

9.0 Applicable Law

9.1 Magnuson-Stevens Fishery Conservation and Management Act

9.1.1 Consistency with National Standards

Section 301 of the Magnuson-Stevens Act requires that regulations implementing any fishery management plan or amendment be consistent with the ten national standards listed below. This section will be completed when the Proposed Action is submitted in the final amendment and EIS.

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The proposed management measures are designed to end overfishing on the groundfish stocks that are currently subject to excessive fishing pressure. In addition, the proposed action continues formal rebuilding programs that have already been designed for previously overfished stocks, and implements additional plans for stocks that are newly determined to be overfished. For overfished fisheries, the Magnuson-Stevens Act defines optimum yield as the amount of fish which provides for rebuilding to a level consistent with producing the maximum sustainable yield from the fishery. The measures are designed to achieve the fishing mortality rates, and yields, necessary to rebuild the overfished stocks as well as to keep fishing mortality below overfishing levels for stocks that are not in a rebuilding program. As described in section 7.2.1, this action is expected to end overfishing on groundfish stocks.

Because of the multispecies nature of this fishery, the measures necessary to rebuild overfished stocks also reduce fishing mortality on healthy stocks. This could prevent harvesting the optimum yield from those stocks while rebuilding programs are being followed for the overfished stocks. The proposed action includes measures that are designed to allow increased harvests of healthy stocks. These measures include the provisions for special access programs to target healthy stocks, as well as restricted gear areas to promote selective fishing practices. While many of the details of these programs have yet to be developed, the proposed action establishes the structure that can be used to access healthy stocks in order that optimum yield can be harvested from them during the period that other stocks are being rebuilt.

Conservation and management measures shall be based on the best scientific information available.

The proposed action is based on the most recent estimates of stock status available for each of twenty stocks included in the management unit. These estimates are in the form of information provided by the Northeast Fisheries Science Center in the GARM III proceedings. In the case of Atlantic wolffish, stock status was estimated by the NEFSC in the proceedings of the Data Poor Working Group (DPWG). For all stocks, stock size and fishing mortality in calendar year 2007 was estimated based on catch, trawl survey, observer, and other data through 2007. Management targets for this action are also based on the results of the GARM III and the DPWG, which contain a comprehensive review of fishing mortality thresholds and biomass targets for the groundfish complex.

With respect to bycatch information, the action uses bycatch information from the most recent assessments. Bycatch data from observer reports, vessel logbooks, or other sources must be rigorously reviewed before conclusions can be drawn on the extent and amount of bycatch. While additional observer data has been collected since the most recent assessments were completed, it has not been analyzed or reviewed through the stock assessment process and thus cannot be used.

The economic analyses in this document are based primarily on landings, revenue, and effort information collected through the NMFS data collection systems used for this fishery.

To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action manages each individual groundfish stock as a unit throughout its range. In general, management measures specifically designed for one stock are applied to the entire range of the stock. There are minor exceptions, such as when a trip limit is applied to an area slightly different than the stock area to facilitate management and enforcement concerns. In addition, the groundfish complex as a whole is managed in close coordination. Many of the management measures are applied to all groundfish stocks. They are designed and evaluated for their impact on the fishery as a whole.

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The proposed management measures do not discriminate between residents of different states. They are applied equally to all permit holders, regardless of homeport or location. While the measures do not discriminate between permit holders, they do have different impacts on different participants. This is because of the differences in the distribution of fish and the varying stock levels in the complex. For example, the measures designed to rebuild GB cod have more impacts on fishermen who target that stock. Some of these impacts may be localized, as often communities near the stock may have developed small boat fisheries that target it. These distributive impacts are difficult to avoid given the requirement to rebuild overfished stocks. Even if the measures are designed to treat all permit holders the same, the fact that fish stocks are not distributed evenly, and that individual vessels may target specific stocks, means that distributive impacts cannot be avoided.

The proposed action does include some measures designed to mitigate these distributive impacts. The sector allocation program and special management programs, including special access areas and the Category B DAS program, are specifically designed to foster ways to target healthy stocks to mitigate some of these distributional impacts.

The proposed action does allocate fishing privileges in several ways. First, for two stocks (GOM cod and GOM haddock), available groundfish catch is allocated to the commercial and recreational components of the fishery. This decision is based on catch history from 2001-2006 for the two components. Second, within the commercial fishery, permits eligible to join sectors are assigned a Potential Sector Contribution (PSC) that determines the pounds of fish that are

allocated to the sector when the permit joins the sector. These PSCs are calculated under two different methods. For most stocks, the PSC is based on landings history from 1996-2006 for all permits. For GB cod, permits committed to one of the two existing sectors have their PSC determined using a different time period (1996-2001).

Using different periods for the various allocation decisions raised concerns that the allocation of fishing privileges was not fair and equitable. This complaint is clearly not valid for the commercial and recreational allocation decision: the same years are used for both components. Both components were subject to restrictive management measures during this period, though the impacts of those measures may not have been identical. The catch history is based on data peer reviewed through GARM III. The use of one set of years for allocating between these two groups does not mean the same set of years needs to be used to distribute this allocation within one of the groups – this is a separate decision that need not use the same period or method. For this reason, using a different set of years to calculate the PSC for commercial permits than the years used for the recreational/commercial allocation is not unfair or inequitable.

The use of two different time periods to determine the PSC for GB cod also raised concerns about fairness. The issue here is more complex. If sectors are to operate successfully, they need some certainty that their allocation is not likely to change based on future decisions to form sectors by other fishermen. The two existing sectors should not be forced to revisit their business plans as a result of other fishermen deciding to form sectors several years later, or due to a Council decision to revise sector policies. In essence the Council's decision in this case establishes a policy that sector allocation decisions, once made, will be adhered to. While this cannot be guaranteed because a future Council could make a different decision, the Council's decision on the GB cod PSC at least serves as a clear statement of intent. All of the PSCs calculated for permits not committed to one of the existing sectors are based on the same period.

The Council discussed whether to include provisions that limit the ACE that can be acquired by a sector. Amendment 13 adopted a 20 percent cap on the ACE that a sector can hold, while Amendment 16 removes that cap. Advice from the Groundfish PDT indicated it unlikely that any sector could acquire a sufficient share of a stock to exercise market power of the rest of the fishery. The Council ultimately decided that the flexibility and efficiency provided to sectors would be improved without a cap on ACE. Further, sectors do not technically "own" ACE, nor do individual permits. The ACE is based on the PSCs of member permits. For these reasons, this action does not include specific provisions to limit sector ACE.

Both the allocation between the commercial and recreational components and the PSC allocations can be expected to promote conservation. The commercial/recreational allocation will make it easier in the future to develop measures for the appropriate component in order to control fishing mortality. Without the allocation, measures have treated each component the same, leading to criticism that a component had to pay for excessive fishing pressure by the other component. The PSCs facilitate the application of quotas through sector management, which is expected to lead to a more precise control of harvests.

Additional allocation decisions may occur as a result of the implementation of ACLs. The ACL process requires the Council to allocate the available catch to various fisheries that catch groundfish. These decisions are effectively allocation decisions – they determine what can be caught before AMs are triggered. There is some guidance in this amendment that indicates recent catch history will be a key element in making these decisions, but until the actual ACLs are specified in a separate action it is not possible to evaluate whether the decisions are fair and equitable.

With respect to DAS allocations, this amendment reduces fishing privileges for all commercial limited access DAS permit holders by the same percentage. The reduction was calculated (through the use of an analytic model) to be the amount necessary to achieve mortality targets and is thus expected to promote conservation.

Conservation and management measures shall, where practicable consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The proposed management program relies on two systems to control fishing mortality in the commercial fishery: effort controls that rely primarily on restrictions in time fishing (days-at-sea, or DAS) and sector management. In the first, there are additional measures included that tend to reduce economic efficiency of vessels, but they are generally required for sound management reasons. For example, restrictions on minimum mesh size reduce catches, but benefit the resource by targeting larger fish that have had an opportunity to spawn. Closed areas also reduce efficiency by preventing fishermen from fishing in high catch areas, but provide benefits to both habitat protection and spawning aggregations of fish. In sector management, the sectors have been designed with the maximum allowable flexibility so that they may draft fishing plans that are as efficient and profitable as possible. Certain restrictions for sectors still exist that may slightly reduce efficiency, but all have critical conservation and management goals. These include rolling closures that were designed to protect spawning fish and increased administrative requirements.

Some of the measures in this amendment will improve economic efficiency, thus mitigating the effects of some of the measures necessary for conservation. Clearly, sectors are being implemented as an attempt to increase efficiency over DAS fishing. Some common pool management measures also mitigate economic effects of fishing restrictions in this action. For example, the decrease in the minimum size for haddock will allow more fish to be kept and sold, and the removal of the limit on hooks for the recreational fishery as well as increased trip limits for the handgear fleet will allow for more efficient fishing. Specific proposals that address economic concerns include the DAS leasing and DAS transfer provision of the amendment. These measures allow for fishermen to consolidate DAS on fewer vessels, making each active fishing vessel more economically viable.

Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The measures allow for the use of different gear, vessel size, and fishing practices. While there are many restrictions included, especially for the common pool, with respect to minimum mesh size, quantity of gear, closed areas, and fishing time, there are no restrictions preventing the use of an authorized gear in an open area, and few restrictions on the deployment of that gear. The proposed action includes programs designed to encourage innovation in fishing practices in order to target healthy stocks. These programs include the sector provisions, special access programs, and the use of Category B DAS.

The sector program in particular takes into account variations in fishing practices. Sector vessels will be exempt from DAS limits, trip limits, some closed areas, and can request exemptions from other elements of the management program. This will increase the ability of fishermen to adjust fishing practices to take into account local conditions.

Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The Council considered the costs and benefits of a range of alternatives to achieve the goals and objectives of this FMP. It considered the costs to the industry of taking no action relative to adopting and maintaining existing rebuilding programs. The expected benefits are greater in the long-term if stocks are rebuilt, though it is clear there are significant short-term declines in revenue and possible increases in costs that can be expected. Sector administration provisions include increased reporting and monitoring requirements. These programs are expected to be costly. While the amendment expects sector participants to bear these costs, in FY 2010 many of the costs will be paid by taxpayers through NMFS. It is unclear how long such funding will remain available. In any event, these costs are believed essential to the effective transition from the effort control system to the quota management system of sectors.

Some management alternatives were not selected in part because of concerns over the costs and burdens of administering the program. One hundred percent monitoring coverage are two examples of management measures whose costs were deemed to outweigh the benefits expected.

The management program does not duplicate other regulatory efforts. Management of multispecies in federal waters is not subject to coordinated regulation by any other management body. Absent Council action, a coordinated rebuilding effort to restore the health of the overfished stocks would not occur.

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse impacts on such communities.

Consistent with the requirements of the Magnuson-Stevens Act to prevent overfishing and rebuild overfished stocks, the proposed action will restrict fishing activity through the imposition of additional restrictions on fishing time, possession limits, allowable catches, and other measures. Analyses of the impacts of these measures show that landings and revenues are likely to decline for many participants in the upcoming years of the rebuilding program. In the short term, these declines will probably have negative impacts on fishing communities throughout the region, but particularly on those ports that rely heavily on groundfish. These declines are unavoidable given the m-S Act requirements to rebuild overfished stocks. The need to control fishing mortality means that catches cannot be as high as would likely occur with less stringent management measures.

There are measures included that are designed to foster continued participation. As previously discussed, the sector allocation, special access program, and Category B DAS programs are designed to provide avenues for fishermen to continue to participate while stocks rebuild. Sector allocation programs are believed by many to provide an opportunity for local communities to maintain a presence on the fishery. Whether this will occur is subject to some debate, as there are some who believe that sectors will lead to fewer fishing vessels and as a result less vibrant fishing communities. What is clear, however, is that absent sectors, the ability of the industry to remain profitable under the needed DAS restrictions would be in question (see section 7.5.1.3.1) because the DAS allocations are so restrictive that many vessels would not remain in business.

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Numerous elements of this action are designed to reduce bycatch. For common pool (non-sector) vessels, many trip limits have been increased (trip limits are a key reason for regulatory discards). Restricted gear areas, and the use of selective gears in special management programs, are adopted in order to reduce catches of stocks that continue to have low trip limits. The minimum size of haddock had been reduced to 18 inches, which should reduce discards of fish between that size and the 19 inch minimum size in place prior to this action. While discards may increase because landing windowpane flounder, ocean pout, Atlantic wolffish, and SNE/MA winter flounder is prohibited, these restrictions were adopted to discourage targeting and contribute to rebuilding objectives. Sector administration provisions could also reduce bycatch by eliminating trip limits for sector vessels. There is some evidence that this may have occurred with one of the existing sectors (see section 6.2.4.2.2).

Conservation and management measures shall, to the extent practicable, promote safety of human life at sea.

The primary controls on fishing mortality used in this plan are sector management and limitations on the number of DAS that vessels can fish. The design of sectors leaves it up to individual fishermen and sector managers to determine when and where they will fish throughout the year. There are limitless arrangements that could be devised through sectors in case a vessel or a certain segment of the fishery should become economically unviable. The flexibility in designing these arrangements should help mitigate any safety concerns associated with the relatively low TACs implemented in this action. Similarly, for vessels in the common pool, DAS can be used at any time, subject to limitations imposed by closed areas. Reductions in DAS could affect vessel safety if vessels are unable to remain economically viable. Comments received suggested that vessel maintenance and safety equipment are often two major costs that are trimmed when vessel revenues decline. Vessel revenues are expected to decline for many vessels under the proposed action. If operators are unable to afford maintenance or safety equipment, there could be an increased number of accidents. While reduced fishing time means that vessels are on the water for less time and subject to fewer hazards, it is not clear that this will compensate for the lack of spending on safety and maintenance equipment. Reduced time fishing could also lead to less experience for crew and vessel captains, which could adversely affect safety.

The proposed action, however, does include some measures that may help mitigate these problems. Both DAS leasing and the DAS transfer provision will help some vessels obtain more DAS so that they can remain profitable (and an analogous situation exists with the ACE transfer provision for sectors). While DAS are being reduced, for some areas the action includes some measures to make each DAS more profitable as discussed under National Standard 5 above.

9.1.2 Other M-SFCMA requirements

Section 303 (a) of FCMA contains required provisions for FMPs. This section will be completed when the Proposed Action is submitted in the final amendment and EIS.

- (1) *contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations*

implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

Foreign fishing is not allowed under this management plan or this action and so specific measures are not included that specify and control allowable foreign catch. The measures in this management plan are designed to prevent overfishing and rebuild overfished stocks. There are no international agreements that are germane to multispecies management (the U.S./Canada resource Sharing Understanding, implemented through Amendment 13, is not considered an international agreement).

- (2) *contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;*

Amendment 13 (NEFMC 2003) included a thorough description of the multispecies fishery from 1994 through 2001, including the gears used, number of vessels, landings and revenues, and effort used in the fishery. Amendment 16 updates this information for the period 2001 through 2008. Information on the commercial harvesting sector can be found in section 6.2.3 Information on the recreational harvesting sector can be found in section 6.2.5. Short overviews of the gear used in the fishery, and the impacts of those gear on habitat, are in section 6.1.6.

- (3) *assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*

The present biological status of the fishery is described in section 6.1.8. Likely future conditions of the resource are described in section 7.2.1. The maximum sustainable yield and optimum yield for the fishery are described in section 4.1.1.

- (4) *assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*

U.S. fishing vessels are capable of, and expected to, harvest the optimum yield from this fishery as specified in Amendment 16. U.S. processors are also expected to process the harvest of U.S. fishing vessels. None of the optimum yield from this fishery can be made available to foreign fishing.

- (5) *specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;*

Current reporting requirements for this fishery have been in effect since 1994 and were originally specified in Amendment 5. The requirements include Vessel Trip Reports (VTRs) that are submitted by each fishing vessel. Dealers are also required to submit reports on the purchases of regulated groundfish from permitted vessels. Current reporting requirements are detailed in 50 CFR 648.7. This action modifies several reporting requirements (see sections 4.2.3.5.1 and 4.2.4).

- (6) *consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;*

The Proposed Action continues to allow the carry-over of a small number of DAS from one fishing year to the next. If a fisherman is unable to use all of his DAS because of weather or other conditions, this measure allows his available fishing time to be used in the subsequent fishing year. This practice does not require consultation with the Coast Guard.

The Proposed Action also adopts a measure that will allow sectors to carry-forward a small amount of ACE into the next fishing year. This will help sectors react should adverse weather interfere with harvesting the entire ACE before the end of the year. This practice does not require consultation with the Coast Guard.

- (7) *describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;*

Essential fish habitat was defined in an earlier action. This action does not change those designations, except that it designates EFH for Atlantic wolffish which was previously not part of the management unit (see section 4.2.2.2).

- (8) *in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;*

Scientific and research needs are identified in section 8.0.

- (9) *include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;*

Impacts of Amendment 16 on fishing communities directly affected by this action can be found in section 7.6. Possible impacts on fisheries conducted in adjacent areas are described in section 7.7.

- (10) *specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;*

Objective and measurable criteria for determining when the fishery is overfished, including an analysis of how the criteria were determined, can be found in Amendment 13 (NEFMC 2004), section 3.1.

- (11) *establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;*

A Standardized Bycatch Reporting Methodology omnibus amendment was adopted by the Council in June 2007. That methodology applies to this amendment. The proposed action includes a number of measures that are designed to minimize bycatch and associated mortality. These include increases in some trip limits that apply to common-pool vessels (section 4.3.2.1), requirements to use selective gears to reduce catches of stocks with low trip limits (sections 4.3.2.1, 4.2.7.3, 4.2.7.4, 4.2.7.6, 4.3.2.1), decreases in the haddock minimum size (section 4.3.2.3), and implementation of additional sectors and the exemption of those sectors from measures that tend to cause regulatory discards (sections 4.3.6 and 4.2.3.9).

- (12) *assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*

This management plan does not include a catch and release recreational fishery management program and thus does not address this requirement.

- (13) *include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;*

As noted above, the description of the commercial, recreational, and charter fishing sectors was updated in this document, sections 6.2.3 and 6.2.5.

- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

Proposed management measures restrict harvest for all sectors of the fishery. The principal stock harvested by both the commercial and recreational sectors is GOM cod. This action establishes an allocation between these components and the mortality reductions targeted in this action are calculated after considering this distribution and recent catch composition (section 5.3.3.3). Recovery benefits have been allocated equitably, most notably for haddock: minimum size was reduced for both commercial and recreational catches, there remains no bag limit on recreational catch, and special access programs were enhanced for the commercial fleet.

- (15) *Establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*

Annual Catch Limits and Accountability Measures for both the commercial and recreational fisheries are adopted in this action. A detailed description of the ACL process can be found in section 4.2.1. AMs are described in section 4.3.7.

9.1.3 EFH Assessment

This essential fish habitat (EFH) assessment is provided pursuant to 50 CFR 600.920(e) of the EFH Final Rule to initiate EFH consultation with the National Marine Fisheries Service.

9.1.3.1 Description of Action

The purpose of the Amendment 16 (Northeast Multispecies FMP) Proposed Action is to adopt management measures that are necessary to implement the most recent revisions to the MSFCMA including Annual Catch Limits and Accountability Measures, and to end overfishing on all Northeast groundfish stocks. This amendment also greatly expands and further defines the sector management program implemented in Amendment 13. Modifications are also proposed to many measures adopted by previous management actions so that the benefits to groundfish stocks are realized.

In general, the activity described by this Proposed Action, fishing for groundfish species occurs off the New England and Mid-Atlantic coasts within the U.S. EEZ. Thus, the range of this activity occurs across the designated EFH of all Council-managed species (see Amendment 11 to the Northeast Multispecies FMP for a list of species for which EFH was designated, the maps of the distribution of EFH, and descriptions of the characteristics that comprise the EFH). EFH designated for species managed under the Secretarial Highly Migratory Species FMPs are not affected by this action, nor is any EFH designated for species managed by the South Atlantic Council as all of the relevant species are pelagic and not directly affected by benthic habitat impacts.

The Proposed Action is described in section 4.0. For a summary of the impacts of the Proposed Action on EFH, refer to Table 204 in the Habitat Impacts of the Proposed Action section 7.4.1.4. The Proposed Action includes the following general measures:

- Updates to status determination criteria
- Implementation of Annual Catch Limits and Accountability Measures for all stocks
- Addition of Atlantic wolffish to the management unit
- Fishery program administration changes, including expanded requirements for sectors
- Commercial fishing measures
- Recreational fishing measures
- Measures applicable to special management programs
- Establishment of 17 additional sectors in addition to reauthorization of the two existing sectors
- Measures to modify the DAS leasing and DAS transfer programs
- Requirements for vessel reporting systems
- Changes to the haddock trip limit

9.1.3.2 Potential Adverse Impacts of the Action on EFH

A list of specific measures and a summary of the habitat impacts of the proposed measures is found in section 7.4.1. The following proposed measures have the potential to affect EFH:

- Allocation of groundfish to the commercial and recreational fishing industries
- Removal of the DAS transfer tax
- Removal of cap on DAS leasing and allowing CPH permits to participate in the DAS transfer program
- CAII Yellowtail Flounder SAP modifications
- Simultaneous possession of a limited access multispecies and scallop permit
- Commercial fishery measures: 50% reduction in Category A DAS, 24 hour clock, use of specific trawls in restricted gear areas
- Implementation of additional sectors

Proposed management measures that are expected to have negative impacts are described in Table 304, and those with expected positive impacts in Table 305. Most of these measures are difficult to assess on the basis of their impact on EFH, and therefore their impacts are speculative at best. It is not possible at this time to assess some of the proposed measures at all (such as implementation of additional sectors and the Category B DAS program). The only proposed measures that would, without doubt, have a significant habitat impact are the commercial fishery effort control measures. Implementation of a 24-hour clock, the area-specific use of bottom trawls designed to catch fewer groundfish species that are more closely associated with the bottom, and a 50% reduction in category A days-at-sea, will substantially reduce the amount of disturbance associated with bottom trawling throughout the range of the fishery. Given the overriding significance of these proposed measures, the overall impact of this action on EFH would be positive. Other proposed measures not mentioned above are not expected to affect EFH as they are either administrative in nature or are expected to have neutral or no habitat impacts (see section 7.4.1).

9.1.3.3 Proposed Measures to Avoid, Minimize, or Mitigate Adverse Impacts of This Action

None of the management measures proposed in this action would have any adverse habitat impacts that more than minimal and, overall, the net habitat effect of this action would be positive. Therefore, no mitigation measures are required. The adverse EFH impacts of the multispecies trawl fishery, as it existed in 2003, were evaluated in Amendment 13 to the FMP (NEFMC 2003) and minimized by the implementation of seven habitat closed areas on Georges Bank and in the Gulf of Maine. As a result of this action, the adverse habitat impacts of this fishery will continue to be minimized to the extent practicable, as required by the MSA and the EFH regulations [50 CFR Part 600.815(a)(2)(ii)].

9.1.3.4 Conclusions

Because there are no adverse impacts associated with this action, no EFH consultation is required.

Measures with Potential Negative Effects on EFH

Table 304 – Expected Negative Habitat Impacts of Proposed Action Relative to No Action Alternative

Removal of cap on DAS leasing and allowing CPH permits to participate in the DAS transfer program	0/-	Could lead to consolidation of groundfish permits onto fewer vessels. This is unlikely to reduce groundfish fishing effort, but may reduce effort in other fisheries. There may be some reduced fishing impacts in EFH as a result, but this is difficult to evaluate this with certainty.
CAII Yellowtail Flounder SAP modifications	0/-	Some vessels (i.e., non-sector vessels) may be using Category B DAS that they would otherwise not have used, resulting in some net increase in trawl fishing effort. The magnitude of the impact, however, cannot be determined because it is uncertain how many vessels would or could participate in this program.
Simultaneous possession of a limited access multispecies and scallop permit	0/-	If the former groundfish vessel participates in other fisheries after the multispecies permit is transferred, and this results in effort increases in other fisheries that use mobile bottom tending gears (e.g. summer flounder), then there may be a consequent negative effect on habitats designated EFH that overlap with those fisheries. The potential for, and likely magnitude of, this outcome is unknown at this time.

Measures with Potential Positive Effects on EFH

Table 305 – Expected Positive Habitat Impacts of Proposed Action Relative to No Action Alternative

Proposed Measure	Expected Relative Habitat Impacts	Rationale
Allocation of groundfish to the commercial and recreational fishing industries	0/+	May alter the distribution of fishing effort, potentially shifting effort from commercial fisheries that are more likely to have an adverse effect on habitats (e.g. commercial trawling) to recreational fisheries with less overall impact on habitats (e.g. recreational hook/line). Any such shift will likely be very small, as the proposed allocation estimates are based on historical averages.
Removal of the DAS transfer tax	+0	Combined changes are expected to have minimal effect. Removing the DAS transfer tax could lead to consolidation of groundfish permits onto fewer vessels. This is unlikely to reduce groundfish fishing effort, but may reduce effort in other fisheries as duplicate permits are cancelled when a transfer takes place. It is difficult to evaluate this with certainty.
Commercial fishery effort control measures: 24 hour clock, restricted gear areas	+	Gears will likely have a reduced impact on the seabed since gears are required to minimize interactions with species that tend to remain close to the seabed floor. Additionally, the dramatic decrease in overall DAS allocations will translate to a reduction in fishing effort and will have benefits to habitats designated as EFH throughout the range of the fishery.
Implementation of additional sectors	+0	Sector implementation is administrative. Operations plans must describe fishing practices and impacts on EFH. Addition of sectors could lead to reductions in effort as sectors fish more efficiently which would be expected to benefit EFH.

9.1.4 Skate Baseline Review

Federal regulations at 50 CFR 648.320(c) specify provisions for evaluating the impacts of FMPs on the skate fishery as a result of changes in several FMPs, including the Northeast Multispecies FMP. The regulatory requirement is that if an action is initiated that may make less restrictive one or more of the identified baseline measures such that the change will have an effect on the overall mortality for a species of skates subject to a formal rebuilding program, the skate PDT will evaluate the impacts of the proposed changes on rebuilding skate populations and develop management measures to mitigate the impacts if the changes to the baseline measures on rebuilding skates.

Amendment 3 to the Skate FMP was approved by the Council in April, 2009 and is undergoing review. That amendment adopts additional measures to rebuild overfished skate stocks and adopts ACLs and AMs for the skate fishery. It also removes the baseline review requirement. Since that action has not yet been approved by NMFS, the regulatory requirement to conduct a baseline review technically remains in effect. The following discussion draws from the fishery impacts discussion in section 7.7.7 in place of a review by the skate PDT.

With respect to the Northeast Multispecies FMP, there are three baseline measures that must be evaluated:

- (i) NE Multispecies year-round closed areas;
- (ii) NE Multispecies DAS restrictions;
- (iii) Gillnet gear restrictions;

The Proposed Action does not modify the year-round closed areas, but does modify access to the CAII yellowtail flounder SAP and the CAI Hook Gear Haddock SAP. Both of these SAPs are expanded in time and/or area, increasing access to the closed areas. The changes to the CAII yellowtail flounder SAP allow the use of selective gear to target haddock during years the SAP is not open for targeting yellowtail flounder. These gears are designed to reduce catches of bottom-dwelling species such as skates, but in practice they have had mixed results. Since this program will open the area more frequently than before, there is likely to be some increases in skate catch from the area.

This action does not increase DAS allocations and does not remove requirements to use DAS when required by another management plan, so the baseline review is not triggered for this measure. For vessels that choose to join sectors, the action does remove the requirement that multispecies DAS be used to target groundfish, but it does not modify the requirement that the DAS be used if required to target other species. With respect to targeting groundfish, analyses in this document indicate that sectors are likely to lead to the use of fewer fishing DAS than prior than if the action is not adopted. Coupled with the overall reduction in DAS for vessels that do not choose to join sectors, overall groundfish fishing effort is expected to decline as a result of this action.

This action also proposes to adopt a pilot program to facilitate targeting GOM haddock with sink gillnets. This proposal does not allow the use of Category B DAS, so fishing effort will not increase, particularly in light of the overall DAS reductions and 24 –hour clock.

The changes expected to occur are unlikely to create a need for skate catch control measures in addition to those adopted by Amendment 3 to the Skate FMP.

9.2 National Environmental Policy Act (NEPA)

NEPA provides a mechanism for identifying and evaluating the full spectrum of environmental issues associated with federal actions, and for considering a reasonable range of alternatives to avoid or minimize adverse environmental impacts. This document is designed to meet the requirements of both the M-S Act and NEPA. The Council on Environmental Quality (CEQ) has issued regulations specifying the requirements for NEPA documents (40 CFR 1500 – 1508) and NOAA’s agency policy and procedures for NEPA are found in NOAA Administrative Order 216-6.. All of those requirements are addressed in this document, as referenced below.

The required elements of an Environmental Impact Statement Assessment (EIS) are specified in 40 CFR 1508.9(b) and NAO 216-6 Section 5.04b.1. They are included in this document as follows:

- The need for this action is described in section 3.2;
- The alternatives that were considered are described in sections 4.0);
- The environmental impacts of the Proposed Action are described in section 7.0;
- The agencies and persons consulted on this action are listed in section 9.2.5.

This document includes the following additional sections that are based on requirements for an Environmental Impact Statement (EIS).

- An Executive Summary can be found in section 1.0.
- A table of contents can be found in section 2.0.
- Background and purpose are described in section 3.0.
- A summary of the document can be found in section 1.0.
- A brief description of the affected environment is in section 6.0.
- Cumulative impacts of the alternatives are described in section 7.8.
- A list of preparers is in section 9.2.1.
- The index is in section 10.3.

9.2.1 Scoping Summary

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. A summary of the scoping process, comments, and responses to those comments is provided in section 3.3 and is not repeated here.

9.2.2 Areas of Controversy

Amendment 16 was developed under close scrutiny, and there were mixed public reactions to the measures herein, especially on the topics of sector development, calculation of PSCs, and ACL implementation. Approximately 10,000 written comments were received during the comment period that offered various concerns with the amendment measures. Responses to those comments are in Appendix V. In addition to the public comments, one Council member submitted a minority report in response to the Council's decisions on PSC calculation and the commercial/recreational allocation. That report, along with the Executive Committee's response, is included in the amendment package.

The major areas of controversy are related to the expansion of the sector management program and the calculation of potential sector contributions. The expansion of sectors is viewed with trepidation by many industry participants as they fear it may lead to rapid consolidation of the fishery. Many other interests, however, were strong supporters of sectors as a desirable alternative to the effort control system. Fishermen also have divergent opinions on the proposed action for calculating PSCs for permits. While the majority of public comments supported the selected alternative it was not universally accepted, and the use of a separate allocation method for GB cod also is viewed as controversial as evidenced by the minority report submitted by a council member.

The required implementation of ACLs also drew considerable discussion. This tended to focus on the details of the proposed process since the legal requirement to implement ACLs is clearcut and as a result there was little disagreement over the concept of implementing the measure. But there was disagreement over the exact process used for implementing ACLs as proposed in this action.

9.2.3 Document Distribution

The draft document is available on the NEFMC web page, www.nefmc.org. Copies were provided to all Council members. Announcements of the documents availability will be made in the Federal Register and to the interested parties' mailing list. In addition, copies were distributed to the following:

US Environmental Protection Agency
EIS Filing Section
Office of Federal Activities
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

United States Environmental Protection Agency (USEPA), Region 1
Betsy Higgins
One Congress Street, 11th Floor
Boston, MA 02203
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Applicable Law
National Environmental Policy Act (NEPA)

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9.2.4 List of Preparers

The following personnel participated in the preparation of this EIS.

Amy Van Atten, National Marine Fisheries Service
Jennifer Anderson, National Marine Fisheries Service
Douglas Christel, National Marine Fisheries Service
Steven Correia, Massachusetts Division of Marine Fisheries

Applicable Law
National Environmental Policy Act (NEPA)

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Mark Grant, National Marine Fisheries Service
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Phil Haring, New England Fishery Management Council
Anne Hawkins, New England Fishery Management Council
Dan Holland, Gulf of Maine Research Institute
Kohl Kanwit, Maine Department of Marine Resources
Thomas Nies, New England Fishery Management Council
Paul Nitschke, National Marine Fisheries Service
Joan O'Leary, New England Fishery Management Council
Paul Parker, Groundfish Advisory Panel Chair
Patrick Scida, National Marine Fisheries Service
Lori Steele, New England Fishery Management Council
Dr. David Stevenson, National Marine Fisheries Service
Dr. Eric Thunberg, National Marine Fisheries Service
John Walden, National Marine Fisheries Service
Thomas Warren, National Marine Fisheries Service

9.2.5 Agencies Consulted

The following agencies were consulted in the preparation of this document:

Mid-Atlantic Fishery Management Council
New England Fishery Management Council, which includes representatives from the following additional organizations:
Connecticut Department of Environmental Protection
Rhode Island Department of Environmental Management
Massachusetts Division of Marine Fisheries
New Hampshire Fish and Game
Maine Department of Marine Resources
National Marine Fisheries Service, NOAA, Department of Commerce
United States Coast Guard, Department of Homeland Security

9.2.6 Opportunity for Public Comment

The Proposed Action was developed during the period November 2006 through September 2009 and was discussed at the following meetings. Opportunities for public comment were provided at Advisory Panel, Committee, and Council meetings. There are limited opportunities to comment at PDT meetings and conference calls. In addition, a public comment period was held from April 24 through June 8, 2009. Comments were accepted via letter, facsimile, and email during that period (see Appendix VI).

Table 306 – List of public meetings

Date	Meeting Type	Location
2006		
9/26-9/28/2006	Council Meeting	Holiday Inn, Peabody, MA
11/6/2006	Oversight Committee	Holiday Inn, Peabody, MA
11/27/2006	Groundfish A16 Scoping Hearing	Holiday Inn, Ellsworth, ME
11/28/2006	Groundfish A16 Scoping Hearing	Eastland Park Hotel, Portland, ME
11/29/2006	Groundfish A16 Scoping Hearing	Urban Forestry Ctr., Portsmouth, NH
11/30/2006	Groundfish A16 Scoping Hearing	MA DMF, Gloucester, MA
12/5/2006	Groundfish A16 Scoping Hearing	Best Western East End, Riverhead, NY
12/7/2006	Groundfish A16 Scoping Hearing	Holiday Inn Express, Fairhaven, MA
12/12/2006	Groundfish A16 Scoping Hearing	Skyline Hotel, New York, NY
2007		
1/18/2007	Oversight Committee	Holiday Inn, Mansfield, Mansfield, MA
1/11/2004	PDT conference call	
2/6-2/8/07	Council Meeting	Sheraton Harborside, Portsmouth, NH
3/7/2007	PDT Meeting	Falmouth Tech Park, Falmouth, MA
4/10-4/12/07	Council Meeting	Mystic Hilton, Mystic, CT
4/20/2007	Oversight Committee	Holiday Inn, Peabody, MA
5/29/2007	Advisory Panel	Holiday Inn, Mansfield, Mansfield, MA
5/31/2007	Oversight Committee (joint with Monkfish)	Providence Biltmore, Providence, RI
6/19-6/21/07	Council Meeting	Eastland Park Hotel, Portland, ME
6/26/2007	PDT conference call	
7/25/2007	PDT Meeting	Holiday Inn, Mansfield, Mansfield, MA
8/1/2007	Oversight Committee	Holiday Inn, Peabody, MA
8/21/2007	PDT conference call	
9/5/2007	Oversight Committee	Holiday Inn, Peabody, MA
9/18-9/19/07	Council	Radisson Hotel, Plymouth, MA
10/2/2007	PDT	MA Audubon, Newburyport, MA
10/16/2007	Oversight Committee	Holiday Inn, Peabody, MA
10/22/2007	PDT	Holiday Inn, Mansfield, Mansfield, MA
11/6-11/7/07	Council Meeting	Hotel Viking, Newport, MA
12/6/2007	PDT	Holiday Inn, Mansfield, Mansfield, MA

Applicable Law
National Environmental Policy Act (NEPA)

Date	Meeting Type	Location
12/12-12/13/07	Oversight Committee	Holiday Inn, Peabody, MA
2008		
1/9/2008	PDT	Starboard Galley, Newburyport, MA
1/17/07-8	Oversight Committee	Holiday Inn, Peabody, MA
1/24/2008	Council Meeting	Sheraton Ferncroft, Danvers, MA
1/22/2008	PDT conference call	
2/11/2008	Oversight Committee	Courtyard by Marriot, Portsmouth, NH
2/12/08- 2/14/08	Council Meeting	Sheraton Harborside, Portsmouth, NH
3/19/2008	PDT Meeting	Holiday Inn, Mansfield, MA
3/27/2008	Oversight Committee	Holiday Inn by the Bay, Portland, ME
4/8/2008	PDT Meeting	Holiday Inn, Mansfield, MA
4/15-4/17/08	Council Meeting	Providence Biltmore, Providence, RI
5/13/2008	Oversight Committee	Holiday Inn, Peabody, MA
5/15/2008	PDT conference call	
5/16/2008	PDT conference call	
5/20/2008	Recreational Advisory Panel	Holiday Inn, Peabody, MA
5/27/2008	Advisory Panel	Holiday Inn, Peabody, MA
6/2/2008	Oversight Committee	Holiday Inn by the Bay, Portland, ME
6/3-6/5/08	Council Meeting	Holiday Inn by the Bay, Portland, ME
7/1/2008	PDT conference call	
7/17/2008	Oversight Committee	Holiday Inn, Peabody, MA
8/13/2008	PDT Meeting	MA Audubon, Newburyport, MA
8/21/2008	PDT conference call	
8/26/2008	Oversight Committee	Holiday Inn, Peabody, MA
9/3-9/4/08	Council Meeting	Providence Biltmore, Providence, RI
9/11/2008	PDT conference call	
9/16/2008	Advisory Panel	Sheraton Ferncroft, Danvers, MA
9/17/2008	Recreational Advisory Panel	Sheraton Ferncroft, Danvers, MA
9/29/2008	Oversight Committee	Holiday Inn, Peabody, MA
10/15/2008	PDT conference call	
10/22/2008	PDT conference call	
10/30/2008	Oversight Committee	Sheraton Harborside, Portsmouth, NH
11/18-1/20/08	Council Meeting	Sheraton Ferncroft, Danvers, MA

Applicable Law
National Environmental Policy Act (NEPA)

Date	Meeting Type	Location
2009		
1/5/2009	PDT conference call	
1/29/2009	Oversight Committee	Holiday Inn, Mansfield, MA
2/9-2/11/09	Council Meeting	Sheraton Harborside, Portsmouth, NH
4/7-4/9/09	Council Meeting	Mystic Hilton, Mystic, CT
5/26/2009	Advisory Panel	Sheraton Colonial, Wakefield, MA
5/27/2009	Recreational Advisory Panel	Sheraton Colonial, Wakefield, MA
6/4/2009	PDT	Holiday Inn, Mansfield, MA
6/17/2009	Oversight Committee	Holiday Inn, Mansfield, MA
6/22-6/25/09	Council Meeting	Holiday Inn by the Bay, Portland, ME

9.3 Endangered Species Act

Section 7 of the Endangered Species Act requires federal agencies conducting, authorizing or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The NEFMC has concluded, at this writing, that the proposed action and the prosecution of the multispecies fishery are not likely to jeopardize any ESA-listed species or alter or modify any critical habitat. NMFS has already concurred on that action. The Council does acknowledge that endangered and threatened species may be affected by the measures proposed, but impacts should be minimal especially when seen in light of the large reductions in fishing effort being implemented.

For further information on the potential impacts of the fishery and the proposed management action on listed species, see section 7.2.2.2.3.4 of this document.

9.4 Marine Mammal Protection Act

For further information on the potential impacts of the fishery and the proposed management action on marine mammals, see section 7.2.2.2.3.4 of this document. The NEFMC has reviewed the impacts of Amendment 16 on marine mammal species and has concluded that the management actions contained in Amendment 16 are consistent with the provisions of the MMPA. The take of harbor porpoise under the existing FMP have been reduced to the point that would allow the stocks to achieve optimum levels. The level of take for the remaining odontocetes and seals that are affected by this fishery are low enough, in relation to the size of their populations, that it has been determined that the stocks would be allowed to achieve optimum levels. Therefore, since the mortality and serious injury that is likely to occur under the existing FMP has been assessed relative to the PBR allowed for each species under the MMPA and found to be below those levels, the NEFMC concludes that Amendment 16 will further reduce effort, providing additional protection to these species.

9.5 Coastal Zone Management Act

Section 307(c)(1) of the Federal CZMA of 1972 requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. Pursuant to the CZMA regulations at 15 CFR 930.35, a negative determination may be made if there are no coastal effects and the subject action: (1) Is identified by a state agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or (2) which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity. The Council has determined that the proposed action is consistent with the CZM programs of the states and will send a notification of this determination, along with a copy of the amendment document, to the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina for their concurrence. Copies of the correspondence are on file at the Council office, and a list of the specific state contacts and a copy of the letters are available upon request.

9.6 Administrative Procedure Act

This action was developed in compliance with the requirements of the Administrative Procedures Act, and these requirements will continue to be followed when the proposed regulation is published. Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

9.7 Data Quality Act

Pursuant to NOAA guidelines implementing section 515 of Public Law 106-554 (the Data Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of the information (including statistical information) disseminated by or for Federal agencies. The following section addresses these requirements.

9.7.1 Utility of Information Product

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the Proposed Action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the Proposed Action is included so that intended users may have a full understanding of the Proposed Action and its implications.

Until a proposed rule is prepared and published, this document is the principal means by which the information contained herein is available to the public. The information provided in this document is based on the most recent available information from the relevant data sources. The development of this document and the decisions made by the Council to propose this action are the result of a multi-stage public process. Thus, the information pertaining to management measures contained in this document has been improved based on comments from the public, the fishing industry, members of the Council, and NOAA Fisheries Service.

This document is available in several formats, including printed publication, CD-ROM, and online through the Council's web page in PDF format. The Federal Register notice that announces the proposed rule and the final rule and implementing regulations will be made available in printed publication, on the website for the Northeast Regional Office, and through the Regulations.gov website. The Federal Register documents will provide metric conversions for all measurements.

9.7.2 Integrity of Information Product

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NOAA Fisheries Service adheres to the standards set out in Appendix III, "Security of Automated Information Resources," of OMB Circular A-130; the Computer Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13,

15, and 22 of the U.S. Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson-Stevens Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

9.7.3 Objectivity of Information Product

For purposes of the Pre-Dissemination Review, this document is considered to be a “Natural Resource Plan.” Accordingly, the document adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; the Essential Fish Habitat Guidelines; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act.

This information product uses information of known quality from sources acceptable to the relevant scientific and technical communities. Stock status (including estimates of biomass and fishing mortality) reported in this product are based on either assessments subject to peer-review through the Stock Assessment Review Committee or on updates of those assessments prepared by scientists of the Northeast Fisheries Science Center. These update assessments were reviewed by the Groundfish Assessment Review Meeting III (GARM III; NEFSC 2008) and included participation by independent stock assessment scientists. Landing and revenue information is based on information collected through the Vessel Trip Report and Commercial Dealer databases. Information on catch composition, by tow, is based on reports collected by the NOAA Fisheries Service observer program and incorporated into the sea sampling or observer database systems. These reports are developed using an approved, scientifically valid sampling process. In addition to these sources, additional information is presented that has been accepted and published in peer-reviewed journals or by scientific organizations. Original analyses in this document were prepared using data from accepted sources, and the analyses have been reviewed by members of the Groundfish Plan Development Team/Monitoring Committee.

Despite current data limitations, the conservation and management measures considered for this action were selected based upon the best scientific information available. The analyses conducted used information from the most recent complete calendar years, through 2007, and in some cases includes information that was collected during t calendar year 2008. Complete data were not available for calendar year 2008. The data used in the analyses provide the best available information on the number of harvesters in the fishery, the catch (including landings and discards) by those harvesters, the sales and revenue of those landings to dealers, the type of permits held by vessels, the number of DAS used by those vessels, the catch of recreational fishermen and the location of those catches, and the catches and revenues from various special management programs. Specialists (including professional members of plan development teams, technical teams, committees, and Council staff) who worked with these data are familiar with the most current analytical techniques and with the available data and information relevant to the groundfish fishery.

The policy choices are clearly articulated, in sections 4.0 of this document, as the management alternatives considered in this action. The supporting science and analyses, upon which the policy choices are based, are summarized and described in section 7.0 of this document. All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced according to commonly accepted standards for scientific literature to ensure transparency.

The review process used in preparation of this document involves the responsible Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries Service

Headquarters. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, demersal resources, population biology, and the social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the action proposed in this document and clearance of any rules prepared to implement resulting regulations is conducted by staff at NOAA Fisheries Service Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

9.8 Executive Order 13132 (Federalism)

This E.O. established nine fundamental federalism principles for Federal agencies to follow when developing and implementing actions with federalism implications. The E.O. also lists a series of policy making criteria to which Federal agencies must adhere when formulating and implementing policies that have federalism implications. However, no federalism issues or implications have been identified relative to the measures proposed in Amendment 16. This action does not contain policies with federalism implications sufficient to warrant preparation of an assessment under E.O. 13132. The affected states have been closely involved in the development of the proposed management measures through their representation on the Council (all affected states are represented as voting members of at least one Regional Fishery Management Council). No comments were received from any state officials relative to any federalism implications that may be associated with this action.

9.9 Executive Order 13158 (Marine Protected Areas)

The Executive Order on Marine Protected Areas requires each federal agency whose actions affect the natural or cultural resources that are protected by an MPA to identify such actions, and, to the extent permitted by law and to the maximum extent practicable, in taking such actions, avoid harm to the natural and cultural resources that are protected by an MPA. The E.O. directs federal agencies to refer to the MPAs identified in a list of MPAs that meet the definition of MPA for the purposes of the Order. The E.O. requires that the Departments of Commerce and the Interior jointly publish and maintain such a list of MPAs. As of the date of submission of this document, the list of MPA sites has not been developed by the departments. No further guidance related to this Executive Order is available at this time.

9.10 Paperwork Reduction Act

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The authority to manage information and recordkeeping requirements is vested with the Director of the Office of Management and Budget (OMB). This authority encompasses establishment of guidelines and policies, approval of information collection requests, and reduction of paperwork burdens and duplications.

Amendment 16 may contain collection of information requirements subject to the PRA, including:

- Reporting requirements for SAPs and the Category B (regular) DAS Program

Applicable Law
Regulatory Flexibility Act (RFA)

- Changes to possession limits, which will change the requirements to notify NMFS of plans to fish in certain areas
- Differential DAS counting areas, which will require advance notice to NMFS of areas that will be fished
- Sector monitoring provisions, and sector formation provisions
- Provisions for reporting area fished, in order to facilitate assignment of catch to stock areas

The PRA package prepared in support of this action and the information collection identified above, including the required forms and supporting statements, will be submitted when the Proposed Action is determined and the final amendment is submitted.

9.11 Regulatory Flexibility Act (RFA)

The purpose of the RFA is to reduce the impacts of burdensome regulations and recordkeeping requirements on small businesses. To achieve this goal, the RFA requires Federal agencies to describe and analyze the effects of proposed regulations, and possible alternatives, on small business entities. To this end, this document contains an IRFA, found below, which includes an assessment of the effects that the Proposed Action and other alternatives are expected to have on small entities.

9.11.1 Economic Impacts on Regulated Small Entities

The Proposed Action would affect regulated entities engaged in commercial fishing for groundfish and entities that provide recreational fishing services to anglers. These entities include any vessel that has been issued either an open access or a limited access Federal permit under the Northeast Multispecies Fishery Management Plan (FMP). The size standard for commercial fishing (NAICS code 114111) is \$4 million in sales while the size standard for party/charter operators (part of NAICS code 487210) is \$7 million. Available data indicate that based on 2005-2007 average conditions median gross sales by commercial fishing vessels were just over \$200,000 and no single fishing entity earned more than \$2 million. Note that available data are not adequate to identify affiliated vessels so each operating unit is considered a small entity for purposes of the RFA. For regulated party/charter operators the median value of gross receipts from passengers was just over \$9,000 and did not exceed \$500 thousand dollars in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated party/charter operators are determined to be small entities under the RFA. The remaining discussion describes the number of regulated entities, the number of participating regulated entities, and the potential economic impacts on participating regulated entities for party/charter operators and for commercial fishing vessels.

9.11.2 Commercial Fishing Vessels

The Proposed Action would substantially change the provisions developed under Amendment 13 affecting sector formation and would substantially change effort controls for commercial fishing vessel owners that do not choose to join a sector. Among vessel owners that possess a permit to land groundfish, only limited access permit holders would be eligible to join a sector. Vessel owners that possess only an open access permit would continue to be regulated with effort controls. Since the economic impacts on small fishing businesses depend on the type of permit(s) held economic impacts for each permit type is discussion below.

9.11.2.1 Open Access Permits (HB, I, J, K)

Of the available open access permits that may be held by vessel owners the Proposed Action would not make any changes to regulations affecting permit categories J or K. Permit category I is a recreational party/charter permit. The potential impacts of the Proposed Action changes to regulations affecting party/charter operators are discussed later. Permit category HB is an open access permit requiring the use of rod and reel hand gear and allows the vessel owner to retain up to a specified possession limit for groundfish with special provisions for cod; the primary target species for these vessels. Provisions for the cod possession limit tie the possession limit for HB permits to the daily GOM cod possession limit for limited access permits, such that, the HB possession limit would be proportionally adjusted to the change in the limited access permit possession limit. Currently any vessel with an HB permit is limited to a cod possession limit of 75 pounds. Since the limited access possession limit would be increased from 800 to 2,000 pounds per day the HB permit possession limit would be increased from 75 to 200 pounds. Thus the Proposed Action would provide increased economic opportunities for vessel owners that now hold HB permits and may provide an incentive for new entrants.

During FY 2007 a total of 1,292 category HB permits were issued. Approximately half of these permits reported any fishing activity on a VTR during FY 2007. Of these active vessels only 75 reported landing cod. Among those vessels landing cod a total of 342 reported trips were taken on which 302 trips landed less than 75 pounds. Thus, based on recent activity reports the change in the cod trip limit may have a modest positive impact on current participating small fishing entities. Given the substantial increase in the cod trip limit under the Proposed Action past activity may not be a reliable predictor of future activity. Nevertheless, the raised possession limit for cod may be expected to offer improved economic opportunities to both current participants in the fishery as well as being an attractive alternative for fishing businesses that may participate in the future.

9.11.2.2 Limited Access Permits (HA, A, C, D, E, F)

The Proposed Action would limit eligibility to join a sector to vessel owners that hold a limited access permit. This means that limited access permit holders may elect to join a sector or opt to remain under an effort control program, thereby, offering vessel owners greater flexibility in making business decisions. However, this flexibility may be illusory in some instances. Since sectors are self-selecting some vessel owners may not be accepted into the sector of their choice or any sector at all. Vessel owners with little or no PSC to contribute to a sector's overall ACE may find it difficult to find a sector that will accept them. Since each sector member is required to sign a joint and severable contract, some vessel owners may not be accepted for past behaviors that may be deemed unacceptable to the sector membership. As of September 1, 2009 a total of 723 of 1,480 eligible permits elected to join a sector. The extent to which any of the circumstances that may have hindered individual flexibility previously described had an impact on any of the 757 permits that did not join a sector is unknown.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be expected to be based on whichever (i.e. joining a sector or opting for the effort control program) offers the greater economic advantage. Since sectors will be granted a set of universal exemptions and may request additional exemptions from regulatory measures that will apply to vessels that opt for the so-called "common pool" sector vessels will be afforded greater flexibility than otherwise. However, sectors will have to bear the administrative costs associated with preparing an environmental assessment as well as the monitoring costs associated with a sector manager, dockside monitoring, and at-sea monitoring. The magnitude of the administrative costs for sector formation and operation was estimated to range from \$60,000 to \$150,000 per sector

and the cost potential cost for dockside and at-sea monitoring ranged from \$13,500 to \$17,800 per vessel. Although these estimates are uncertain they serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. At least for FY 2010 the majority of these administrative costs will be subsidized by the NMFS. Whether these subsidies- which include providing financial support for preparation of sector EAs, dockside monitoring, and at-sea monitoring - will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative during FY 2010 than otherwise.

The economic impacts of the Proposed Action on vessel owners that choose to join a sector cannot be reliably quantified since any given sector may be expected to operate in a different manner. A quantitative estimate of the economic impact of the Proposed Action effort control measures on fishing businesses were reported in Section 7.5.1.3.1.1. Since joining a sector is voluntary the economic impact on small fishing businesses that choose to join a sector may be expected to be less than that estimated for the common pool.

Since the number of vessels that would join a sector was not known, the economic impacts of the Proposed Action effort control measures reported in Section 7.5.1.3.1.1 were based on the assumption that no new sectors form. Under this assumption vessels operating under remain in the common pool may be expected to experience gross revenue losses of 9.8% relative to a 2005-2007 baseline. Note that this impact is only slightly larger than the estimated reduction in revenue associated with the interim action measures (9.5%) using the same 2005-2007 baseline. This means that the aggregate impact of the Proposed Action may have no additional economic burden beyond that already incurred through interim action. However, since there are substantial differences between the interim and the Proposed Action measures, the impacts may be expected to differ among participating vessels even though the aggregate estimated impacts were similar.

Estimated impacts for the Proposed Action suggest that the impact on fishing revenue may be expected to be larger on smaller vessels in terms of physical size compared to larger vessels. Similarly, impacts on gillnet vessels tended to be higher than impacts on trawl vessels. These tendencies may be a reflection of the differential impacts associated with trip or day boat status. That is, both trip and day boats are affected by the same DAS reduction. However, the 24-hour clock is likely to have a larger impact on day boats since most trips are less than 24-hours in duration. In some respects the 24-hour clock has economic effects that are similar to differential DAS counting since the number of trips that may be taken given the same allocation of DAS is reduced. The extent to which the increased trip limit for GOM cod mitigates this effect on day boats is uncertain.

The Proposed Action would implement a suite of gear restricted areas that would limit the use of fishing gear to gear that meet specified performance characteristics that reduce bycatch of flatfish; winter flounder and yellowtail flounder in particular. The designated restricted gear areas correspond to the SNE/MA stock areas for these two species. Vessels that opt for the common pool would be required to adopt specialized gear at an estimated cost of \$13,000 for a complete setup or about \$750 to modify existing gear whereas sector vessels would not be subject to the restricted gear regulations.

The Proposed Action effort control measures would apply to limited access vessels that are managed by DAS. This includes anyone with a limited access permit categories A, D, E and F. Neither permit category C (small vessel exemption) nor category HA (hand gear) vessels are regulated by DAS. These vessels would be unaffected by the principal effort controls under Proposed Action and would benefit from the change in trip limits for GOM cod. The GOM cod

possession limit would be increased from 200 lbs to 750 pounds while category C permit holders would be subject to the same trips limits as that of DAS vessels. Additionally, since vessels with these permits are not regulated by DAS they would not be subject to the proposed commercial common pool accountability measures.

Given the economic considerations presented by the effort control measures vessels with limited access category C or HA permits may be expected to have comparatively little PSC to bring to a sector and may be expected to have substantially improved economic opportunities under the common pool measures compared to the interim action. In fact, none of the limited access category C permit holders had elected to join a sector as of September 1, 2009 and only 6 of the 130 category HA permit holders had elected to join a sector. Of the remaining vessels that had not elected to join a sector 337 DAS permit holders had no Category A DAS of which 164 had not qualified for a PSC for any stock. These vessels may still be able to participate in the groundfish fishery but would only be able to do so through the DAS leasing program. Among the vessels that did not join a sector and either had some PSC and/or had nonzero Category A DAS the reasons for electing to remain in the common pool are uncertain. Many of these vessels may have had low PSCs, may have not been accepted by any sector, considered the cost of joining a sector to be too high, or made a business decision in which the economic opportunities of fishing under effort controls to be superior to joining a sector.

The flexibility afforded sectors includes exemptions from certain specified regulations as well as the ability to request additional exemptions. Sector members would no longer be limited by DAS allocations and would instead be limited by their available ACE. In this manner the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the ACE. This change places a premium on timing of landings to market conditions as well as changes in the selectivity and composition of species landed on fishing trips.

The substantial changes affecting vessels that choose to join a sector make it difficult to assess the economic impact on these fishing businesses. The only sector that has been operating since sector allocation was first authorized in 2004 is the Georges Bank Cod Hook Sector. The average revenue per sector member during fishing years 2004 to 2008 increased from \$61 thousand in 2004 to \$112 thousand in 2008. Comparative analysis of vessels using similar gear that did not join sectors suggests that vessels that joined the sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions or a self-selection effect is not known. Nevertheless, available information is suggestive that economic performance among sector vessels may be expected to improve relative to continuing to remain under effort controls.

Table 307 - Summary of GB Cod Hook Sector Performance

Fishing Year	Revenue per Vessel	Total Revenue	Members
2004	\$61	\$3,529	58
2005	\$86	\$4,217	49
2006	\$78	\$2,882	37
2007	\$102	\$2,545	25
2008	\$112	\$2,130	19

The Proposed Action would allow the trading of stock-specific ACE between sectors that would provide additional flexibility to participating vessels in the event that 1) the initial portfolio of

ACE by stock does not match the desired portfolio, or 2) a sector exceeds its ACE and needs additional quota to cover the overage to be able to continue fishing. The qualification criterion used to compute the PSC for each stock means that allocations of ACE may or may not be consistent with contemporary fishing patterns. The portfolio of stock-specific PSC based on the qualifying years from 1996-2006 that sectors will end up with may not quite match up with current activity or fishing opportunities. While inter-sector trading of ACE will allow sectors to balance initial and desired quota allocations this is not likely to be a costless transaction. The potential shortfalls or surplus in PSC for any given sector was evaluated for each sector by subtracting the average shares by stock for fishing years 2005-2007 from the sector PSC (Table 2). In this manner a positive value is indicative of a PSC that exceeds recent activity. In this case ACE for this specifies may represent a surplus that could be traded to another sector. By contrast, a negative value means that the PSC is less than recent activity and the sector may be expected to want to acquire additional ACE. Note that even sectors with a comparatively large negative value for GB haddock may not need addition GB haddock ACE since the proposed ACL exceeds recent landings by a substantial amount.

For several sectors (Port Clyde Community Groundfish and the Northeast Coastal Community are some examples) there was reasonable correspondence between recent activity shares and the sectors' PSCs as the difference between the two did not exceed $\pm 2\%$. In other cases, sectors either have substantial potential surplus or deficits depending on stock. For example, recent GOM cod landings exceed the NSC 3 PSC by 10.3%. On the other hand, recent GOM cod landings by vessels that have enlisted in the Sustainable Fisheries Sector were 6.7% below their sector's PSC. Whether the Sustainable Fisheries Sector may choose to increase targeting of GOM cod or may be trading partners with NSC 3 is not known.

Although the common pool is not formally considered a sector, its PSC would be the basis for assigning an ACL to the common pool. Note that the difference between the common pool recent activity share and the PSC is positive for all stocks except for GOM haddock. This means that the ability for sector vessels to trade ACE amongst themselves to match 2005-2007 activity shares will not be possible since the aggregate "ACE" assigned to the common pool will be larger than its recent history and cannot be traded. For the majority of stocks this difference is small (less than $\pm 2\%$ but for SNE/MA yellowtail flounder this difference is 15.3%. Thus sectors may find it difficult to obtain sufficient SNE/MA yellowtail ACE to be able to take full advantage of all available fishing opportunities within this stock area.

Table 308 - Summary of Sector PSC minus 2005-2007 Average Share by Sector

Sector Name	Number of Permits	GOM Cod	GB Cod	GOM Haddock	GB Haddock	CCGOM Yellowtail	GB Yellowtail	SNEMA Yellowtail	Pollock	Redfish	White Hake	Plaice	GOM Winter	GB Winter	Witch
Common	757	2.4%	2.3%	-0.7%	1.1%	4.1%	0.8%	15.3%	1.8%	1.7%	2.7%	4.1%	7.4%	1.1%	1.2%
NSC2	75	-1.8%	-1.7%	-10.2%	1.3%	-8.1%	0.4%	1.6%	-5.3%	-6.7%	1.4%	0.5%	-3.4%	-0.9%	-1.4%
NSC3	74	-10.3%	0.9%	-3.5%	0.0%	-0.1%	0.0%	0.4%	-1.7%	0.9%	1.8%	3.6%	1.3%	0.0%	1.9%
NSC4	47	0.7%	1.9%	-0.5%	2.2%	0.0%	1.2%	2.0%	0.7%	2.8%	2.9%	3.3%	0.4%	-0.4%	2.0%
NSC5	39	0.3%	-0.9%	0.7%	1.3%	1.3%	0.7%	-9.3%	0.4%	0.5%	0.2%	-0.7%	0.7%	-0.6%	0.1%
NSC6	21	0.5%	-1.1%	-0.9%	0.1%	-1.0%	0.4%	3.5%	-0.3%	-2.4%	-0.9%	-3.3%	1.0%	1.5%	-2.5%
NSC7	25	0.4%	-2.1%	0.5%	1.0%	3.3%	0.5%	-3.1%	0.1%	0.3%	-0.1%	0.3%	2.9%	-5.0%	0.3%
NSC8	22	0.3%	-3.2%	0.0%	-0.1%	3.2%	0.6%	-6.2%	-0.1%	-0.1%	-0.1%	-0.6%	1.1%	2.3%	-0.8%
NSC9	44	1.3%	-5.3%	2.1%	0.4%	2.1%	-0.6%	-1.3%	1.8%	3.7%	1.5%	1.3%	1.4%	4.2%	1.0%
NSC10	33	-2.1%	-0.1%	-2.2%	0.4%	-9.2%	1.0%	0.4%	0.9%	0.3%	0.4%	0.6%	-13.1%	0.5%	0.4%
NSC11	47	0.1%	0.2%	-0.3%	0.0%	-0.3%	0.0%	0.0%	-5.5%	-0.2%	0.7%	1.2%	0.2%	0.0%	0.4%
NSC12	10	0.5%	0.0%	0.0%	0.0%	-0.1%	0.0%	0.0%	0.1%	0.0%	0.1%	0.2%	-0.1%	0.0%	0.1%
NSC13	31	0.7%	-4.5%	0.4%	1.1%	0.5%	-2.0%	-4.9%	0.7%	1.8%	0.5%	0.1%	0.5%	-2.1%	-0.6%
GB Cod Fixed Gear	88	1.2%	15.3%	-0.5%	-4.3%	0.8%	0.0%	0.1%	5.1%	-0.7%	0.7%	0.4%	0.3%	0.0%	0.5%
Tri-State	16	0.6%	-0.4%	2.6%	0.7%	0.1%	-4.5%	-2.2%	-0.6%	-0.3%	-1.5%	-3.2%	-2.8%	-0.4%	-0.5%
Sustainable Harvest	93	6.7%	-1.6%	13.3%	-5.2%	3.6%	1.5%	5.0%	1.8%	-1.9%	-8.6%	-9.8%	2.2%	-0.1%	-2.2%
NE Coast Community	19	0.3%	0.1%	0.2%	0.0%	0.0%	0.0%	-2.0%	0.3%	0.2%	0.3%	0.2%	0.0%	-0.2%	0.1%
Port Clyde	39	-1.7%	0.2%	-0.9%	0.0%	-0.1%	0.0%	0.7%	-0.3%	0.0%	-1.9%	1.7%	0.0%	0.0%	-0.1%

9.11.2.3 Commercial Fishing Impacts of Non-Selected Effort Control Alternatives

In addition to the Proposed Action two other effort control programs were considered. These alternatives included one that relied on increased use of differential DAS (Alternative 2a) and another (Alternative 4) that would have implemented a 40% reduction in DAS over FW42 levels as well as gear restricted areas. A detailed comparison of estimated economic impacts between the Proposed Action and the non-selected alternatives may be found in Section 7.5.1.3.1.3. The findings are summarized herein.

The aggregate impact of the Proposed Action was lower (a 9.8% reduction in total fishing revenue) as compared to Alternative 2A (14.7% reduction) and Alternative 4 (18.5% reduction). Among the considered alternatives Alternative 4 tended to have larger adverse impacts on fishing businesses across home port states and dependence on groundfish for total fishing income. Alternative 2A tended to have larger adverse impacts on vessels from Maine, and Massachusetts while the Proposed Action impacts were larger for vessels from New Hampshire as well as from Southern New England and Mid-Atlantic states. However, due to differences in fishing strategies at the individual business level one alternative may provide regulatory relief for some vessels but may prove more burdensome for others. There was no one alternative that would have provided regulatory relief for all fishing businesses.

9.11.3 Party/Charter Impacts

The Proposed Action continues most management measures implemented under the Interim Action. For this reason, the Proposed Action would not have substantial economic impacts over and above what had previously analyzed. Nevertheless the expected economic impacts on small entities engaged in party/charter businesses are discussed below. The manner in which the realized economic impacts during FY 2009 and continuing into FY 2010 and beyond may differ from that discussed below cannot be assessed at this time because the FY 2009 fishing year will not end until April, 2010.

Party/charter permits are issued as an open access category I permit under the Northeast Multispecies FMP. During Fishing Year 2007 (FY 2007) 762 party/charter permits were issued. Additionally, limited access permit holders (1,525 during FY 2007) may take passengers for hire, but do not possess a party/charter permit since the Multispecies FMP prohibits issuing both an open access and a limited access permit to the same vessel. During FY 2007 there were 128 of the 762 open access party/charter permit holders that reported taking at least one for-hire trip, of which, 74 reported keeping groundfish on one or more trips. An additional 29 limit access permit holders reported taking passengers for hire, of which, 18 reported keeping groundfish on one or more for-hire trips. Thus a total of 92 party charter operators participated in the party/charter recreational groundfish fishery during FY 2007.

Available data indicate that about two-thirds of participating party/charter operators would not be adversely affected by the Proposed Action. These vessels either did not take any trips in the Gulf of Maine during April 1 to April 15 that retained cod, did not report keeping any winter flounder in the SNE/MA stock area, or did not retain more than 10 Georges Bank cod on any for-hire trip. The remaining 29 participating vessels were estimated to lose an average of \$10,393 in sales due to potential lost passengers. All but four of these affected vessels were adversely affected by only one of the Proposed Action recreational measures.

The realized impact on party/charter vessels is uncertain since impacts depend on angler response to any one of the proposed measures. These responses may be expected to have different impacts depending on where party/charter operators are located. The majority of party/charter operators from Maine, New Hampshire, and Massachusetts take trips exclusively in the Gulf of Maine. Passenger demand in these three states would only be adversely affected by the two-week extension of the closed season on Gulf of Maine cod. While party/charter operators may be expected to try to shift trips that would otherwise have taken place during early April to later in the month or into May the ability to do so may be limited. At least some of the impacts of the extended closure may be offset by the reduction in the haddock size limit as this action would increase the number of opportunities for party/charter passengers to keep more haddock. Since the majority of occasions where haddock were kept occurred in the Gulf of Maine, to the extent that party/charter demand is influenced by the chance to keep more fish, passenger demand may be expected to increase for Gulf of Maine party/charter operators.

Unlike the party/charter passengers in the Gulf of Maine, anglers taking party/charter trips may be affected by the removal of the bag limit on Georges Bank cod and/or the prohibition on keeping winter flounder. Compared to angler response to the Gulf of Maine cod closure, angler response to these measures may be larger because they would affect all trips not just trips during a particular season. The prohibition on retaining winter flounder may be particularly sensitive since the winter flounder season is short and occurs during early spring when the availability of substitute species is limited. Angler response to removing the bag limit on Georges Bank cod is uncertain. Realized trips indicate that the majority of angler trips harvest fewer than 10 cod per angler. However, angler trip demand is believed to be driven by expectations and the extent to which those expectations may be constrained by regulation may be anticipated to influence demand. Note that these two measures (prohibition on SNE/MA winter flounder and removing the GB cod bag limit) are likely to have a larger impact on party/charter operators from Rhode Island to New Jersey. Since the number of trips that also landed haddock is likely to be comparatively small, reduced passenger demand for trips in the SNE/MA area as a result of the prohibition on landings SNE/MA winter flounder may not be expected to be offset by the reduction in the haddock size limit. It is more likely that removing the GB cod bag limit will have more of an influence and would be expected to increase passenger demand for trips. When compared to the No Action alternative, however, this is not a change in management measures.

In addition to the measures described above that were implemented on May 1, 2009 the Proposed Action would remove the limit on the number of hooks and would remove the prohibition on filleting fish at sea. These two measures would provide some economic relief to party/charter operators although the relative magnitude of this relief is uncertain. Removal of the limit on hooks would improve the likelihood that a recreationally caught fish would be able to be retained. At least part of the underlying motivation fishing is to keep fish particularly in so-called meat fisheries removal of the hook limit would enhance the value of a recreational fishing trip even if the number of fishing trips does not change. At-sea filleting of fish may be expected to increase the quality of services that party/charter operators may offer to their customer base. Whether this service increases the demand for party/charter trips is uncertain, but would increase the overall value of the recreational fishing experience.

9.12 Executive Order 12866

The purpose of E.O 12866 is to enhance planning and coordination with respect to new and existing regulations. This E.O. requires the Office of Management and Budget (OMB) to review regulatory programs that are considered to be “significant.” E.O. 12866 requires a review of

proposed regulations to determine whether or not the expected effects would be significant, where a significant action is any regulatory action that may:

- Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Northeast groundfish fishery has been regulated by days at sea (DAS) since 1994. Since then the fishery has been regulated through a series of DAS reductions in concert with numerous other measures including year-round and seasonal area closures, gear restrictions, and trip limits. In the absence of output controls these measures were unable to prevent persistent overfishing from occurring, in part, because DAS controls lack a direct link between the individual benefits received from fishing and the external costs of overfishing. The Proposed Action would bring the Northeast Multispecies FMP into compliance with the 2006 MSA reauthorization that required setting of ABCs, ACLs and AMs. The Proposed Action would expand the use of sector allocation originally established in 2004. Expansion of sector allocation will also key the transition from effort controls to output controls where sector allocation is one means of allocating available ACL to groups of affiliated vessel owners. These allocations to sectors will more effectively link actions with the costs and benefits of those actions limiting the external diseconomies to individual sector members. That is, actions by one sector will not impose external diseconomies on other sectors, but within-sector external diseconomies may remain.

The economic impacts of the Proposed Action are uncertain. Analysis of the impacts of the effort control measures (Section 7.5.1.3.1) indicate that fishing revenue could decline by a little less than 10%. During fishing year 2007 just over 600 vessels reported groundfish revenues. The total value of all species reported by these 600 vessels was \$193.3 million in constant 1999 dollars. Applying the 10% reduction in revenue to FY 2007 totals landed by the 600 groundfish vessels, results in an estimated reduction of \$19.3 million measured in constant 1999 dollars. Note, however, that the estimated reduction in fishing revenue was based on an assumption that no new sectors would form, and that the estimated impact on fishing revenue was based on the same baseline (fishing revenue during 2005-2007) as that of the Interim Action. The former was necessary because many of the provisions for joining a sector including qualification criteria for PSC were not known at the time the analysis had to be completed, while the latter means that the economic impacts of the Proposed Action effort control measures may result in comparatively little added economic burden during 2010 beyond what has already occurred as a result of taking action during 2009. That is, the estimated reduction in fishing revenue for 2009 was 9.5% while the estimated reduction under the Proposed Action was 9.8%. At this time the realized impact of taking Interim Action is not known since the 2009 fishing year began in May, 2009.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be expected to be based on whichever (i.e. joining a sector or opting for the effort control program) offers the greater economic advantage. Since sectors will be granted a set of universal exemptions and may request additional exemptions from regulatory measures that will apply to vessels that opt for the so-called “common pool” sector vessels will be afforded greater flexibility than otherwise. Sector members would no longer be limited by DAS allocations and would instead be limited by their available ACE. In this manner the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the ACE. This change places a premium on timing of landings to market conditions as well as changes in the selectivity and composition of species landed on fishing trips. The manner in which this may be accomplished will depend on the operational rules established by each sector and the relative skill with which sector members are able to manage a portfolio with different levels of quota available for different stocks. The only sector that has been operating since sector allocation was first authorized in 2004 is the Georges Bank Cod Hook Sector. The average revenue per sector member during fishing years 2004 to 2008 increased from \$61 thousand in 2004 to \$112 thousand in 2008. Comparative analysis of vessels using similar gear that did not join sectors suggests that vessels that joined the sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions or a self-selection effect is not known. Nevertheless, available information is suggestive that economic performance among sector vessels may be expected to improve relative to continuing to remain under effort controls.

Table 309 - Summary of GB Cod Hook Sector Performance

Fishing Year	Revenue per Vessel (\$1,000)	Total Revenue (\$1,000)	Members
2004	\$61	\$3,529	58
2005	\$86	\$4,217	49
2006	\$78	\$2,882	37
2007	\$102	\$2,545	25
2008	\$112	\$2,130	19

Summary

The Proposed Action would not be significant for purposes of E.O. 12866. Quantified impacts would be approximately \$19 million, but may not differ substantially from that estimated for the Interim Action. Available data suggest that vessels that join sectors will be more efficient than they would otherwise be if they were unable to join a sector.

9.13 E.O. 12898 - Environmental Justice

Executive Order (E.O.) 12898 requires that, “to the greatest extent practicable and permitted by law... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions...” Due to data constraints and other concerns, the means for conducting this analysis in detail are not yet available at this time. Nonetheless, many of the participants in the groundfish industry may come from lower income and/or ethnic minority populations. These populations may be more vulnerable to more restrictive management measures. For example, in many ports crew may be

Applicable Law
E.O. 12898 - Environmental Justice

comprised of ethnic minorities, and many regions in which fishing is an important livelihood can also be economically impoverished. Although some economic impacts are likely to occur, it is not expected nor can it be shown at this time that there would be a disproportionately high and adverse effect on the health or environment of minority and low-income populations.