33(a) and (c), a measure inadvertently deleted in the proposed rule, that requires vessels when subject

to a possession limit to have on board at least one standard tote, is added.

In § 651.22, paragraphs (b)(1)(i) and (b)(2)(i), (b)(5)(i), (b)(6)(i), and (b)(7)(i) have been revised to reflect that the DAS allocations for the 1996 fishing year have been prorated based on the amount of time remaining in the 1996 fishing year, or 83 percent.

In § 651.22, paragraphs (b)(1)(ii) and (b)(2)(ii) are revised to reflect that vessels holding both Gillnet and Individual DAS category permits are to be initially assigned into the Fleet DAS category, rather than the Individual DAS category.

In § 651.22, paragraph (b)(6) is revised and paragraph (b)(7) is added to reflect the approval of the measures included in the resubmitted part of Amendment 7, which allows vessels the ability to elect either the Large Mesh Fleet DAS program or the Large Mesh Individual DAS program.

In § 651.22, paragraph (c) is redesignated as paragraphs (c)(1) and (c)(2) to clarify that a vessel possessing both a 1995 limited access Gillnet permit and Individual DAS permit is eligible to appeal its initial allocation of gillnet DAS.

In § 651.22, paragraph (d)(2)(i), the date by which a vessel may appeal its allocation of DAS is revised to reflect a later than anticipated implementation date for this amendment.

In § 651.22, paragraph (g), is clarified by replacing the phrase "fishing year" with "calendar year" and by clarifying the requirement for the 1996 calendar year.

In § 651.27, paragraph (b) is removed to reflect that the possession limit for winter flounder has been disapproved, paragraph (c) is redesignated as paragraph (b), and the title to § 651.27 was revised accordingly.

In § 651.28, paragraph (c) is removed to reflect the disapproval of the charter/party call-in requirement.

In § 651.29, paragraphs (b)(1), (b)(2), (b)(4), and (b)(5), all references to charter/party vessels are removed to reflect that the call-in requirement for charter/party vessels has been disapproved.

In § 651.29, paragraph (b)(3) is revised to clarify that DAS confirmation numbers for the current trip and immediately prior multispecies fishing trip must be retained on board the vessel.

In § 651.29, paragraph (d) is revised to reflect the disapproval of the proposal to count gillnet DAS as time when gillnet gear is in the water.

In § 651.29, paragraph (e) is added to describe the call-in requirement for the 20 day spawning season restriction.

In § 651.32, paragraph (a), the reference to § 651.32(h) is corrected to read § 651.21(h), and paragraph (a) is redesignated as paragraphs (a)(1) and (a)(2) to include gillnet area closures that were implemented on March 5, 1996 (61 FR 8494) under Framework 14 to the FMP.

In § 651.33, paragraph (b), the phrase "and has declared into the charter/party fishery" is removed to reflect that the declaration into the charter/party fishery has been disapproved.

In § 651.40, paragraph (a)(3), the reference to (a)(5) is corrected to read (a)(6).

Classification

The Regional Director determined that Amendment 7 to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable laws.

The Council prepared a FSEIS for Amendment 7; a notice of availability was published on February 16, 1996 (61 FR 6230). This action is expected to have a significant economic impact on the human environment. The Assistant Administrator for Fisheries, NOAA (AA), determined upon review of the FSEIS and public comments on the Draft SEIS that the PA of the amendment is environmentally preferable to the SQ. The FSEIS demonstrates that the PA contains management measures able to rebuild severely depleted stocks of haddock, cod, and yellowtail flounder; protect harbor porpoise; provides economic and social benefits to the fishing industry in the long term; and should provide better balance in the ecosystem in terms of groundfish resources.

This final rule has been determined to be "economically significant" for purposes of E.O. 12866, but probably will not have an annual impact on the economy of \$100 million or more, and will not adversely affect the productivity, environment, public health or safety or state, local or tribal governments or communities in the long term. By increasing multispecies catch rates in the long term and reducing operating costs, this action is expected to make the industry more productive after recovery of multispecies stock abundance and to increase the competitiveness of the domestic industry in comparison to foreign suppliers.

In compliance with the RFA, the Council prepared an IRFA as part of the RIR that concluded that this action would have significant economic impacts on a substantial number of small entities. The FRFA consists of the

IRFA and comments and responses in this final rule associated with the public's concerns about possible effects of this rule on small entities. Responses to comment numbers 12, 13, 14, 18, 22, 23, 25, 26, 27, 28, 29, 35, 37, 39, 40, 43, 46, 48, 51, 58, 65, and 67 are especially relevant to concerns of the public about possible effects of one or more measures contained in this rule on small entities, often focusing on a particular group of small entities. The measures contained in this rule are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs in part because of these restrictions and also due to the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the SQ, however, this program is expected to produce higher long-term benefits to the industry and the Nation. The majority of the vessels in the Northeast multispecies fishery are considered small entities. This action is expected to reduce the overall revenues of the multispecies industry by approximately 10 to 25 percent in the first 3 years of the program compared to the SQ. The impact of the action will not be uniform for all vessels or all sectors. Instead, the action will have differential effects on gear groups, with trawlers potentially being relatively more disadvantaged than other vessels. This is primarily because trawlers produce the largest share of total multispecies landings and have higher costs. Alternately, smaller and independent vessels are well suited to adapting to year to year changes in species as availability changes. Generally, smaller vessels are more flexible and have lower costs. This action will allow vessels less than or equal to 30 ft (9.1 m) to be exempt from the DAS program, provided they comply with the 300-lb (136.1-kg) CHY possession limit. The CHY comprise 15 percent of the revenue of these vessels.

The negative effects of the non-selected alternatives would be greater than those of the selected measures. Expected impacts of the action on crew income are negative in the first 5 years of the program and positive thereafter. Likewise, the level of employment is expected to decline in the short-term to an undetermined extent but will rebound over the long term. Projected revenues from fishing will be positive beginning in the year 2001, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. The action is expected to increase net

benefits to the nation by \$18 million over the 10-year rebuilding period. The recreational sector is not expected to be negatively impacted by this action.

Also, regarding the RFA, steps are being taken by NOAA to reduce the socio-economic burden on small entities through a buyout program, being implemented in two phases, aimed at reducing fishing capacity in the groundfish fishery and offering an economic alternative to vessel owners in the fishery. NOAA awarded grants to 11 New England fishing vessels under a \$2 million pilot buyout program in February, 1996, in return for scrapping their vessels and surrendering their fishing permits. A larger vessel buyout program for as much as \$25 million is being developed for implementation after Amendment 7 is made effective.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains six new collection of information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

1. The Nantucket Shoals Dogfish exemption, OMB# 0648-0202, will require vessel notification (2 minutes/response).

Revisions to the existing requirements are:

2. Proof of VTS installation, OMB# 0648-0202, (2 minutes/response);

3. Call-in or card system, OMB# 0648-0202, (2 minutes/response);

4. Limited access permit, OMB# 0648-0202. Appeal of the DAS allocation will require written submission (2 hours/response);

5. Limited access permit appeals, OMB# 0648-0202, appeal of denied permits will require written submission (0.5 hours/response);

6. Three new vessel permit categories (Handgear, Charter/Party and Scallop Multispecies Possession Limit), OMB # 0648-0202, are created with no increase in burden above that currently associated with vessel permits.

A formal section 7 consultation under the ESA was initiated for Amendment 7 to the FMP. In a biological opinion dated February 16, 1996, the AA determined that fishing activities conducted under Amendment 7 and its implementing regulations may affect, but are not likely to jeopardize the

continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.2, the definition for "Charter and party boats", "Sink gillnet", and "Standard Box" are removed; the definitions for "Alewife", "American shad", "Atlantic croaker", "Black sea bass", "Blowfish", "Bluefish", "Charter or party boat or charter/party boat", "Conger eels", "Cunner", "Dogfish", "Exempted gear", "Fourspot flounder", "Hagfish", "Handgear", "Handline or handline gear", "Hickory shad", "John Dory", "Longhorn sculpin", "Mullet", "Multispecies Monitoring Committee", "Prior to leaving port", "Rod and reel", "Scup", "Sea raven", "Searobin", "Sink gillnet or bottom-trawling gillnet", "Skate", "Spot", "Summer flounder", "Swordfish", "Target Total Allowable Catch (TAC)", "Tautog", "Tilefish", "Upon returning to port", and "Weakfish" are added, in alphabetical order; and the definitions for "DAS (Day(s)-at-sea)", and "Out of the multispecies fishery or DAS program" are revised to read as follows:

§ 651.2 Definitions.

* * * * *
Alewife means *Alosa pseudoharengus*.

* * * * *
American shad means *Alosa sapidissima*.

* * * * *
Atlantic croaker means *Micropogonias undulatus*.

* * * * *
Black sea bass means *Centropristis striata*.

* * * * *
Blowfish (puffer) means any species in the family *Tetraodontidae*.

Bluefish means *Pomatomus saltatrix*.
* * * *

Charter or party boat or charter/party boat means any vessel carrying passengers for hire to engage in recreational fishing and that is not fishing under a DAS.
* * * *

Conger eels means *Conger oceanicus*.
* * * *

Cunner means *Tautoglabrus adspersus*.

DAS (Day(s)-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species.
* * * *

Dogfish means spiny dogfish, *Squalus acanthias*, or smooth dogfish, *Mustelus canis*.
* * * *

Exempted gear means gear that is deemed to be not capable of catching multispecies finfish and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and mid-water trawls.
* * * *

Fourspot flounder means *Paralichthys oblongus*.
* * * *

Hagfish means *Myxine glutinosa*.
Handgear means handline or rod and reel gear.

Handline or handline gear means fishing gear that is released by hand and consists of one main line to which is attached up to two leaders for a total of not more than three hooks. Handlines are retrieved only by hand, not by mechanical means.
* * * *

Hickory shad means *Alosa mediocris*.
* * * *

John Dory means *Zenopsis conchifera*.
* * * *

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.
* * * *

Mullet means any species in the family *Mugilidae*.
* * * *

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the Council to review, analyze, and recommend adjustments to the management measures. The team will consist of staff from the New England and Mid-Atlantic

Fishery Management Councils, the NMFS Northeast Regional Office, the NEFSC, the U.S. Coast Guard, an industry representative, and up to two representatives from each affected coastal state appointed by the Atlantic States Marine Fisheries Commission.
* * * *

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the multispecies DAS program.
* * * *

Prior to leaving port, for purposes of the notification systems described in § 651.29, means prior to departing from the last dock or mooring in port to engage in fishing, including the transport of fish to another port.
* * * *

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.
* * * *

Scup means *Stenotomus chrysops*.
Sea raven means *Hemitripterus americanus*.

Searobin means any species in the family *Triglidae*.
Sink gillnet or bottom-tending gillnet means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species in the family *Rajidae*.

Spot means *Leiostomus xanthurus*.
* * * *

Summer flounder means *Paralichthys dentatus*.

Swordfish means *Xiphias gladius*.
Target Total Allowable Catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitis*.
* * * *

Tilefish means *Lopholatilus chamaeleonticeps*.
* * * *

Upon returning to port, for purposes of the call-in notification system, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.
* * * *

Weakfish means *Cynoscion regalis*.
* * * *

3. In § 651.4, paragraphs (a), (b), (c), (e), (f), (h)(1)(ii), (h)(1)(iii), and (q) are revised to read as follows:

§ 651.4 Vessel permits.

* * * *

(a) *General*. Any vessel of the United States, including a charter or party boat,

must have been issued and have on board a valid Federal multispecies permit issued under this part to fish for, possess or land multispecies finfish in or from the EEZ. Recreational vessels and vessels fishing for multispecies exclusively in state waters are exempt from this requirement.

(b) *Limited access permits*—(1) *Eligibility*—(i) *Limited access multispecies permit*. To be eligible for a multispecies limited access permit, specified in § 651.22, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies permit under paragraph (b)(1)(ii) of this section.

(ii) *Limited access Hook-Gear permit*. A vessel issued a 1995 open access Hook-Gear permit may apply for and obtain a 1996 limited access Hook-Gear permit provided it meets the criteria for eligibility described below. Vessels must apply for a limited access Hook-Gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be ensured that their permit application will be processed within the 30 days allowed under paragraph (e) of this section. Vessels applying after December 31, 1996, will be ineligible to apply for a 1997 limited access Hook-Gear permit. A vessel qualifying for a limited access Hook-Gear permit may not change its limited access permit category. The criteria for eligibility are as follows:

(A) The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, when fishing with hook gear under the open access Hook-Gear permit, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish; or its equivalent in numbers of fish; or

(B) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(ii)(A) of this section.

(2) *Qualification restriction*. Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS

allocation according to paragraph (b)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (b)(5) of this section:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit.

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. For purposes of this paragraph, a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 net tons. For undocumented vessels, gross registered tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit under this part, or to apply for or renew a limited access permit under this part, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit.

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be

increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(6) *Consolidation restriction.* Limited access permits under this permit and DAS allocations may not be combined or consolidated.

(7) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant eligible to apply for an initial limited access Hook-Gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) *Status of vessels pending appeal of a limited access permit denial.* A vessel denied a limited access Hook-Gear permit may fish under the limited access Hook-Gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access Hook-Gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(8) *Limited access permit restrictions.*

(i) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels are prohibited from changing limited access multispecies permit categories during the fishing year, except as provided in paragraph (f)(3) of this section. A vessel issued a limited access Hook-Gear permit may not change its limited access permit category at any time.

(ii) With the exception of Combination Vessels, sea scallop dredge vessels are prohibited from being issued a limited access multispecies permits.

(9) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access multispecies permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History must be received by the Regional Director by the beginning of the fishing year for which the Confirmation of Permit History is required. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel

that has been sunk, destroyed or transferred. Vessel permit applicants who have been issued a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(4) of this section.

(c) *Open access permits.* Subject to the restrictions in § 651.33, a U. S. vessel that has not been issued a limited access multispecies permit may obtain an open access Handgear or Charter/party permit. Vessels that are issued a valid scallop limited access permit under § 650.4 of this chapter and that have not been issued a limited access multispecies permit may obtain an open access Scallop Multispecies Possession Limit permit.

* * * * *

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for a permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's current U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the current state registration; party/charter boat license; home port and principal port of landing; length overall; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation,

or other corporate papers showing incorporation and the names of the current officers in the Corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners owning a 25 percent interest or more; and, name and signature of the owner or the owner's authorized representative.

(2) Applications for an initial limited access Hook-Gear permit must also contain the following information:

(i) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date of when the contract for the replacement engine was signed.

(ii) If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year from the date when the contract for the upgrade was signed.

(3) A vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (b)(8) of this section. In 1996, the vessel owner, or the owner's authorized representative, has one opportunity to request a change in permit category by submitting an application to the Regional Director by July 15, 1996. After this date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year and must comply with the restrictions applicable to such category. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, limited access multispecies vessels eligible to request a change in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting

an application to the Regional Director within 45 days of receipt of their permit. After this date, the vessel must fish only in the DAS program assigned for the remainder of the fishing year and must comply with the restrictions applicable to such category. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. A vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(4) A vessel issued a limited access combination permit or an Individual DAS permit or a vessel applicant who elects to use a VTS unit, is required to submit a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

* * * * *

(h) * * *

(1) * * *

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (b)(1)(ii), and (q) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (b)(1) of this section; or

* * * * *

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

* * * * *

4. Section 651.9 is revised to read as follows:

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies vessel permit under this part, a permit under § 651.5 or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(2) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(3) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or

otherwise transfer, for a commercial purpose, other than transport, any multispecies, unless the dealer or transferee has a dealer permit issued under § 651.6.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Enter, fail to remove gear from, or be in the areas described in § 651.21(f)(1) through § 651.21(h)(1) during the time period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(7) Possess or land multispecies finfish smaller than the minimum sizes specified in § 651.23 or § 651.34, as appropriate.

(8) Land, or possess on board a vessel, more than the possession limits specified in § 651.27(a), or violate any of the other provisions of § 651.27.

(9) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel or other floating conveyance unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(10) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(11) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(12) Fail to provide an observer with the required food, accommodations, access, and assistance, specified in § 651.31.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a valid limited access multispecies permit under § 651.4(b) or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(b)(4) or (b)(5).

(2) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(b)(4) or (b)(5).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 651.27(b) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22, unless otherwise exempted under § 651.22(b)(3) or § 651.34.

(5) Possess or land per trip more than the possession limit specified under § 651.22(b)(3)(i) if the vessel has been issued a limited access Small Vessel permit.

(6) Fail to comply with the restrictions on fishing and gear specified in § 651.22(b)(4) if the vessel has been issued a limited access Hook-Gear permit.

(7) Fail to declare and be out of the multispecies fishery as required by § 651.22(g), using the procedure described under § 651.22(h), as applicable.

(8) If required to have a VTS unit specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage specified in § 651.29(a).

(9) Fail to comply with any requirement regarding the DAS notification specified in § 651.29(a) or (b).

(10) Fail to comply with other notification requirements, including a call-in system specified in § 651.29(c), if required by the Regional Director.

(11) Fail to provide notification of the beginning or ending of a trip, as required under § 651.29(b) and (d).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Handgear permit under § 651.4(c) to do any of the following:

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 651.33(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting multispecies finfish other than rod and reel or handline while in possession of, or fishing for, multispecies finfish.

(3) Possess or land multispecies finfish during the time period specified in § 651.33(a)(2).

(4) Violate any of the provisions of § 651.33(a).

(d) In addition to the prohibitions specified in paragraph (a) of this

section, it is unlawful for any person owning or operating a vessel issued a Scallop Multispecies Possession Limit permit under § 651.4(c) to do any of the following:

(1) Possess or land more than the possession limit of regulated species specified in § 651.33(c).

(2) Possess or land regulated species when not fishing under a scallop DAS.

(3) Violate any of the provisions of § 651.33(c).

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and the operator aboard such vessel was issued an operator's permit under § 651.5 and a valid permit is on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for and possesses multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any multispecies finfish from a trip unless the vessel is issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and is not fishing under the charter/party restrictions specified in § 651.34(d), or unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or issued a Federal multispecies permit under this part, without having been issued and possessing a valid operator's permit issued under § 651.5.

(4) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(5) Purchase, possess, or receive for a commercial purpose or attempt to purchase, possess, or receive multispecies finfish caught by a vessel other than one issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(6) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(7) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(8) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 651.20 of this chapter, or with scallop dredge gear, unless said fish are caught, possessed or landed in accordance with § 651.20, or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) Fish with, use, or have on board, within the area described in § 651.20(a)(1) nets of mesh size smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20 (a)(3) through (a)(6), (a)(8), (a)(9), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(10) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3).

(11) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(12) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(13) Fail to comply with the gear restrictions for the Stellwagen Bank/ Jeffrey's Ledge juvenile protection areas specified in § 651.20(a)(5).

(14) Fail to comply with the gear restrictions and time periods specified for Small Mesh Area 1 and Small Mesh Area 2 in § 651.20(a)(8).

(15) Fail to comply with the requirements of the Nantucket Shoals dogfish exemption specified in § 651.20(a)(9).

(16) Fish with, use, or have available for immediate use within the area described in § 651.20(c)(1) nets of mesh size smaller than the minimum size specified in § 651.20(c)(2), except as provided in § 651.20(c)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with, use, or have available for immediate use within the area described in § 651.20(d)(1) nets of mesh size smaller than the minimum size specified in § 651.20(d)(2), except as provided in § 651.20 (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size specified in § 651.20(a)(2), (c)(2) or (d)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20(e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(19) Obstruct or constrict a net as described in § 651.20 (h)(1) and (h)(2).

(20) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(21) Violate any of the restrictions on fishing with scallop dredge gear specified in § 651.20(i), or any of the other provisions of § 651.20(i).

(22) Violate any of the provisions of the state waters winder flounder exemption program specified in § 651.20(j).

(23) Enter or be in the area described in § 651.21(a)(1) on a fishing vessel, except as provided in § 651.21(a)(2) and (d).

(24) Enter or be in the area described in § 651.21(b)(1) on a fishing vessel, except as provided in § 651.21(b)(2).

(25) Enter or be in the area described in § 651.21(c)(1), on a fishing vessel, except as provided in § 651.21(c)(2) and (d).

(26) Enter or be on a fishing vessel, or fail to remove gear from the EEZ portion of the areas described in § 651.21(f)(1) through § 651.21(h)(1), during the time

period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(27) Import, export, transfer, land, buy, sell or possess regulated species smaller than the minimum sizes specified in § 651.23, or attempt to do any of the same, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Violate any terms of a letter authorizing experimental fishing pursuant to § 651.24 or fail to keep such letter on board the vessel during the period of the experiment.

(29) Fail to comply with the gear-marking requirements of § 651.25.

(30) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, fish in excess of the possession limits specified for vessels issued a Federal multispecies permit.

(31) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(32) Violate any provision of the DAS notification program as specified by § 651.29.

(33) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(34) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(35) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(36) Make any false statement in connection with an application under § 651.4 or § 651.5 or on any report required to be submitted or maintained under § 651.7.

(37) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search relating to the enforcement of this part.

(38) Fail to have on board the vessel at least one standard tote as specified under § 651.20(i) and (j), § 651.27, and § 651.33(a) and (c).

(f) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified

in paragraphs (a) through (e) of this section, it is unlawful for the owner or operator of a charter or party boat issued a permit under § 651.4, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 651.34(a).

(2) Possess regulated species smaller than the minimum sizes specified in § 651.34(b).

(3) Possess cod and haddock in excess of the possession limits specified in § 651.34(c).

(4) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, multispecies finfish for a commercial purpose as specified in § 651.34(d).

(g) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation, permit or other authorization issued under the Magnuson Act.

(h) Presumption. The possession for sale of regulated species that do not meet the minimum sizes as specified in § 651.23 will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

5. Section 651.10 is revised to read as follows:

§ 651.10 Facilitation of enforcement.

(a) *Radio hails.* Permit holders, while underway, must be alert for communications conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16, when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(b) Also see § 620.8 of this chapter.

6. In § 651.20, paragraph (a)(9) is added and paragraphs (a)(2), (a)(3)(i)(B), (a)(4)(i)(E), (a)(5), (a)(6)(iii)(C), (a)(7), paragraph (a)(8) introductory text preceding the table, paragraphs (a)(8)(i), (a)(8)(iii)(B), (c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e)(2), (f)(2), (g)(1), (g)(2), (i), (j) introductory text, and (j)(7) are revised to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Gear restrictions.* (i) Except as provided in paragraphs (a)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraphs (a)(2)(ii) and (a)(5) of this section, the minimum mesh

size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel fishing under a DAS in the multispecies DAS program in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7 inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel, when not fishing under the multispecies DAS program and when fishing in the GOM/GB regulated mesh area, is provided for under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, or with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the GOM/GB regulated mesh area.

(3) * * *

(i) * * *

(B) The following may be retained, with the restrictions noted, as allowable bycatch species in the northern shrimp fishery as described in this section: Longhorn sculpin; up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(4) * * *

(i) * * *

(E) The following may be retained, with the restrictions noted, as allowable bycatch species in the Cultivator Shoal whiting fishery exemption area as described in this section: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* Except as provided in paragraphs (a)(3), (a)(6), (e), (f), and (j) of this section, unless otherwise restricted in paragraph (a)(2)(ii) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(6) * * *

(iii) * * *

(C) Vessels may not fish for, possess on board, or land any species of fish except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (c), and (d) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (c)(3), and (d)(3) of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there is sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the Council, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent by weight of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5

percent by weight of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through publication of a rule in the Federal Register.

(ii) The Council may recommend to the Regional Director, through the framework procedure specified in § 651.40(b), additions or deletions to exemptions for fisheries either existing or proposed for which there may be insufficient data or information for the Regional Director to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraphs (a)(7)(i) or (ii) of this section, authorize an exemption to fish for, possess and land white hake by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, possession of regulated species will be prohibited.

(B) Possession of monkfish or monkfish parts will be limited to 10 percent by weight of all other species on board.

(C) Possession of lobsters will be limited to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(D) Possession of skate or skate parts in the SNE regulated mesh area will be limited to 10 percent by weight of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Fisheries using nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in subareas described as Small Mesh Area 1 and Small Mesh Area 2 of the Small Mesh Exemption Area as specified under paragraph (a)(3) of this section, and defined in this paragraph (a)(8), have been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in these areas, if the vessel complies with the restrictions specified in paragraphs (a)(8)(i) through (iii) of this section. These subareas are defined by straight lines connecting the

following points in the order stated (see Figure 4 to part 651):

* * * * *

(i) The fishing season is from July 15 through October 31 when fishing under the exemption in Small Mesh Area 1.

* * * * *

(iii) * * *

(B) *Allowable bycatch.* Vessels fishing for the exempted species identified in paragraph (a)(8)(iii)(A) of this section may also possess and land the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(9) *Nantucket Shoals dogfish fishery exemption area.* The Nantucket Shoals dogfish fishery as defined in this part has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Nantucket Shoals dogfish fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals dogfish fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	Latitude	Longitude
NS1	41°45' N	70°00' W.
NS2	41°45' N.	69°20' W.
NS3	41°30' N.	69°20' W.
Cl1	41°30' N.	69°23' W.
NS5	41°26.5' N.	69°20' W.
NS6	40°50' W.	69°20' N.
NS7	40°50' W.	70°00' N.
NS1	41°45' N	70°00' W.

(i) *Requirements.* Vessels authorized to fish in this fishery must have on board an authorizing letter issued by the Regional Director. Vessels are subject to the following conditions:

(A) Authorized vessels may not fish for, possess on board or land any species of fish other than dogfish except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Authorized vessels may fish under this exemption during the season of June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area as specified under

paragraph (a)(1) of this section, any nets of mesh smaller than the regulated mesh size specified in paragraph (a)(2) of this section, must be stowed according to the provisions of paragraph (c)(4) of this section.

(D) The following may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals dogfish fishery exemption area as described in this section: Longhorn sculpin, up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less; and skate or skate parts up to 10 percent by weight of all other species on board.

(E) Authorized vessels must comply with any additional gear restrictions specified in the authorization letter issued by the Regional Director.

(ii) *Sea Sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

* * * * *

(c) *Southern New England regulated mesh area.* (1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6' N.	66°24.8' W.
G6	40°55.5' N.	66°38' W.
G7	40°45.5' N.	68°00' W.
G8	40°37' N.	68°00' W.
G9	40°30.5' N.	69°00' W.
NL3	40°.7' N.	69°00' W.
NL2	40°18.7' N.	69°40' W.
NL1	40°50' N.	69°40' W.
G11	40°50' N.	70°00' W.
G12		70°00' W. ¹

¹Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by the eastern boundary of the Mid-Atlantic regulated mesh area.

(2) *Gear restrictions.* (i) *Minimum mesh restrictions.* Except as provided in paragraphs (c)(2) (iii) and (j) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the

multispecies DAS program in the Southern New England (SNE) regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) and (7) shall be 7 inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8 inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel when not fishing under the multispecies DAS program and when fishing in the SNE regulated mesh area, is provided for under the exemptions specified in paragraphs (c)(3), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the SNE regulated mesh area.

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (c)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels;

searobins; black sea bass; red hake; tautog (blackfish); blowfish (puffer); cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less; and skate and skate parts up to 10 percent by weight of all other species on board.

* * * * *

(5) *Addition or deletion of exemptions.* An exemption may be added, deleted or modified pursuant to the procedure described in paragraph (a)(7) of this section.

(d) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic (RMA) regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline at 41°18.2' N. and 71°51.5' W. (Watch Hill, RI) southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY, and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3 nautical mile line east of Montauk Point, southwesterly along the 3 nautical mile line to the intersection of 72°30' W. Longitude and south along that line to the intersection of the outer boundary of the EEZ. (see Figure 1 to part 651).

(2) *Gear restrictions.* (i) *Mesh size restrictions.* Except as provided in paragraph (j) of this section, and unless otherwise restricted under paragraph (d)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the MA regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) and (b)(7) shall be 7 inch (17.78 cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large

Mesh DAS program shall be 8 inch (20.32 cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m²)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (d)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2)(i) of this section.

(3) *Additional Exemptions.* The Regional Director may, using the process described in either (a)(7)(i) or (a)(7)(ii), authorize an exemption to fish for, possess, or land white hake by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(f) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(g) *Mesh measurements—(1) Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive stretched meshes on the diamond, inside knot to inside knot. The mesh size shall be the average of the measurements of the 10 consecutive meshes.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net shall be measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The

square mesh size shall be the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh shall be measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net shall be measured running parallel to the long axis of the net. The mesh size shall be the average of the measurements of any series of 20 consecutive meshes. The mesh shall be measured at least five meshes away from the lacings of the net.

(i) *Scallop vessels.* (1) Except as provided in paragraph (i)(2) of this section, scallop vessels that possess a valid limited access permit under § 650.4 of this chapter, and that a scallop multispecies possession limit permit under § 650.4(c), and that are fishing under the scallop DAS program described in § 650.24, may possess and land up to 300 lb (136.1 kg) of regulated species, unless otherwise restricted pursuant to § 651.27(a)(2). Vessels subject to this possession limit shall have at least one standard tote on board.

(2) Combination vessels, and scallop vessels not equipped with or fishing with dredge gear, fishing lawfully under a multispecies DAS are subject to the gear restrictions specified in § 651.20 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(j) *State waters winter flounder exemption.* Any vessel issued a Federal limited access multispecies permit under this part may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (c)(2), and (d)(2) of this section provided that:

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder and, when subject to this possession limit, has at least one standard tote on board;

7. In § 651.21, paragraphs (a)(2)(i), (b)(2)(i), (c)(2)(i), (d) and (e) introductory text are revised, and paragraphs (f), (g), and (h) are added to read as follows:

§ 651.21 Closed areas.

- (a) * * *
- (2) * * *

(i) Fishing with or using pot gear designed or used to take lobsters, or pot gear designed or used to take hagfish,

and that have no other gear on board capable of catching multispecies finfish; and

* * * * *

- (b) * * *

- (2) * * *

(i) Fishing with or using pot gear designed or used to take lobsters, or pot gear designed or used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

- (c) * * *

- (2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the Northeast Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transiting the closed areas must stow their gear as follows:

* * * * *

(f) *Northeast Closure Area.* (1) During the period August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Northeast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0' W.
NE2	43°29.6' N	68°55.0' W.
NE3	44°04.4' N	67°48.7' W.
NE4	44°06.9' N	67°52.8' W.
NE5	44°31.2' N	67°02.7' W.
NE6	Maine shoreline	67°02.7' W.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear,

provided that there is no other gear on board capable of catching multispecies finfish. (ii) Classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) During the period November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish unless otherwise allowed in this part may be, in the area known as the Mid-coast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section:

Point	Latitude	Longitude
MC1	42°30' N.	Massachusetts shoreline.
MC2	42°30' N.	70°15' W.
MC3	42°40' N.	70°15' W.
MC4	42°40' N.	70°00' W.
MC5	43°00' N.	70°00' W.
MC6	43°00' N.	69°30' W.
MC7	43°15' N.	69°30' W.
MC8	43°15' N.	69°00' W.
MC9	Maine shoreline	69°00' W.

(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish. (ii) Classified as charter, party, or recreational.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Massachusetts Bay Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

Point latitude	Longitude
MB1 42°30' N.	Massachusetts shoreline.
MB2 42°30' N.	70°30' W.
MB3 42°12' N.	70°30' W.
MB4 42°12' N.	70°00' W.
MB5 Cape Cod shoreline.	70°00' W.
MB6 42°00' N.	Cape Cod shoreline.

Point latitude	Longitude
MB7 42°00' N.	Massachusetts shoreline.

(2) *Exceptions.* Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish.

(iii) Classified as charter, party, or recreational.

8. Section 651.22 is revised to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(a) A vessel issued a limited access multispecies permit under § 651.4(b) may not fish for, possess or land regulated species except during a DAS as allocated under and in accordance with the applicable DAS program described below, unless otherwise provided in these regulations.

(b) *DAS program—Permit categories, allocations and initial assignments to categories.* For the remainder of the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the remainder of the 1996 fishing year and all fishing years thereafter as specified in § 651.4(f)(3). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS Category—(i) DAS allocation.* Vessels assigned to the Individual DAS category shall be allocated 65 percent of their initial 1994 allocation baseline determined by regulations implementing Amendment 5 to the FMP for the 1996 fishing year multiplied by the proration factor equal to 0.83 and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued valid Individual DAS limited access multispecies permits, with the exception of vessels that have also been issued limited access multispecies Gillnet category permits, as of the effective date of the final rule for Amendment 7, shall be initially assigned to this category.

(2) *Fleet DAS Category—(i) DAS allocation.* Vessels assigned to the Fleet

DAS category shall be allocated 139 DAS for the 1996 fishing year multiplied by the proration factor equal to 0.83 for a total of 115 DAS, and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* As of the effective date of the final rule for Amendment 7, vessels issued valid permits in one of the following categories shall be initially assigned to this category: Fleet DAS permit holders; limited access multispecies Hook-Gear permit holders; limited access multispecies Gillnet permit holders; limited access multispecies 45 ft (13.7 m) category permit holders that are larger than 20 ft (6.1 m) in length as determined by the most recent permit application, determined by the most recent permit application.

(3) *Small vessel category—(i) DAS allocation.* Vessels qualified and electing to fish under the Small Vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. These vessels are not subject to a possession limit for the other multispecies finfish.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit and fishing under the small boat exemption (less than or equal to 45 ft (13.7 m)) permit as of the effective date of the final rule for Amendment 7, and that are 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit shall be initially assigned to this category. Other vessels may elect to change into this category as provided for in § 651.4(f)(3) if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) Vessels for which construction was begun after May 1, 1994, must be constructed such that the quotient of the overall length divided by the beam will not be less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be U.S. Guard documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a Federal

multispecies permit issued under § 651.4.

(D) Adjustments to the small-boat category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C.

(4) *Hook-Gear Category—(i) DAS allocation.* Vessels issued a valid limited access multispecies Hook-Gear permit shall be allocated 139 DAS multiplied by the proration factor equal to 0.83 for a total of 115 DAS for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond. A vessel fishing in this permit category under the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500 hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the Hook-Gear category. Any vessel that meets the qualifications specified in § 651.4(b)(1) may apply for and obtain a permit to fish under this category.

(5) *Combination Vessel Category—(i) DAS allocation.* Vessels assigned to the Combination Vessel category shall be allocated 65 percent of their initial 1994 allocation as determined by regulations implementing Amendment 5 to the FMP multiplied by the proration factor equal to 0.83 for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit qualified to fish as a Combination Vessel as of the effective date of the final rule for Amendment 7 shall be assigned to this category.

(6) *Large Mesh Individual DAS Category—(i) DAS allocation.* Vessels fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase that is equivalent to a 12 percent increase in DAS in year 1 and a 36 percent increase in DAS in year 2

beyond the DAS allocations specified in (b)(1)(i) of this section, which includes the proration factor for 1996. To be eligible to fish under the Large Mesh Individual DAS permit category a vessel while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7 inch (17.78 cm) diamond or trawl gear with a minimum mesh size of 8 inch (20.32 cm) diamond, for the entire fishing year, as described under § 651.20 (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Individual DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(7) *Large Mesh Fleet DAS Category—*
(i) *DAS allocation.* Vessels fishing under the Large Mesh Fleet DAS category shall be allocated 155 DAS multiplied by the proration factor equal to 0.83 for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh Fleet DAS permit category a vessel must fish with gillnet gear with a minimum mesh net of 7 inch (17.78 cm) diamond or trawl gear with a minimum mesh size of 8 inch (20.32 cm) diamond, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Fleet DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(c) *The 1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and has been fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)), Hook-Gear or Gillnet permit categories, that elects to fish under the Individual DAS category, and has not previously been allocated Individual DAS, is eligible to appeal its allocation of DAS if it has not previously done so, as described under paragraph (d)(2) of this section. Each of these vessel's initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–97 reductions).

(2) *Exempted gillnet vessels that held an Individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and fishing under the Gillnet permit category and the Individual DAS permit category, that

elects to fish under the Individual DAS category, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each of these vessels' initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–97 reductions).

(d) *Individual DAS allocations—*(1) *Calculation of a vessel's Individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the Individual DAS Program shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990. Multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used.

(ii) Exclude the year of least multispecies DAS.

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation—*(i) Initial allocations of Individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than August 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* Vessels, while their

Individual DAS allocation is under appeal, may fish under the Fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(1) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(2) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(g) *Spawning season restrictions.* Vessels issued a valid Small Vessel category permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species between March 1 and March 20 of each year. All other vessels issued limited access permits must declare out and be out of the regulated multispecies finfish fishery for a 20-day period between March 1 and May 31 of each calendar year using the notification requirements specified under § 651.29. If a vessel owner has not declared, or taken, the period of time required between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species during the period May 12 through May 31, inclusive. If a vessel has taken a spawning season 20-day block out of the multispecies fishery during May, 1996, it shall not be required to take a 20-day block out of the multispecies fishery in 1997. Beginning January 1, 1998, any such vessel must comply with the spawning season restriction as specified in this part.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day spawning period out of the multispecies fishery using the notification requirements specified under § 651.29.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made following

a reappraisal and analysis as specified in subpart C.

9. In § 651.23, paragraph (a) introductory text, and paragraphs (d) and (e) are revised as follows:

§ 651.23 Minimum fish size.

(a) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a multispecies DAS are specified in § 651.34. All other vessels are subject to minimum fish sizes (total length) as follows:

* * * * *

(d) *Exception.* Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(e) *Adjustments of minimum size.* (1) At anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented following the procedures specified in subpart C.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C.

10. Section 651.27 is revised to read as follows:

§ 651.27 Additional haddock possession restrictions.

(a) *Haddock*—(1) *Multispecies DAS vessels.* A vessel issued a limited access multispecies permit under this part that is fishing under a multispecies DAS may land, or possess on board, up to 1000 lb (453.6 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this possession limit shall have on board the vessel at least one standard tote.

(2) *Scallop dredge vessels*—(i) No person owning or operating a scallop dredge vessel issued a permit under this part may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a permit under this part may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, no scallop dredge vessel or persons owning or operating a scallop dredge vessel, that is fishing under the scallop DAS program as described in § 651.20(i), may land, or possess on board, more than 300 lb (136.1 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this possession limit shall have on board the vessel at least one standard tote.

(b) Vessels are subject to any other applicable possession limit restrictions of this part.

11. In § 651.28, paragraph (c) is removed, the heading and the first sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access multispecies vessels.* Unless otherwise authorized or required by the Regional Director under § 651.29(b), vessel owners fishing under the Individual DAS program and Combination Vessels must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. * * *

(b) *Fleet DAS and other limited access multispecies vessels.* Vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS shall be subject to the call-in requirements specified in § 651.29(b).

12. Section 651.29 is revised to read as follows:

§ 651.29 DAS notification program.

(a) *VTS notification.* Unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of vessels issued limited access multispecies permits that have elected to or are required to use a VTS system shall be subject to the following requirements:

(1) Vessels that are issued limited access multispecies permits, that have crossed the demarcation line specified

under paragraph (d) of this section, are deemed to be fishing under the DAS program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (b) of this section.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* Vessel owners authorized or required to provide notification using the call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program by calling 1-800-260-8204 or 508-281-9335, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) The vessel's confirmation numbers for the current and immediately prior multispecies fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(4) Upon returning to port, at the end of a fishing trip as defined in paragraph (d) of this section, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 1-800-260-8204 or 508-281-9335, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, confirmation number, and that the fishing trip has ended.

(5) A DAS ends when the call has been received and confirmation given by the Regional Director.

(6) Any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possess or lands regulated species, except as provided in § 651.34, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(7) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

(c) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a

temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the Federal Register, or other appropriate means. Vessel owners authorized or required by the Regional Director to provide notification by a call-in system under this paragraph shall be subject to the requirements specified in paragraph (b) of this section.

(d) *Counting of DAS for vessels fishing under the VTS system.* (1) DAS for vessels that are under the VTS monitoring system described in

§ 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(2) *Vessel Tracking System Demarcation Line.* The VTS Demarcation Line is defined as straight lines connecting the following points in the order stated (see Figures 6 and 7 to part 651):

VESSEL TRACKING SYSTEM DEMARCATION LINE

Description	Longitude	Latitude
1. Northern terminus point (Canada land mass)	45°03' N.	66°47' W.
2. A point east of West Quoddy Head Light	44°48.9' N.	66°56.1' W.
3. A point east of Little River Light	44°39.0' N.	67°10.5' W.
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6' N.	68°10.8' W.
5. Isle au Haut Light	44°03.9' N.	68°39.1' W.
6. Pemaquid Point Light	43°50.2' N.	69°30.4' W.
7. A point west of Halfway Rock	43°38.0' N.	70°05.0' W.
8. A point east of Cape Neddick Light	43°09.9' N.	70°34.5' W.
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6' N.	70°47.1' W.
10. Halibut Point Gong Buoy "1AHP"	42°42.0' N.	70°37.5' W.
11. Connecting reference point	42°40' N.	70°30' W.
12. Whistle Buoy "2" off Eastern Point	42°34.3' N.	70°39.8' W.
13. The Graves Light (Boston)	42°21.9' N.	70°52.2' W.
14. Minots Ledge Light	42°16.2' N.	70°45.6' W.
15. Farnham Rock Lighted Bell Buoy	42°05.6' N.	70°36.5' W.
16. Cape Cod Canal Bell Buoy "CC"	41°48.9' N.	70°27.7' W.
17. A point inside Cape Cod Bay	41°48.9' N.	70°05' W.
18. Race Point Lighted Bell Buoy "RP"	42°04.9' N.	70°16.8' W.
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0' N.	70°06.2' W.
20. Connecting point, off Nauset Light	41°50' N.	69°53' W.
21. A point south of Chatham "C" Whistle Buoy	41°38' N.	69°55.2' W.
22. A point in eastern Vineyard Sound	41°30' N.	70°33' W.
23. A point east of Martha's Vineyard	41°22.2' N.	70°24.6' W.
24. A point east of Great Pt. Light, Nantucket	41°23.4' N.	69°57' W.
25. A point SE of Sankaty Head, Nantucket	41°13' N.	69°57' W.
26. A point west of Nantucket	41°15.6' N.	70°25.2' W.
27. Squibnocket Lighted Bell Buoy "1"	41°15.7' N.	70°46.3' W.
28. Wilbur Point (on Scoticut Neck)	41°35.2' N.	70°51.2' W.
29. Mishaum Point (on Smith Neck)	41°31.0' N.	70°57.2' W.
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7' N.	71°13.4' W.
31. Point Judith Lighted Whistle Buoy "2"	41°19.3' N.	71°28.6' W.
32. A point off Block Island Southeast Light	41°08.2' N.	71°32.1' W.
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0' N.	72°28.6' W.
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5' N.	73°55.0' W.
35. Barnegat Lighted Gong Buoy "2"	39°45.5' N.	73°59.5' W.
36. A point east of Atlantic City Light	39°21.9' N.	74°22.7' W.
37. A point east of Hereford Inlet Light	39°00.4' N.	74°46' W.
38. A point east of Cape Henlopen Light	38°47' N.	75°04' W.
39. A point east of Fenwick Island Light	38°27.1' N.	75°02' W.
40. A point NE of Assateague Island (VA)	38°00' N.	75°13' W.
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0' N.	75°33.7' W.
42. A point NE of Cape Henry	36°55.6' N.	75°58.5' W.
43. A point east of Currituck Beach Light	36°22.6' N.	75°48' W.
44. Oregon Inlet (NC) Whistle Buoy	35°48.5' N.	75°30' W.
45. Wimble Shoals, east of Chicamacomico	35°36' N.	75°26' W.
46. A point SE of Cape Hatteras Light	35°12.5' N.	75°30' W.
47. Hatteras Inlet Entrance Buoy "HI"	35°10' N.	75°46' W.
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5' N.	76°00.5' W.
49. A point east of Cape Lookout Light	34°36.5' N.	76°30' W.
50. Southern terminus point	34°45' N.	76°41' W.

(e) *Call-in for 20 day blocks.* With the exception of vessels issued a valid Small Vessel category permit, vessels subject to the spawning season restriction described in § 651.22 must notify the Regional Director of the commencement date of their 20-day period out of the multispecies fishery through either the VTS system or by calling 1-800-260-8204 or 508-281-9335 and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20 day period.

13. In § 651.31, paragraph (d) is added to read as follows:

§ 651.31 At-sea observer coverage.

* * * * *

(d) *Industry funded observer coverage.* NMFS may accept observer coverage funded by sources outside the U.S. Government provided the following requirements are met:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Director.

14. Section 651.32 is revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* (1) *Harbor porpoise take restrictions.* The closed area restrictions prohibiting sink gillnets in the areas and times specified in § 651.21(f) through (h) are implemented in order to reduce the takes of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(2) *Additional harbor porpoise area closures.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (a)(2)(i) and (ii) of this section; and, all persons owning or operating vessels issued a Federal multispecies limited access permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board a vessel, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the areas, and for the times specified, in paragraphs (a)(2)(i) and (ii) of this section.

(i) *Mid-coast Closure Area.* During the period March 25 through April 25 of

each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to the Mid-coast Closure Area, as defined under § 651.21(g)(1).

(ii) *Cape Cod South Area Closure.* During the period March 1 through March 30 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to an area known as the Cape Cod South Area Closure which is an area bounded by straight lines connecting the following points in the order stated (see Figure 9 of this part).

CAPE COD SOUTH CLOSURE AREA

Point	Latitude	Longitude
CCS1	RI shoreline	71°45' W.
CCS2	40°40' N.	71°45' W.
CCS3	40°40' N.	70°30' W.
CCS4	MA shoreline ...	70°30' W.

(b) *Framework adjustment.* (1) At least annually the Regional Director will provide the Council with the best available information on the status of Gulf of Maine harbor porpoise including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the Council's Harbor Porpoise Review Team shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the Council's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The HPRT shall report its findings and recommendations to the Council.

(2) After receiving and reviewing the HPRT's findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two Council meetings.

(3) The Council may request at any time that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The Council shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 651.40(b)(1).

(5) If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(b)(2).

(6) The Regional Director may accept, reject, or with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule, as specified under § 651.40(b)(3).

14. Section 651.33 is revised to read as follows:

§ 651.33 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access Handgear permit issued under § 651.4(c) is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other multispecies finfish provided that it does not use, or possess on board, gear other than rod and reel or handlines while in possession of, fishing for, or landing multispecies finfish. Vessels subject to this possession limit shall have at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species between March 1 and March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access Charter/party permit under § 651.4(c), and has declared into the charter/party fishery, is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 651.34, and any other applicable provisions of this part.

(c) *Scallop Multispecies Possession Limit Permit.* A vessel that has been issued a valid open access Scallop Multispecies Possession Limit permit under § 651.4(c) may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS as described under § 651.20(i), provided the vessel does not fish for, possess or land haddock during January 1 through June 30 as specified under § 651.27(a)(2)(i). Vessels subject to this possession limit shall have at least one standard tote on board.

15. Section 651.34 is added to subpart B to read as follows:

§ 651.34 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not

fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 651.20(c)(4) and 651.21(e)(2), 651.21(e)(3) and 651.21(e)(4).

(b) *Recreational minimum fish sizes.* (1) Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (total length) as follows:

RECREATIONAL

Species	Inches	
	1996	1997+
Cod	20(50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm) ...	9 (22.9 cm)

(2) *Exception.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ:

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored, so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, multispecies finfish caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

16. Section 651.40 is revised to read as follows:

§ 651.40 Framework Specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for Council consideration on any changes, adjustment or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP goals and objectives.

(1) The MSMC must review available data pertaining to the following:

- (i) Catch and landings.
- (ii) DAS and other measures of fishing effort.
- (iii) Survey results.
- (iv) Stock status.
- (v) Current estimates of fishing mortality.

(vi) Any other relevant information.
 (2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the FMP including, but not limited to:

(i) The annual target TACs which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species.

- (ii) DAS changes.
- (iii) Possession limits.
- (iv) Gear restrictions.
- (v) Closed areas.
- (vi) Permitting restrictions.
- (vii) Minimum fish sizes.
- (viii) Recreational fishing measures.
- (ix) Any other management measures currently included in the FMP.

(3) The Council shall review the recommended target TACs and all of the options developed by the MSMC, other relevant information, consider public comment, and develop a recommendation to meet the FMP objective that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the Council, as specified in (a)(6) of this section, provided that the option meets the FMP objective and is consistent with other applicable law.

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

(5) If the Council submits, on or before January 7, a recommendation to the Regional Director after one Council meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the

Council's recommendation in the Federal Register as a proposed rule. The Federal Register notification of proposed action will provide for a 30-day public comment period. The Council may instead submit its recommendation on or before February 1 if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law and determines that the recommended management measures be published as a final rule, the action will be published as a final rule in the Federal Register. If the Regional Director concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and as a result the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the Council's recommendation, a final rule shall be published in the Federal Register on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the Federal Register.

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (i) DAS changes.
- (ii) Effort monitoring.
- (iii) Data reporting.
- (iv) Possession limits.
- (v) Gear restrictions.
- (vi) Closed areas.
- (vii) Permitting restrictions.
- (viii) Crew limits.
- (ix) Minimum fish sizes.
- (x) Onboard observers.
- (xi) Minimum hook size and hook style.
- (xii) The use of crucifiers in the hook fishery.
- (xiii) Fleet sector shares.
- (xiv) Recreational fishing measures.
- (xv) Area closures and other appropriate measures to mitigate marine mammal entanglements and interactions.
- (xvi) Any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

- (i) Whether the availability of data on which the recommended management

measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(i) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (b)(2) of this section, the action will be published in the Federal Register as a final rule; or

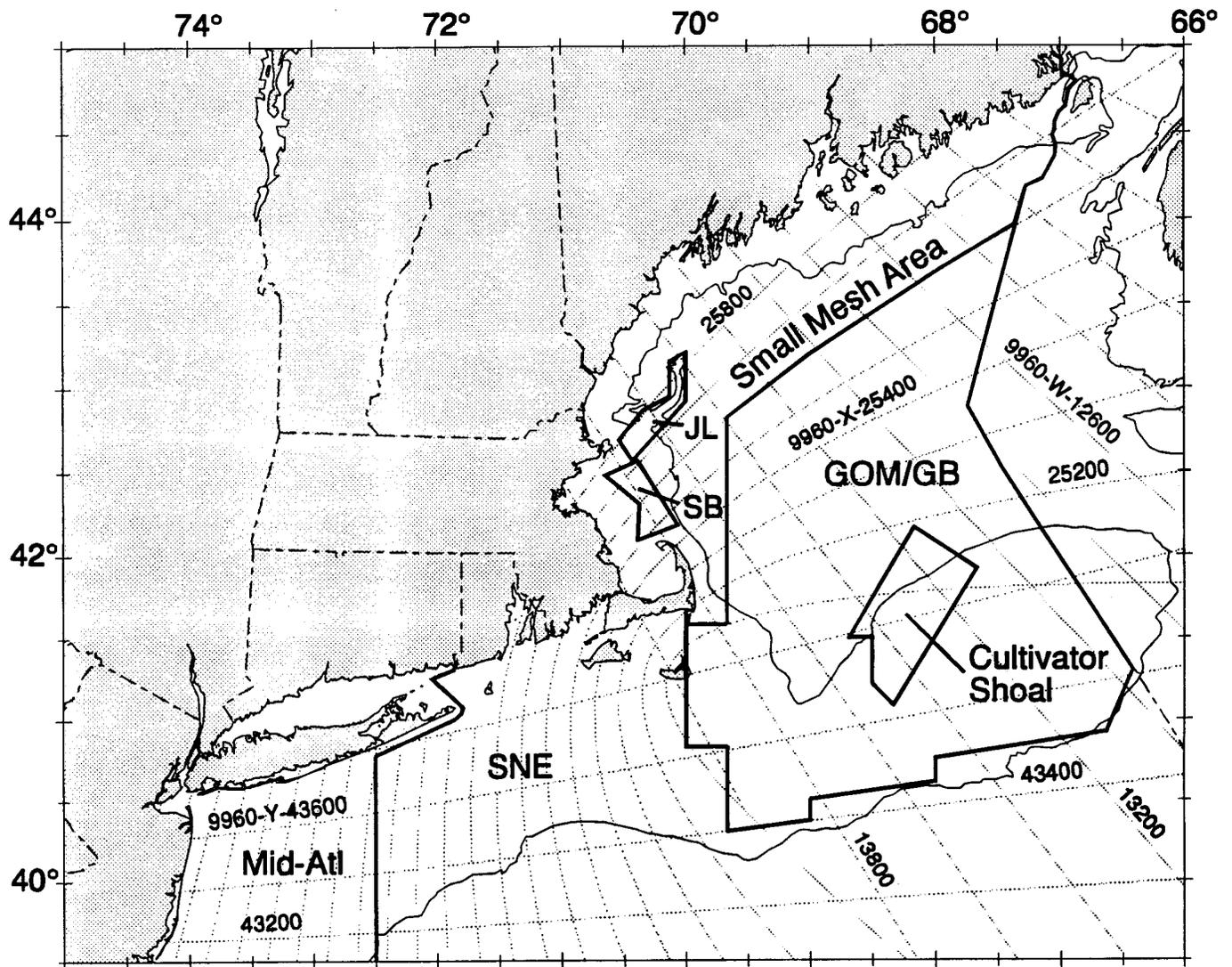
(ii) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the Federal Register; or

(iii) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(c) Nothing in this section is meant to derogate from the authority of the Secretary of Commerce to take emergency action under section 305(e) of the Magnuson Act.

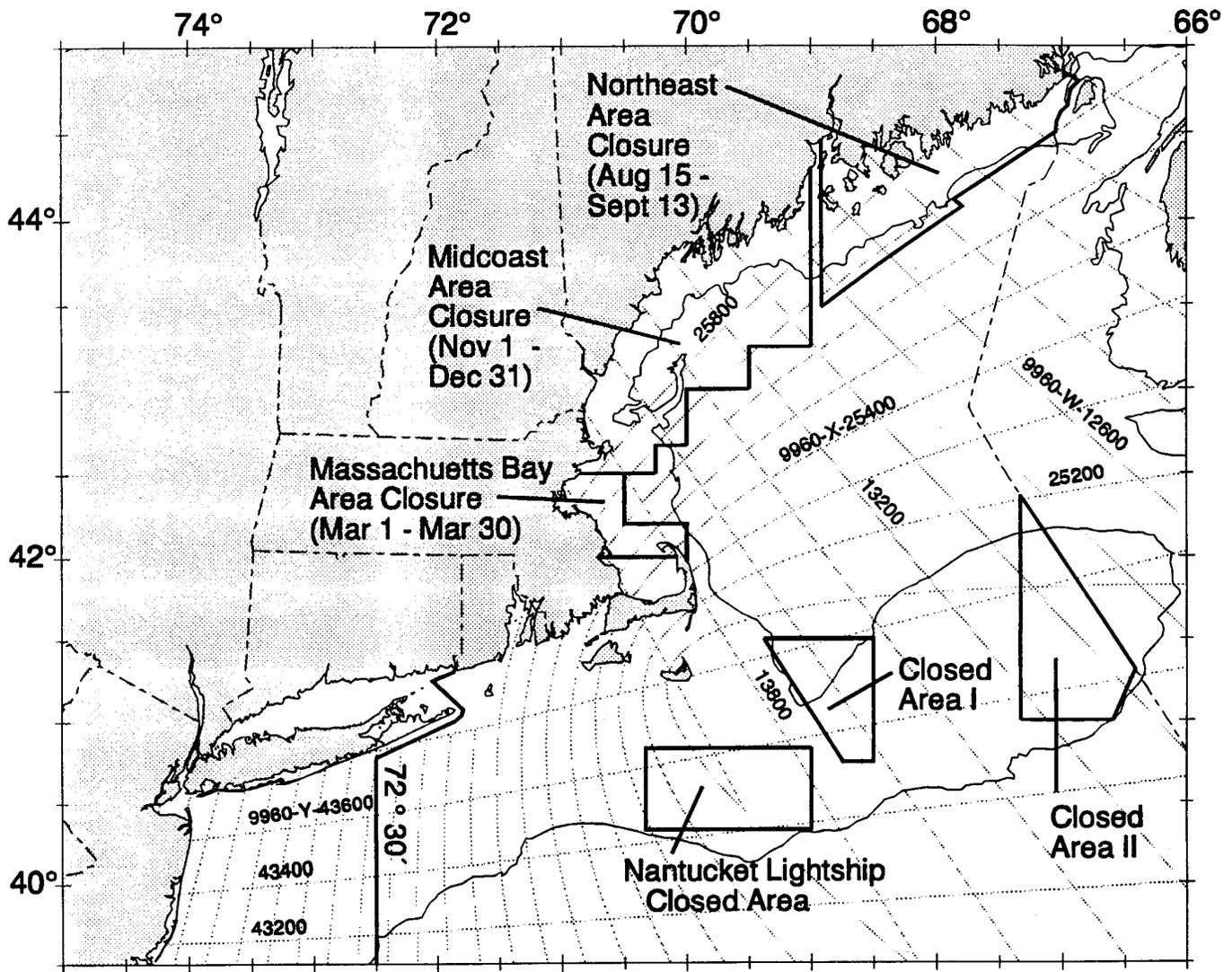
17. Figure 5 to part 651 is removed and reserved, and Figures 1, 3, and 4 to part 651 are revised to read as follows:

BILLING CODE 3510-22-W



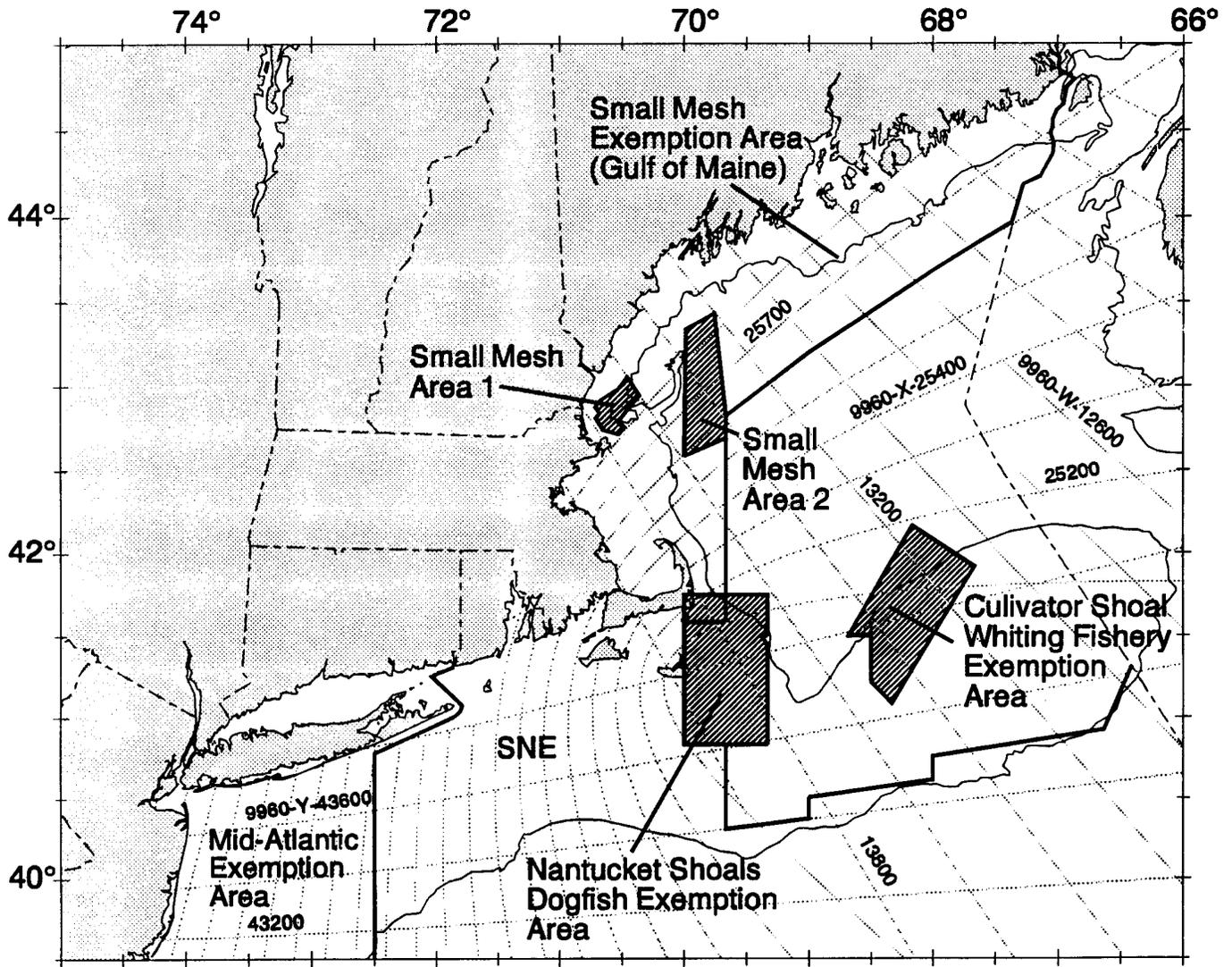
Regulated Mesh Area

Figure 1 to Part 651—Regulated Mesh Area



Closed Areas

Figure 3 to Part 651—Closed Areas



Exemption Areas

Figure 4 to Part 651—Exemption Areas