

3.0 Background and Purpose

3.1 Brief History of Prior Management Actions

The Northeast Multispecies FMP was adopted in 1986 to manage key groundfish stocks from Maine to Cape Hatteras. Management actions under this FMP were summarized in Amendment 5, adopted in 1994. The key actions leading to this action since Amendment 5 are summarized below.

Sustainable Fisheries Act

Despite the efforts taken in Amendment 5 and the cutbacks made by the industry during the following years, new legislation in 1996 set the standards for effective management even higher. The Magnuson-Stevens Act was amended with the adoption of the Sustainable Fisheries Act (SFA) in 1996. The SFA placed new demands on fishery management plans to reduce bycatch, identify and protect Essential Fish Habitat, and minimize adverse effects of fishing on EFH to the extent practicable. It also initiated new National Standards in the MSFCMA that emphasized minimizing impacts to fishing communities, improving safety at sea, significantly reducing bycatch and improving the collection and use of fishery and biological data.

Amendment 7

The amendment accelerated the DAS effort reduction program established in Amendment 5, eliminated significant exemptions from the current effort control program, and provided incentives to fish exclusively with mesh larger than the minimum required, broadened the area closures to protect juvenile and spawning fish, and increased the haddock possession limit to 1,000 pounds. It established a rebuilding program for Georges Bank (GB) and Southern New England (SNE) yellowtail flounder, GB and GOM cod, and GB haddock based primarily on days-at-sea (DAS) controls, area closures, and minimum mesh size. Additionally, the amendment changed existing permit categories and initiated several new ones, including an open access multispecies permit for limited access sea scallop vessels. Amendment 7 also created a program for reviewing the management measures annually and making changes to the regulations through the framework adjustment process to insure that plan goals would be met. Of all the major changes to the Northeast Multispecies Plan prior to 2000, Amendments 5 and 7 had the greatest impact on the fishery, both for stock rebuilding and in shaping the socio-economic conditions of the industry and fishing communities.

Amendment 9

Amendment 9 (1999) had a significant impact on the fishery, establishing new status determination criteria (overfishing definitions) and setting the Optimum Yield (OY) for twelve groundfish species to bring the plan into complete compliance with the SFA.

Amendment 11 and Essential Fish Habitat

This amendment adopted essential fish habitat (EFH) for New England groundfish stocks. However, according to a 2000 ruling in *American Oceans Campaign et al. v. Daley et al.* [Civil Action No. 99-982(GK)], EFH considerations continued to be inadequate in fishery management plans. The prosecution contested the adequacy of evaluations of fishing gear impacts on EFH and challenged NMFS approval of amendments and management plans which did not fully address the impacts of fishing on habitat. The U.S. District Court for the District of Columbia found that the agency's decisions on the subject EFH amendments were in accordance with the Magnuson-Stevens Act, but found that the EAs for the Councils' amendments were inadequate and in violation of NEPA. The court determined that the EAs prepared for the EFH provisions of the fishery management plans did not fully consider all relevant alternatives. The court specifically criticized several of the EAs for evaluating only two options for the EFH amendments: either approval of the amendment or status quo. Additionally, the decision noted that the descriptions and analyses

of the environmental impacts of the Proposed Actions and alternatives were vague or not fully explained. The court ordered NMFS to complete a new and thorough NEPA analysis for each EFH amendment named in the suit. Amendments 11 and 12 addressed the SFA requirements for designating EFH for all managed species and for managing whiting (silver hake), red hake and offshore hake through a separate small-mesh multispecies management plan implemented in 2000.

Amendment 13 Development and Implementation

Work on Amendment 13 began in February 1999, when the Council published a Notice of Intent recognizing the need for rebuilding plans that would be compliant with the SFA and new status determination criteria adopted by Amendment 9. In December 2001, during the drafting of the Amendment and immediately following the implementation of Framework 33, Conservation Law Foundation and other organizations successfully filed suit against NMFS alleging that the rebuilding plans NMFS had implemented were not consistent with Amendment 9 overfishing definitions (*Conservation Law Foundation et al. v. Evans et al.*). Additionally, they charged that there had been a consistent failure in management plans to assess bycatch reporting and establish measures to minimize bycatch and bycatch mortality (when bycatch is unavoidable). The plaintiffs prevailed on the issue that the rebuilding plans failed to implement a Standardized Bycatch Reporting Methodology. After a long series of negotiations among various parties, interim measures were adopted by the court and NMFS was instructed to submit a management plan to comply with the law. Amendment 13, which went into effect on May 1, 2004, met the requirements for compliance with that court order.

The main purpose of Amendment 13 was to end overfishing on groundfish stocks and to rebuild all of the groundfish stocks that were overfished. The Amendment addressed stock rebuilding issues, greatly reduced fishing effort and capacity in the multispecies fishery, included measures to minimize bycatch, instituted improved reporting and recordkeeping requirements, and implemented additional measures to specifically address habitat protection. The Amendment also mandated a periodic review of stock data midway through the implementation period, and called for a correction in management figures if necessary.

During the period of Amendment 13 development, the relationship between the multispecies fishing industry and the scientific community underwent some important changes. In September 2002, a Cape Cod fisherman convinced federal scientists that the trawl warps used to tow the groundfish survey gear used by the Northeast Fisheries Science Center were of different lengths, a fact that was confirmed. A series of workshops took place to assess how the warp length discrepancy and confounding structural problems with the otter trawl doors and footrope may have affected data quality. Issues surrounding the trawl warps, reference point estimates, and a trawl survey experiment were evaluated by Payne et al. (2003) and the general conclusion was that the information available was suitable for management. Payne et al. (2003) also provided numerous recommendations for further investigation of the issues raised. It is likely that in the future, greater emphasis will be placed on collaborative efforts in fisheries research in order to improve communication and understanding among fishermen and scientists, and to collect more comprehensive and complete data for management of the fishery.

Framework Adjustments and Interim Rule

The Northeast Multispecies FMP has been subject to many additional changes since its inception. Besides the 12 amendments implemented prior to development of Amendment 13, the multispecies plan has been altered multiple times since 1994.

The Council has held four annual reviews and made eight adjustments to the FMP to address Amendment 7 rebuilding needs (Frameworks 20, 24, 25, 26, 27, 30 and 33). In 1999, the Council submitted Framework 27 as the primary annual adjustment framework. Both Frameworks 27 and 30 contained trip limits for GOM and GB cod. In both cases, the Regional Administrator was authorized to reduce the trip limit when 75 percent of the target TAC for each stock was reached. On May 28, 1999, the Regional Administrator

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reduced the GOM cod limit implemented on May 1, 1999 of 200 pounds per day to 30 pounds per day, just three weeks into the fishing year. However, even before the trip limit was reduced, fishermen reported excessive discards of cod as seasonal closures ended. NMFS announced on July 29, 1999 that it disapproved the 30-day closure on Georges Bank proposed in Framework 30, but it approved the trip limit, which took effect on August 15. Framework 30 established a GB cod trip limit of 2,000 pounds per day/20,000 pounds maximum possession limit.

The Council submitted Framework 31 on October 14, 1999, which addressed discards in the Georges Bank and Gulf of Maine cod fisheries. NMFS approved an increased GOM cod trip limit on January 5, 2000, but it disapproved the change to the GB cod trip limit program that would have eliminated the authority of the Regional Administrator to make mid-season adjustments to the trip limit when 75 percent of the target TAC is reached.

Framework 33 was implemented on June 1, 2000 to reduce or maintain fishing mortality rates for the five critical stocks below fishing mortality rebuilding targets established by Amendment 7. This framework maintained some seasonal closures and implemented new ones, maintained or reduced trip limits, and mandated that party and charter vessels obtain a letter of authorization to fish in any of the GOM closed areas. The Council also proposed changes to the large mesh permit category, but these were not approved by NMFS. Implementation of Framework 33 was immediately followed by the CLF lawsuit mentioned earlier.

Framework 36 was completed in December 2001, but the Council did not adopt the framework and it was not submitted. Frameworks 37 and 38 instituted changes to management of the whiting fishery.

Framework 39 was drafted jointly with the scallop fishery and addressed scallop area management in parts of the groundfish closed areas, specifically portions of the Nantucket Lightship Area and Closed Areas I and II. Area closures had occurred to achieve groundfish mortality and rebuilding objectives, resulting in increased scallop biomass. The purpose of the Framework was to allow access to those scallop resources while providing measures to minimize and control bycatch of groundfish, including when and where scallop fishing could occur, as well as a limit on how much bycatch was to be allowed.

Framework 40A was created in order to mitigate economic and social impacts from the effort reductions imposed by Amendment 13. It was intended to provide additional opportunities for vessels in the fishery to target healthy stocks. The framework instituted the Category B (Regular) DAS Pilot Program, the Eastern US/Canada Haddock SAP Pilot Program, and the Closed Area I Hook Gear Haddock Special Access Program, a program that allows longline vessels to fish in Closed Area I to target haddock. The SAP program was only partially approved and did not allow participation by vessels that are not members of the GB Cod Hook Sector. In addition, FW 40-A relieved an Amendment 13 restriction that prohibited vessels from fishing both in the Western U.S./Canada Area and outside that area on the same trip, and allowed for increase in incidental TACs.

Following Framework 40A, the Council sought to improve the effectiveness of the Amendment 13 effort control program, including the opportunities developed to use effort to target healthy stocks and other measures that were adopted to facilitate adaptation to the amendment's effort reductions. In Framework 40B, the Council considered measures to clarify the DAS allocations and provide a small allocation to all permit holders, to modify the DAS leasing and transfer programs, to improve opportunities to target healthy stocks, and to adjust the Georges Bank cod hook sector provisions in order to meet those purposes. The framework also included measures developed to address interactions between the herring fishery and regulated groundfish, since catches of groundfish that occur in the herring fishery are wasted and do not contribute to optimum yield in the groundfish fishery. Some of the actions in the framework included revising the Days-at-Sea (DAS) Leasing and Transfer Programs, modifying provisions for the Closed Area

(CA) II Yellowtail Flounder Special Access Program (SAP), changing the allocation criteria for the Georges Bank (GB) Cod Hook Sector (Sector), establishing a DAS credit for vessels standing by an entangled whale, implementing new notification requirements for Category 1 herring vessels, and removing the net limit for trip gillnet vessels.

The purpose of Framework 41 was to revise the Closed Area 1 Hook Gear Haddock SAP, which was implemented in Framework 40A, to allow participation by non-sector vessels. The program, like many of the measures in Framework 40A was intended to help mitigate the economic and social impacts caused by the effort reductions adopted by Amendment 13.

Framework 42 introduced several measures to achieve rebuilding of fishing mortality targets. It included measures to implement the biennial adjustment, anticipated by Amendment 13, to the Northeast Multispecies FMP. The Framework instituted a wide range of changes included a Georges Bank yellowtail rebuilding strategy, several changes to the Category B (regular) DAS Program and two Special Access Programs, and an extension of the DAS leasing program. Additionally, it introduced the differential DAS system, where DAS are counted at the rate of 2:1 in certain areas in the Gulf of Maine (GOM) and Southern New England (SNE).

Framework 43 imposed a haddock catch cap for the herring fishery. Large haddock year classes had been leading to increased haddock bycatch by mid-water herring trawlers, particularly on Georges Bank. The Framework included a catch cap for haddock, an incidental catch allowance for other regulated multispecies, and a monitoring program for the catch cap. The existing classification of herring midwater trawl and purse seine gear relative to the multispecies fishery were also modified through the action.

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act

In 2006, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act was passed, which updated the original Magnuson-Stevens Act (MSA) as well as the Sustainable Fisheries Act of 1996. The bill reauthorized the MSA for Fiscal Years 2007 through 2013.

The MSA reauthorization contained several provisions that introduced new legal requirements for fishery management. Some of the key changes include:

- A firm deadline to end overfishing in America by 2011. For stocks that are currently experiencing overfishing, the deadline for ending that overfishing is 2010. Two key approaches are included to achieve this mandate:
 - The reauthorization requires the use of Annual Catch Levels (ACLs) to prevent overfishing. Every management plan must contain an ACL, which is set at a level to ensure that overfishing does not occur in the particular fishery. The ACL is required to be set at or below the Acceptable Biological Catch (ABC) of the fishery. Furthermore, the Councils are directed to follow the recommendations of the Scientific and Statistical Committee (SSC), and the ACL cannot exceed the SSC's recommendation for ABC.
 - Accountability Measures (AMs) are required in each management plan that detail what actions will be taken in the event of an overage of harvest level.
- A Limited Access Privilege Program (LAPP) provision.
 - In the MSA, the term "limited access privilege" means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and: (a) includes an individual fishing quota; but (b) does not include community development quotas as described in section 305(i).

- Much of the responsibility for the development of LAPPs, and their requirements, was delegated to the Councils, including what types of LAPPs can best meet the needs of a specific fishery, eligibility criteria for participation in a LAPP, and procedures for allocating harvest privileges among participants in a fishery. Questions have been raised about what entities qualify as LAPPs.

One more requirement in the MSA reauthorization applies specifically to New England fisheries. The Act states that the NEFMC, “may not approve or implement a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders...”. Thus, a system for creating a referendum and determining voting eligibility would need to be formulated if the Council chose to pursue IFQs as a management tool.

FW 42 Lawsuit

The Commonwealth of Massachusetts and State of New Hampshire filed suit against the Secretary of Commerce over FW 42 provisions. Two of the counts bear on this action. First, the lawsuit argued that the Closed Area Model (CAM) used to develop measures did not comply with National Standard 2 requirements to use the best available science. Second, the lawsuit argued that measures were more stringent than necessary because the Council and NMFS failed to consider the “mixed stock exception” during the design of measures. This exception allows overfishing to continue under certain limited conditions.

On January 26, 2009, the U.S. District Court in Massachusetts issued an order in the case. The order affirmed the use of the CAM and rejected the argument that its use was not the “best available science.” The court also said “The court temporarily suspends Framework 42 pending serious consideration and analysis of the Mixed-Stock Exception by Defendant.” The court’s order led to considerable confusion over the management measures that remained in place. After filings by the parties in the suit, the court issued a subsequent ruling on February 17, 2009 that said (in part): “Framework 42 is hereby reinstated except for those provisions relating to the 2:1 DAS counting system, which remains suspended for thirty-eight (38) days from the date of this order.”

The impacts of this liberalization of fishing rules are uncertain. It may result in increased fishing mortality for stocks caught in the differential DAS counting areas. These include inshore GOM stocks (GOM cod, CC/GOM yellowtail flounder, pollock, plaice, GOM winter flounder, white hake, and witch flounder) and SNE/MA yellowtail flounder and SNE/MA winter flounder. It is not clear whether this will result in more stringent regulations under the interim rule or will increase the magnitude of the mortality reductions needed in this action.

On February 23, 2009, the court extended the suspension of DAS counting provisions until April 10, 2009 so that the Council could review a NMFS filing on the applicability of the mixed stock exception; other FW 42 measures were reinstated. On April 10, 2009, the court reinstated FW 42 in its entirety.

Interim Rule

Because Amendment 16 was not implemented on May 1, 2009, NMFS issued an interim rule that took effect on that date (*74 FR 17030*). The measures are designed to reduce fishing mortality to lower levels until Amendment 16 is implemented. Interim regulations for commercial vessels include the Amendment 13 default DAS change (an 18 percent reduction in available Category A DAS) and expansion of the differential DAS counting area in Southern New England. Landing SNE/MA winter flounder, northern windowpane flounder, and ocean pout were prohibited, and a trip limit was adopted for witch flounder. The SNE/MA winter flounder SAP was eliminated for the duration of the rule, as was the state waters winter flounder exemption. The interim regulation includes mitigation measures such as a reduction in the

minimum size for haddock, removal of the conservation tax for DAS transfers, liberalization of the DAS leasing program, extension of the Eastern U.S./Canada haddock SAP, and modifications to the CAI Hook Gear Haddock SAP. Recreational measures include an extension of the seasonal closure for GOM cod, a 10-fish bag limit on GB cod for party/charter vessels, a lowering of the minimum size for haddock, and a prohibition on retention of winter flounder in the SNE/MA stock area.

The interim regulation is effective for 180 days, but it is expected it will be extended for the entire fishing year (FY 2009).

3.1.1 Other actions affecting the fishery

3.1.1.1 Actions to Minimize Interactions with Protected Species

Many of the factors that serve to mitigate the impacts of the groundfish fishery on protected species are currently being implemented in the Northeast Region under either the Atlantic Large Whale Take Reduction Plan (ALWTRP) or the Harbor Porpoise Take Reduction Plan (HPTRP). In addition, the Northeast Multispecies FMP has undergone repeated consultations pursuant to Section 7 of the Endangered Species Act (ESA), with the most recent Biological Opinion dated June 14, 2001. In that Opinion, NMFS concluded that the continued authorization of the Northeast multispecies FMP would jeopardize the continued existence of ESA-listed right whales as a result of entanglement in gillnet gear. A Reasonable and Prudent Alternative (RPA) was provided to remove the likelihood of jeopardy, and the RPA measures were implemented, in part, through the ALWTRP. On April 2, 2008, NMFS reinitiated section 7 consultation on the continued authorization of the Northeast Multispecies FMP for two reasons: (1) new information on the number of loggerhead sea turtles captured in bottom otter trawl gear used in the fishery, and (2) changes to the ALWTRP that will result in the elimination of measures that were incorporated as a result of the RPA for the June 14, 2001, Opinion on the continued authorization of the Northeast Multispecies FMP. The new consultation is on-going but is not complete as of the drafting of this document.

3.1.1.2 Harbor Porpoise Take Reduction Plan

The Harbor Porpoise Take Reduction Plan (HPTRP) was developed pursuant to Section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoises due to incidental interactions with commercial gillnet fishing gear. Prior to the development of the HPTRP, the bycatch estimate of the GOM/BOF stock of harbor porpoises was estimated at 1,500 animals taken per year in U.S. commercial gillnet fisheries between 1994 and 1998. This exceeded the stock's potential biological removal (PBR) level by more than threefold. Under the MMPA, NMFS was required to take action to reduce the serious injury and mortality of harbor porpoises from incidental interactions with gillnet gear. Thus, NMFS formed two take reduction teams – one to address interactions in the Gulf of Maine, and the other to address interactions in the Mid-Atlantic. Both provided NMFS with recommended measures for reducing these incidental interactions.

The HPTRP regulations, implemented on December 2, 1998 (63 FR 66464), are separated into two components – Gulf of Maine (GOM) and Mid-Atlantic. The GOM component of the HPTRP manages commercial gillnet gear that catches or is capable of catching multispecies through time and area regulations throughout New England, from Maine to Rhode Island, during the months of August through May. This includes seasonal gillnet closures during the peak months of the year during which harbor porpoises are most concentrated in four of the six GOM management areas. During several other times of the year when harbor porpoise concentrations are considered to be less than at the peak time periods, the

HPTRP management areas require the seasonal use of acoustic deterrent devices, known as pingers, on all sink gillnet gear. Pingers are placed approximately every 300 ft (91.4 m) on a string of gillnets and broadcast a ten kilohertz (kHz) sound at 132 decibels every four seconds to alert and/or deter harbor porpoises. Before using pingers on gillnet gear inside HPTRP management areas, fishing vessel operators must complete pinger training administered by NMFS to review the current HPTRP management measures and ensure that pingers are properly deployed and maintained. Those who complete the training are required to carry on board their vessel a NMFS-issued pinger training authorization in order to fish in management areas that require pingers.

The Mid-Atlantic component of the HPTRP manages commercial gillnet fishing through time and area regulations from New York through North Carolina from January through April. In lieu of pinger requirements, the Mid-Atlantic component of the HPTRP established large and small mesh gear specification requirements in which fishermen set gear that is less likely to result in harbor porpoise entanglement. Large mesh gillnets include gillnets with a mesh size of seven to 18 inches (18 – 46 cm) and small mesh gillnets include gillnets with a mesh size of greater than five to less than seven inches (13 -18 cm). Gear specification requirements for Mid-Atlantic gillnets include measures specifying a net limit per net string, twine size, net size, number of nets per vessel, and tie-down provisions. The three management areas of the Mid-Atlantic component of the HPTRP also include seasonal gillnet closures to coincide with high abundances of harbor porpoises.

After implementation of the HPTRP, harbor porpoise bycatch decreased and remained below PBR until 2004. However, bycatch showed an increasing trend after 2001, and again exceeded PBR beginning in 2004. From 2001 through 2005, the average annual mortality was 652 harbor porpoises per year in U.S. commercial fisheries, exceeding the PBR of 610 animals.

Based on this information, NMFS was required to take further action to reduce harbor porpoise takes in gillnet fisheries. As such, NMFS reconvened the Harbor Porpoise Take Reduction Team (HPTRT) in December 2007 to review and discuss the most recent harbor porpoise abundance and bycatch information and to evaluate additional potential measures that may be necessary to reduce harbor porpoise bycatch back to levels below PBR. NMFS is currently in a rule-making to propose modifications to the HPTRP, developed through consultation with the HPTRT, which are intended to reduce harbor porpoise mortalities and serious injuries in Northeast and Mid-Atlantic commercial gillnet fisheries to levels that are again below PBR, thus satisfying NMFS' responsibilities under the MMPA. A proposed rule was published on July 21, 2009 (74 *Federal Register* 36058), with the comment period ending August 20, 2009. A final decision is pending.

3.1.1.3 Atlantic Large Whale Take Reduction Plan

The ALWTRP contains a series of regulatory measures designed to reduce the likelihood of fishing gear entanglements of right, humpback, fin, and minke whales in the North Atlantic. The main tools of the plan include a combination of broad gear modifications and time/area closures (which are being supplemented by progressive gear research), expanded disentanglement efforts, extensive outreach efforts in key areas, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System.

Key regulatory changes implemented in 2002 included: 1) new gear modifications; 2) implementation of a Dynamic Area Management system (DAM) of short-term closures to protect unexpected concentrations of right whales in the Gulf of Maine; and 3) establishment of a Seasonal Area Management system (SAM) of additional gear modifications to protect known seasonal concentrations of right whales in the southern Gulf of Maine and Georges Bank.

On June 21, 2005, NMFS published a proposed rule (70 *Federal Register* 35894) for changes to the ALWTRP, and published a final rule on October 5, 2007 (72 *Federal Register* 57104). The new ALWTRP measures expand the gear mitigation measures by: (a) including additional trap/pot and net fisheries (*i.e.*, gillnet, driftnet) to those already regulated by the ALWTRP, (b) redefining the areas and seasons within which the measures would apply, (c) changing the buoy line requirements, (d) expanding and modifying the weak link requirements for trap/pot and net gear, and (e) requiring (within a specified timeframe) the use of sinking and/or neutrally buoyant groundline in place of floating line for all fisheries regulated by the ALWTRP on a year-round or seasonal basis.

3.1.1.4 Atlantic Trawl Gear Take Reduction Team

The first meeting of the Atlantic Trawl Gear Take Reduction Team (ATGTRT) was held in September 2006. The ATGTRT was convened by NMFS as part of a settlement agreement between the Center for Biological Diversity and NMFS to address the incidental mortality and serious injury of long-finned pilot whales, short-finned pilot whales, common dolphins, and Atlantic white-sided dolphins in several trawl gear fisheries operating in the Atlantic Ocean. Incidental takes of pilot whales, common dolphins and Atlantic white-sided dolphins have occurred in fisheries operating under the Atlantic Mackerel, Squid, and Butterfish FMP, as well as in mid-water and bottom trawl fisheries in the Northeast. The last meeting of the TRT was in April 2007 and work is ongoing.

3.1.1.5 EFH Omnibus Amendment

The NEFMC is currently developing an Omnibus Essential Fish Habitat Amendment for all of its FMPs. The amendment is being completed in two phases. Phase I, completed in 2007, reviewed and updated FH designations and considered identification of HAPCs. Phase II will review and update the gear effects evaluation and consider alternatives for optimizing management measures for minimizing the adverse effects of fishing on EFH across all FMPs. Implementation is expected in 2010/2011.

3.2 Purpose and Need for Action

This amendment is designed to meet all the requirements of the Magnuson-Stevens Act for the Northeast Multispecies Fishery, and is prepared by the New England Fishery Management Council (NEFMC; Council). After the Proposed Action is reviewed, the Amendment will be approved and implemented by the National Marine Fisheries Service (NMFS). Fifteen species of groundfish are managed under this plan. Twelve species are managed as large mesh species, based on fish size and type of gear used to harvest the fish: Atlantic cod, haddock, pollock, yellowtail flounder, witch flounder, winter flounder, windowpane flounder, American plaice, Atlantic halibut, redfish, ocean pout and white hake. Three species — silver hake (whiting), red hake, and offshore hake — are managed under a separate small mesh multispecies program, Amendment 12 to the Northeast Multispecies FMP. Several large mesh species are managed as two or more separate stocks, based on geographic region. For example, Atlantic cod is managed as two stocks: Georges Bank cod and Gulf of Maine cod. This action considers including an additional stock in the management unit (Atlantic wolffish).

Several groundfish stocks are either overfished, have been declared overfished in the past, or are experiencing overfishing and are currently rebuilding under programs that do not meet the requirements of the M-S Act. While many stocks will continue to increase under current fishing mortality rates – indeed, some will increase to levels not observed in the last thirty years – most stocks will not achieve levels that will support maximum sustainable yields.

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In the 1996 reauthorization of the Magnuson-Stevens Act, Congress recognized that one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended Magnuson-Stevens Act included new EFH requirements, and each fishery management plan must now include specific EFH provisions. Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH for the fishery based on the guidelines established by the Secretary (50 CFR part 600, Subpart J), minimize to the extent practicable adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. The description and identification of EFH is applied as included in Amendment 13 to the Northeast Multispecies FMP of 1998.

<i>Need</i>	<i>Purpose</i>
Rebuild overfished fisheries by continuing programs adopted in Amendment 13 and, if necessary, adopt additional rebuilding programs for the 13 stocks determined to be overfished by GARM III	<ul style="list-style-type: none"> • Measures to reduce effort, including DAS reductions, trip limit reductions, and area closures • If necessary, adjust mortality targets for rebuilding programs
End overfishing by 2010/2011 consistent with the status of the stock and the requirements of the MSA of 2006	<ul style="list-style-type: none"> • Implement Annual Catch Limits and Accountability Measures in FY 2010 • Adjust effort controls as necessary to reduce fishing mortality
Implement additional tools to meet mortality objectives prescribed by the MSA of 2006 or existing rebuilding plans	<ul style="list-style-type: none"> • Implement additional sectors • Adjust effort control program for non-sector vessels
Minimize, to the extent practicable, the adverse effects of fishing on essential fish habitat to comply with section 303(a)(7) of the Magnuson-Stevens Act	<ul style="list-style-type: none"> • Minimize, to the extent practicable, adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH.
Minimize bycatch and minimize mortality of bycatch that cannot be avoided in accordance with National Standard 9 (MSA §301(a))	<ul style="list-style-type: none"> • Implement additional sectors • Consider increases in trip limits
Provide meaningful alternatives for reducing harvesting capacity in accordance with 40 CFR 1508.9(b) and NAO 216-6 Section 5.04b.1	<ul style="list-style-type: none"> • Measures to reduce effort, including DAS reductions, trip limit reductions, and area closures
Address numerous issues with respect to the administration of the fishery in order to promote efficiency and improve management capabilities	<ul style="list-style-type: none"> • Implement additional sectors and address monitoring, enforcement, and transparency • Define Annual Catch Limits • Changes to the DAS Transfer and DAS Leasing programs • Address reporting requirements • Consider SAP revisions

3.3 Notice of Intent and Scoping Process

The Council announced its intent to prepare Amendment 16 and an Environmental Impact Statement (SEIS) on November 6, 2006 (71 *Federal Register* 64941). The scoping period extended from that date until December 29, 2006. The announcement stated that Amendment 16 will adjust management measures to continue the formal stock rebuilding programs adopted by Amendment 13 and achieve optimum yield. The Council said that it would consider alternative management systems in addition to adjustments to the existing effort control system. The notice also announced that wolffish and cusk may be added to the

fishery management unit. This decision was to be made after assessments scheduled for 2008, but the assessment for cusk was postponed and was not completed in time to incorporate results into this action.

At the beginning of the scoping period, the Multispecies Oversight Committee met with the Groundfish Advisory Panel and the Recreational Advisory Panel to develop standards that new management systems should meet. The recommendations from this meeting were considered by the Council. The Council published the following guidance for alternative management system proposals:

- Any new management system should clearly state the method of allocation proposed for individual, gear, or other sectors, and area TAC distributions for all Category A Days-at-Sea permit holders in the Gulf of Maine, Georges Bank, and Southern New England managed under the Northeast Multispecies FMP.
- Proposed management concepts may be less dependent upon input controls such as effort closures and trip limits and create a closer link between allocation and catch.
- A new management proposal should include a mechanism for accountability, for all permit holders, of all catch of all stocks (managed under the Northeast Multispecies FMP) caught during his/her fishing operation regardless of allocation.
- Any new management system that is narrow in focus relative to gears, areas/sub-regions or permit categories and is absent detail for application to the Gulf of Maine, Georges Bank, and Southern New England areas should not be considered for inclusion as a management system proposal. (Such narrowly focused concepts may be considered as a component of a comprehensive management system at a later point in this process).

A scoping document with this guidance was published on the Council's web page (www.nefmc.org) and distributed at scoping hearings.

The Council conducted eight hearings to receive public comments (Ellsworth and Portland, Maine, Portsmouth, New Hampshire, Gloucester and Fairhaven, Massachusetts, South Kingstown, Rhode Island, Riverhead and New York City, New York). Notice of the scoping hearings was mailed to over 1,800 interested parties. This notice also announced the availability of the scoping document and listed four ways to submit comments: in person at any of the hearings, or in writing submitted through mail, facsimile, or email. Attendance was light, with only one attendee at one hearing and fewer than ten speakers at several. More comments were received in writing.

Comments identified issues for consideration. Perspectives on each of the issues varied widely. The major issues identified and discussed are summarized below. This summary does not reflect every scoping comment received. Comments are grouped into broad categories, but in some cases the specific comments overlapped several of these categories. Refer to the letters and scoping meeting summaries to gain a better perspective on individual comments, ideas, and suggestions. The Council received suggestions for three new management systems, often with several variations. Changes were suggested to the existing effort control system, and comments were received on other topics as well.

Days-at-Sea (DAS)

- Comments supported and opposed to the existing effort control system based on DAS.
- A written comment provided an extensive list of proposed changes to the DAS system, including: counting DAS as a minimum of twenty-four hours, eliminating spawning block days out of the fishery, altering closed areas (including seasonal or rolling closures), modifying gear requirements, creating additional SAPs or modifying existing SAPs, modifying the DAS leasing and transfer programs, and re-examining all exempted fisheries to determine if they continue to meet groundfish bycatch restrictions.

- A written comment proposed modifying the effort control system to charge differential DAS based on landed catch rather than area fished.
- A comment suggested that if the Council abandons the DAS system then vessels that leased DAS to other vessels will be at a disadvantage if future access is based on recent fishing history.
- One comment suggested continuing to use DAS, but also defining an inshore and offshore area. Fishermen would declare into an area for the fishing year, and DAS might be charged at a differential rate in each area.

Hard TACs/Output Controls/ITQs

- Comments both supported and opposed the use of quotas (hard TACs) in this fishery.
- A proposal suggested quotas for all groundfish species and all species caught by groundfish vessels. This proposal suggested alternatives for allocating these quotas to various gear, vessel size, and temporal periods. It also suggested real-time landings reporting and a mandated level of observer coverage.
- One comment suggested using quotas (hard TACs) as a backstop for any management system adopted to manage groundfish. This proposal also suggested using quotas (bycatch caps) and other measures to minimize bycatch.
- An Individual Transferable Fishing Quota (ITQ) proposal was received from an organization. This organization prefers the DAS system, but argued that if quotas were adopted an ITQ was the only way to make them effective. The proposal detailed options for initial allocation of catch based on a combination of DAS and permit catch history, limits on ownership and acquisition of quota, transfers of quota, and management responses to an underage or overage of catch.
- One comment suggested using a system called “stewardship shares.” While similar to an ITQ, it differs in that the share owned by permit holders also represents a share of the stock biomass. An analogy is that the share of the resource represents a capital account and the share of the annual TAC is the interest produced. Permit holders can, within limits, withdraw from either in a given fishing year.
- One comment suggested using ITQs only on weak stocks, while continuing to use the DAS system for other stocks.

Area Management

- A proposal from a coalition of organizations and individuals proposed area management. Elements of this proposal included defining management areas that reflect ecological and biological uniqueness. Each area would have a finite, annual limit of fish that can be harvested from that area. Area-specific management rules would be developed with the participation of fishermen and local stakeholders from the area. Over time, local governance structures would be developed that would be nested within the current management system. Boundaries would be permeable – vessels could fish in more than one area. Real-time catch reporting would be developed. As an example of how this system could work, an additional submission proposed a specific area management structure and measures for an area off eastern Maine.
- Comments were received from a variety of individuals and organizations that supported the area management concept.

Point System

- An organization proposed a management system titled the “point system.” Each permit would be allocated a quantity of points based on its DAS allocation, baseline characteristic of the vessel, and past fishing history. These points would be the currency charged for landing regulated groundfish. For each regulated stock, point values (based primarily on the biological status of the stock) would be established. Generally, point values would be higher for stocks in poor condition, which would encourage fishermen to target stocks in healthy condition. Point values would be adjusted on a periodic basis over the course of the fishing year so that the catches do not exceed the target TACs for each

stock. The proposal suggested mechanisms to track catch and points, free transferability of points, and retention of all legal-sized groundfish. Interactions with other management systems (sectors, area management) were also described.

- Numerous comments and petitions supported the point system.

Sectors

- Two organizations indicated their intent to submit applications for establishing new sectors. Subsequent to the scoping period, one of these organizations withdrew its interest.
- A research organization suggested changes to the sector provisions of the management plan. These included simplifying the process for submission and approval of new sectors, establishing a fixed time period for determining catch history, allowing sectors to trade catch allocations with other sectors, changing or eliminating the cap on sector allocations, and allowing sectors to define how catch histories are treated for vessels in the sector.
- Two organizations suggested establishing a fixed time period for determining catch histories. One of these organizations suggested allowing sectors to receive an allocation of all stocks caught, with a provision for a default allocation for stocks that are rarely caught.
- One comment opposed the creation of sectors in the groundfish fishery.

Recreational Measures

- Several comments supported the creation of an allocation for recreational vessels (including party/charter vessels).
- Two comments supported creation of a limited entry system for party/charter vessels fishing in the Gulf of Maine.
- Several comments objected to the seasonal prohibition on catching cod in the Gulf of Maine.

Miscellaneous Comments

- One comment suggested changing the General Category Scallop Exempted Fishery east of Cape Cod to allow fishing year-round.
- Several comments supported allowing a vessel to possess a scallop dredge permit and a limited access multispecies permit at the same time.
- One comment suggested allowing the scallop closed area access program yellowtail flounder incidental catch TAC to be allocated to different sectors of the scallop industry.
- One comment suggested renegotiating the U.S./Canada Resource Sharing Understanding to better take into account U.S. concerns.
- Several comments suggested creating a research set-aside in the groundfish fishery.
- One comment suggested incorporating the findings of several research papers into the management program, including a suggestion that fishery stocks should be managed as a portfolio with the goal of providing the greatest benefits over time.

Response to Scoping Comments

Summaries of the scoping hearings and all written scoping comments were provided to all Council members. These documents, as well as recordings of the scoping hearings, were made available to the public. The Council reviewed these comments over a six month period. The Groundfish Plan Development Team (PDT) reviewed the major management proposals on two separate occasions and provided comments and concerns on the proposals. The Multispecies (Groundfish) Committee reviewed the proposals over the course of three separate meetings, and the full Council discussed the comments at two meetings. Many of the scoping comments were incorporated into the alternatives considered in this action. The Council took the following action on the major scoping comments that were not developed into alternatives:

Days at Sea

- The Council decided to include only the following modifications to adjust the DAS system in Amendment 16:
 - count DAS as a minimum of 24 hours;
 - consider adjustments in differential DAS program;
 - trip limit triggers on stocks with trip limits;
 - adjustments to Category A, B and C DAS split as a tool for adjustments to the DAS program.
- The Council decided to consider as an alternative a conservation tax on DAS leasing equal to or greater than the tax on consolidation.

Hard TACs/Output Controls/ITQs

- The Council decided not to pursue an ITQ proposal because recent changes to the M-S Act impose a requirement for an industry referendum before an ITQ can be implemented. The Council does not believe there is enough time available to develop a proposal and complete the referendum in time for a May 1, 2009 implementation date.
- The Council decided not to pursue a “stand-alone” hard TAC alternative – that is, a management system that relies on hard TACs alone to control mortality. Past experiences with these systems have shown that they are fraught with problems that are difficult to solve (Morgan, 1997).
- The Council directed the Groundfish Committee to consider hard TACs for the common pool as a means for mortality control. *(It was clarified that the intent of this motion is for the hard TAC to be developed as a backstop to the effort control system, and not as a stand-alone hard TAC alternative).*
- The Council voted to include in Amendment 16, as an alternative for complying with ACL/AM requirements, a hard TAC backstop based on Amendment 13 hard TAC options and direct the Groundfish Committee to develop mitigating plans to avoid Olympic fishing and hard shutdowns.

Area Management and Point System

- Due to limited time and resources, the Council designated Amendment 17 as the mechanism to further develop all management options including but not limited to area management, DAS performance plan, point system, ITQ management, party/charter limited entry, and approval of any new sector proposals or adjustments or modifications to existing sectors. Amendment 17 should also develop and establish a complete allocation system for the groundfish fishery. That Amendment will be developed following the completion of work on Amendment 16.

Sectors

- The Council decided to continue to pursue the development of sectors and approval of additional sectors in Amendment 16.

Miscellaneous Comments

- The Council supported expansion of the General Category Scallop exemption east of Cape Cod to a year-round fishery should an ongoing experiment demonstrate that this can be done without substantial impacts on yellowtail flounder. The Council believes this change can be made under existing NMFS authority without requiring a Council management action.
- The Council referred to the Scallop Oversight Committee suggestions that the scallop industry be allowed to allocate closed area incidental catch TACs to different segments of the scallop fleet. The Council and NMFS do not believe this decision requires a multispecies action and can be done in a scallop management action.
- The Council made a request that NMFS evaluate VMS requirements and determine if other processes, such as the “legacy code” and/or IVR, would be more practical than current practices.

- The Council voted to advance the concept of the running clock to the Enforcement Committee to see if enforcement problems cited in the past still exist.

3.4 Goals and Objectives

The goals and objectives of this amendment remain as described in Amendment 13:

Goal 1: Consistent with the National Standards and other required provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, manage the northeast multispecies complex at sustainable levels.

Goal 2: Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fishery.

Goal 3: Maintain a directed commercial and recreational fishery for northeast multispecies.

Goal 4: Minimize, to the extent practicable, adverse impacts on fishing communities and shoreside infrastructure.

Goal 5: Provide reasonable and regulated access to the groundfish species covered in this plan to all members of the public of the United States for seafood consumption and recreational purposes during the stock rebuilding period without compromising the Amendment 13 objectives or timetable. If necessary, management measures could be modified in the future to insure that the overall plan objectives are met.

Goal 6: To promote stewardship within the fishery.

Objective 1: Achieve, on a continuing basis, optimum yield (OY) for the U.S. fishing industry.

Objective 2: Clarify the status determination criteria (biological reference points and control rules) for groundfish stocks so they are consistent with the National Standard guidelines and applicable law.

Objective 3: Adopt fishery management measures that constrain fishing mortality to levels that are compliant with the Sustainable Fisheries Act.

Objective 4: Implement rebuilding schedules for overfished stocks, and prevent overfishing.

Objective 5: Adopt measures as appropriate to support international transboundary management of resources.

Objective 6: Promote research and improve the collection of information to better understand groundfish population dynamics, biology and ecology, and to improve assessment procedures in cooperation with the industry.

Objective 7: To the extent possible, maintain a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation.

Objective 8: Develop biological, economic and social measures of success for the groundfish fishery and resource that insure accountability in achieving fishery management objectives.

Objective 9: Adopt measures consistent with the habitat provisions of the M-S Act, including identification of EFH and minimizing impacts on habitat to the extent practicable.

Objective 10: Identify and minimize bycatch, which include regulatory discards, to the extent practicable, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

3.5 Context of Existing Management System

Because of the complexity of groundfish management, this section will describe in general terms the existing management program. This provides the public and reviewers an overview to place the proposed changes in context. The NEPA requires that the No Action alternative be included when considering changes to the management program. Subsequent sections will specifically identify the elements of the No Action alternative as an option so that the choices considered by the Council are explicit. This section briefly identifies key elements of No Action alternatives to provide context to this discussion.

The current management system for the Northeast Multispecies Fishery includes a wide range of measures that have been adopted since the mid-1980s. In 1994, Amendment 5 adopted a moratorium on groundfish permits and an effort control system that is the underpinning of the current measures (see section 3.1 for additional details on past actions). The existing management measures for the Northeast Multispecies Fishery were most recently altered by Amendment 13, FW 40A, FW 40B, FW 41 and FW 42. Regulations that may be implemented as part of an interim action, emergency action, or court order are not considered part of the existing system and are not considered elements of any No Action alternatives. Current implementing regulations can be found at 50 CFR 648 Subpart F.

The most recent amendment to the Northeast Multispecies FMP that is focused on groundfish fishing activities was Amendment 13, implemented May 1, 2004. The Amendment 13 measures can be sorted into the following broad categories:

- Clarification of status determination criteria: overfishing definitions
- Rebuilding programs: fishing mortality trajectories designed to rebuild overfished stocks. These trajectories serve as the fundamental basis for management measures.
- Fishery administration measures: reporting requirements, provisions for sector allocation and special access programs (SAPs), the U.S./Canada Resource Sharing Understanding, permit requirements, DAS leasing, etc.
- Measures to control capacity: a DAS transfer program that allows the permanent transfer of DAS, and the categorization of DAS based on vessel fishing history during the period FY 1996 through FY 2001.
- Measures to minimize, to the extent practicable, the adverse effects of fishing on essential fish habitat (EFH).
- Measures to meet fishing mortality targets: measures for the commercial and recreational fishery designed to control fishing mortality.

Subsequent to Amendment 13, a series of framework actions modified the measures. The following discussion summarizes the most important elements of the management program as it existed during consideration of this action. The discussion is organized into the broad categories identified.

Status Determination Criteria (Overfishing Definitions)

Amendments to the M-S Act in 1996 adopted a requirement that every management plan specify objective and measurable criteria for determining when a stock is overfished and when it is subject to overfishing. Often referred to as overfishing definitions, these status determination criteria were first adopted for the Multispecies FMP with the approval of Amendment 9 in 1999. During the development of Amendment 13, the criteria were re-evaluated by the NEFSC (NEFSC 2002a). These new criteria were adopted in Amendment 13. They include estimates of SSB_{MSY} , MSY , and F_{MSY} , and target fishing mortality rates (or appropriate proxies when these parameters cannot be determined). Amendment 13 also adopted a process to adopt revised parameters and/or their numerical estimates. Amendment 13 also reiterated the definition of OY applicable for each stock in this FMP. The amendment also called for a re-evaluation of the status determination criteria in 2008 so that any necessary changes could be made at the beginning of the 2009 fishing year.

Under the No Action alternative, these status determination criteria and their numerical estimates would remain the same. The Amendment 13 parameters and their estimates are shown in Table 30.

Rebuilding Programs

“Overfished” stocks are those that are at low biomass levels. Amendment 13 and FW 42 adopted formal rebuilding programs for regulated groundfish stocks that are overfished. Stocks also need a rebuilding program if they were previously identified at low biomass levels and have not yet finished rebuilding. These programs take the form of a strategy that identifies target fishing mortality rates for these stocks. Since management measures are designed to achieve the fishing mortality rates specified in the rebuilding programs for overfished stocks, the rebuilding programs are a critical element of the management program.

Analyses in Amendment 13 demonstrates that if these fishing mortality rates are achieved, the overfished stocks should rebuild to a biomass that will support maximum sustainable yield, and will do so within the time period required by the M-S Act. The following stocks have formal rebuilding programs, though some of these stocks are no longer overfished and the rebuilding fishing mortality target is higher than current fishing mortality:

- GOM cod
- GB cod
- GB yellowtail flounder
- Plaice
- GB haddock
- GOM haddock
- CC/GOM yellowtail flounder
- SNE/MA yellowtail flounder
- SNE/MA winter flounder
- Windowpane flounder (south)
- White hake
- Redfish

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- Ocean pout
- Atlantic halibut

Amendment 13 also provided for a mid-course evaluation of rebuilding progress and changes to the rebuilding programs as necessary. Changes might be necessary if the status determination criteria change or if rebuilding progress is behind or ahead of schedule.

Under the No Action alternative, the rebuilding programs and the associated target fishing mortality rates adopted by Amendment 13 and FW 42 would not be changed, regardless of stock conditions or any changes to status determination criteria.

Fishery Administration

The management program includes measures that address a wide range of issue. These include monitoring of catches and other fishing activity, measures to mitigate the social and economic impacts of rebuilding programs, procedures for periodic adjustments to the management program, and other needs. The major elements are briefly summarized below:

- Reporting requirements: Dealers are required to file weekly electronic reports of the purchase of groundfish. Vessel operators report catches on paper forms that must be submitted within fifteen days of the end of a month. Limited access vessels using a DAS are required to use a Vessel Monitoring System (VMS) that reports position on an hourly basis. Vessel operators also use VMS to report several types of fishing activity.
- Periodic adjustments: The FMP calls for a review of stock status and measures every two years, with the submission of management changes as may be necessary. The FMP also describes the types of measures that can be adjusted through these periodic adjustments, called framework actions.
- DAS leasing: Vessel operators are allowed to temporarily acquire DAS from other vessels through a leasing program. The maximum number of DAS that can be leased is limited. Vessels can only be leased to vessels of similar size (i.e. within the vessel upgrade restrictions for the permit).
- Special Access Programs (SAP): These programs relax regulatory restrictions in order to provide opportunities for vessels to target healthy groundfish stocks. For most programs, there are stringent requirements that include limits on catch of other species, additional reporting requirements, and gear restrictions. The current SAPs are:
 - Eastern US/CA Haddock SAP: Vessels using approved gear can fish for haddock in the Eastern US/CA Area while using Category B or Category A DAS. Vessels are allowed to fish in a small part of CAII. The SAP is open from August 1 through December 31. Vessels report catch daily through VMS. Catches of stocks of concern are limited by TACs.
 - CAI Hook Gear Haddock SAP: Longline vessels using specific bait (to reduce cod catches) are allowed to target haddock inside part of CAI. The total catch of haddock is limited by a TAC, as are the catches of stocks of concern. The area is open from October 1 through December 31. The open season is divided between sector and non-sector vessels. Vessels report catch daily through VMS.
 - CAII Yellowtail Flounder SAP: Vessels are allowed to target yellowtail flounder inside the southern part of CAII from July 1 through December 31. Vessels using trawl gear must use a haddock separator trawl or a flounder net. There is a limit on the maximum number of trips allowed each year, on the number of trips a vessel can make each month, and on the amount of yellowtail flounder that can be caught each trip. There are limits on the catches of stocks of concern and daily reporting via VMS. This SAP is only open when the TAC

for GB yellowtail flounder can support access to this area. This SAP has only been allowed once (in 2004) because of the status of yellowtail flounder.

- SNE/MA Winter Flounder SAP: In order to reduce discards of winter flounder in the fluke fishery, this SAP allows retention of up to 200 pounds of winter flounder while fishing without using a DAS. The vessel must be fishing west of 72° 30' W. longitude, must use mesh allowed under the summer flounder regulations, and the amount of winter flounder landed cannot exceed the amount of summer flounder landed.
- Category B (regular) DAS Program: This program allows vessels to use Category B (regular) DAS to target healthy stocks. In general, there are fewer restrictions on this program than on SAPs. The number of DAS that can be used each quarter is limited. Catches of stocks of concern are limited by hard TACs. Trawl vessels must use a separator trawl or other approved gear. Daily catch reporting is required.
- U.S./Canada Resource Sharing Understanding: The stock areas for GB yellowtail flounder, GB cod, and GB haddock straddle the international boundary between the U.S. and Canada. In order to develop a consistent management strategy for these stocks, Amendment 13 incorporated a process for the two countries to agree on annual harvest levels. The agreement applies to the entire GB yellowtail flounder stock area and part of the stock areas for cod and haddock. In order to implement the understanding, the U.S. adopted a suite of management measures that apply to the relevant management units. These include hard TACs on the catches, gear restrictions, and additional reporting requirements. The Regional Administrator has broad authority to make in-season adjustments as necessary to achieve the TACs.

Measures to Control Capacity

Amendment 13 adopted two measures intended to control capacity in the multispecies fishery. These two measures are embedded in the management approach, and could be considered elements of the measures to achieve rebuilding.

- DAS allocations: Amendment 13 categorized the DAS allocated to each vessel based on fishing history during fishing years 1996 through 2001. The DAS allocated were also assigned to one of three categories. Category A DAS can be used to fish for any groundfish stock under the requirements of the FMP. Category B DAS can only be used to target healthy stocks. One sub-category (called Category B (reserve) DAS) can only be used in approved SAPs. Category C DAS cannot be used at present but remain assigned to the permit. This categorization of DAS is a critical element of the existing management program.
- DAS Transfer Program: Vessel operators are allowed to make permanent transfers of DAS from one permit to another, subject to a number of restrictions. DAS from one of the vessels involved in the transfer are reduced by twenty percent (a “conservation tax” intended to reduce the number of DAS available and to account for the possibility DAS will move to more efficient vessels). Transfers can only be made between vessels of similar size. FW 42 adopted additional policy guidance designed to clarify the DAS transfer reprocess.

Measure to Meet Rebuilding Mortality Targets

A primary management tool in the multispecies fishery is the control on the amount of days (days-at-sea, or DAS) that fishing vessels can fish. Amendment 13 changed how the DAS assigned to a limited access multispecies permit can be used. For each limited access permit, Amendment 13 evaluated the fishing history of the permit during the period FY 1996 through FY 2001. For the years when the permitted vessel landed at least 5,000 pounds of regulated groundfish, the number of DAS used during a qualifying fishing year (not to exceed the permit’s FY 2001 allocation) was defined as the vessel’s “effective effort.” Sixty percent of the permit’s effective effort was defined as Category A DAS, while the other forty percent was

defined as Category B DAS (evenly divided between Category B (regular) and Category B (reserve) DAS). The difference between the permit's effective effort and its 2001 allocation were then defined as Category C DAS. Amendment 13 specified that unless certain conditions are met, the ratio of Category A to Category B DAS for each permit would change to 45/55 on May 1, 2009.

FW 42 introduced a significant change to the DAS system: the counting of DAS at different rates in different areas. DAS are counted at a 2:1 rate in a large area in the inshore Gulf of Maine (GOM) and another area in Southern New England (SNE).

Amendment 13 established limitations on the different DAS categories. Category A DAS can be used to target any groundfish stock, subject to the limitations of Amendment 13 (including landing limits, gear requirements, closed areas, reporting requirements, etc.). Category B DAS can only be used in specific programs that are designed to target healthy groundfish stocks. Category C DAS cannot be used at this time, but may be made available at some time in the future. The number of DAS that can be used (whether Category A or Category B) can affect the rebuilding programs. The management measures in Amendment 13 were designed to achieve the target fishing mortality rates, but were based on Category A DAS use only. Programs that allow for the use of Category B DAS must be carefully designed so that they do not unacceptably increase the risk that rebuilding fishing mortality targets will not be met (mortality will be too high). A primary management measure used to prevent the use of Category B DAS from unacceptably raising mortality rates are incidental catch TACs first adopted by FW 40A, and modified in FW 40B, FW 41, and FW 42. These incidental catch TACs would not be modified if the No Action alternative is adopted.

Amendment 13 adopted two programs that facilitate the exchange of DAS between limited access permit holders. The DAS leasing program allows the temporary transfer of DAS from one permit to another. The vessels exchanging DAS must have similar vessel lengths and horsepower. The DAS transfer program allows for the permanent transfer of DAS between two vessels. For the transfer program, the two vessels involved must have similar length, horsepower, gross, and net tonnage. Under the No Action alternative, there would not be any changes to either of these programs.

Amendment 13 provided a mechanism for a group of fishermen to operate as a sector, and established the GB Cod Hook Sector. FW 42 implemented an additional sector, the Fixed Gear Sector. Under the No Action alternative, only these two sectors would be allowed to operate but without any changes, and there wouldn't be any changes to existing sector policies.

Numerous gear requirements have been adopted over the course of these actions. Current requirements are listed in Table 11. There are numerous trip limits in effect as well; these are summarized below.

Trip limits: The following trip limits apply when not participating in SAPs, the Category B (regular) DAS program, or when not altered by regulations for the U.S./Canada area.

GOM cod: 800 lbs./DAS up to 4,000 lbs./trip
GB cod: 1,000 lbs./DAS up to 10,000 lbs./trip
CC/GOM yellowtail flounder: 250 lbs./DAS up to 1,000 lbs./trip
SNE/MA yellowtail flounder: 250 lbs./DAS up to 1,000 lbs./trip
GB yellowtail flounder: 10,000 lbs./trip
GB winter flounder: 5,000 lbs./trip
White hake: 1,000 lbs./DAS up to 10,000 lbs./trip
Atlantic halibut: one fish per trip

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Handgear A permit: 300 lbs./cod per trip
Handgear B Permit: 75 lbs./cod per trip

Existing regulations provide opportunities to target healthy groundfish stocks by establishing three SAPs and one program to use Category B (regular) DAS. GB haddock can be targeted using longline gear through the CAI Hook Gear Haddock SAP, and by vessels using trawl gear in the Eastern U.S./Canada Haddock SAP Pilot Program (other gear could be approved for this SAP as well). Each of these programs controls the catch of cod and haddock through a hard TAC supported by additional reporting and gear requirements. The CAII Yellowtail Flounder SAP provides an opportunity to target GB yellowtail flounder in CAII when that stock is healthy. The Category B (regular) DAS Pilot Program was adopted for one year to allow vessels to target healthy stocks while using Category B (regular) DAS. For all of these programs, the catch of stocks of concern is limited by hard TACs (referred to as “incidental catch TACs”) that are monitored through additional reporting requirements. Under the No Action alternative, the Eastern U.S./CA Haddock SAP Pilot Program would end in December, 2008. Incidental catch TACs would not be specified for FY 2010 and beyond, since they have only been specified through FY 2009.

Table 11 – Gear requirements under the existing management system

	GOM	GB	SNE	Mid-Atl
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category*	<u>Roundfish nets</u> 6.5" (16.5 cm) mesh; 50-net allowance	<u>All nets</u> 6.5" (16.5 cm) mesh; 50-net allowance	<u>All nets</u> 6.5" (16.5 cm) mesh; 75-net allowance	<u>Roundfish nets</u> 6.5" (16.5 cm) mesh; 75-net allowance
	<u>Flatfish nets</u> 6.5" (16.5 cm) mesh; 100-net allowance			<u>Flatfish nets</u> 6.5" (16.5 cm) mesh; 75-net allowance
NE Multispecies Trip Gillnet Category*	<u>All nets</u> 6.5" (16.5 cm) mesh; 150-net allowance	<u>All nets</u> 6.5" (16.5 cm) mesh; 150-net allowance	<u>All nets</u> 6.5" (16.5 cm) mesh; 75-net allowance	<u>All gillnet gear</u> 6.5" (16.5 cm) mesh; 75-net allowance
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square
Large Mesh Category - entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square
MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK-GEAR***				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook- gear vessels only)
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A