

## 5.5 Enforcement Analysis

The following general enforcement comments and concerns are based on the specific alternatives in draft Amendment 13 to the Northeast Multispecies FMP. These comments have not been updated based on the proposed action to achieve rebuilding objectives. The proposed action, however, adopts many of the same measures that were considered in Alternative 1. Specific comments from enforcement on the alternatives are now annotated with the proposed action.

**Closed area enforcement** issues remain the same. These areas must be clearly defined with limited access to the areas in order to allow for efficient and effective offshore enforcement. Ample notice and well defined rules and restrictions must be in place for successful closed area enforcement.

**Possession limits** do not present any new enforcement concerns although can be manpower intensive in general. Vessels fishing in specific areas with restrictions on possession limits can be monitored more effectively though the use of VMS.

**Gear restrictions** are enforceable at-sea when they are clearly defined and limit the use of gear with net stowage requirements and other measures remaining in place. Gear restrictions should be written to encompass dockside enforcement.

**Minimum fish size** can be manpower intensive. No new enforcement concerns.

**Special access programs** which allow certain vessels in closed areas needs to be closely monitored. VMS would be an extremely important enforcement monitoring tool for any special access programs. The NOAA Fisheries Office for Law Enforcement (OLE) recommends the issuance of a special authorization letter that defines the requirements and restrictions for special access programs. In order to maximize enforcement, NMFS Law Enforcement suggests vessels should not be allowed to fish in any other areas while operating under a special access trip.

**Area management measures** also pose enforcement concerns when vessels are allowed to fish in multiple areas. NMFS Law Enforcement recommends vessels who elect to fish in a particular area, should fish in that area for the entire trip. A vessel must declare its intention to fish in a particular area prior to sailing on that trip. From the enforcement perspective, VMS would be an extremely valuable enforcement tool in any area management scheme.

**Sector management** poses certain enforcement and legal concerns. In general, NMFS Law Enforcement does not support sector management, however, more details are required to make an informed decision.

**TAC monitoring under sector and area management alternatives** requires and assumes that daily electronic dealer reporting will take place. If TACs are area specific, this proposal would require monitoring of every vessel's activity to ensure they are fishing in the specified area. To successfully accomplish the monitoring, enforcement recommends mandatory VMS on all vessels involved in this fishery.

**Recreational measures** need to be consistent across the board in the recreational fishery. Same bag limits/possession limits for recreational and head/charter boats.

**Experimental fisheries** should be limited with clearly defined restrictions and limitations that are enforceable.

**DAS leasing** may pose significant enforcement concerns due to the burden of administrative tracking. Program requirements must be clearly identified with an adequate administrative process in place prior to implementation.

**Running clocks** can only be enforced with dockside presence. NMFS Law Enforcement does not support the use of running clocks.

### **5.5.1 Fishery Administration**

This section addresses topics material to the management of the multispecies fishery.

#### **5.5.1.1 Fishing Year**

Altering the fishing year as described in this section does not present any enforcement concerns. For purposes of enforcement, fishing years should be consistent among all fishery management plans.

*The fishing year is not being changed.*

#### **5.5.1.2 DAS Pro-Ration**

This alternative provides two options concerning the proration of DAS. The options focus on how DAS will be adjusted if the fishing year is changed and/or if the management measures for Amendment 13 are implemented during the ongoing fishing year. DAS proration is not an enforcement issue as currently described in this alternative and poses no new enforcement concerns. NMFS Law Enforcement strongly suggests advanced notification to industry and enforcement regarding new DAS allocations.

*DAS pro-ration has not been adopted.*

#### **5.5.1.3 U.S./Canada Resource Sharing Understanding**

A significant problem is that the US/CA area is around CA II, where there could be a separate TAC for these two areas. Access options, some mutually exclusive, are many and yet to be determined, including: declaration, one area versus several areas, VMS or sign-in program, DAS not counted or counted 2 for 1 or 3 for 1.

It is the consensus of the Enforcement committee that VMS should be required.

*The proposed action adopts A VMS requirement for fishing in the US/CA area.*

#### **5.5.1.4 Special Access Programs**

This section proposes a general program which would allow fishing for a specific stock or stocks which may be permitted based on gear used, techniques, DAS adjustments, specific area(s), specific stocks or any other parameters which could be developed to allow a specific fishery.

NMFS Law Enforcement reserves comment until specific measures are identified for the special access program. The NMFS Law Enforcement issues raised in 5.5.1.4.1(Georges Bank Yellowtail Flounder Access Program), 5.5.1.5(Closed Area Administration) and 5.5.3.2.4(Gear Restrictions) would also apply to this section.

##### **5.5.1.4.1 Georges Bank Yellowtail Flounder Access Program**

This measure would allow fishing vessels to make two trips per month into a specific area of Closed Area II to fish for yellowtail flounder from June through December. Under this program vessels are restricted to 30,000 pounds of yellowtail flounder, must use VMS, do not start their DAS clock until they enter CA II unless they are fishing east of 69W on Georges Bank and are restricted to no more than one-fifth of the GB cod landing limit.

This measure is similar to the Sea Scallop Exemption Program, which allows vessels to fish in closed areas under specific conditions. Enforcement's recommendation on any consideration of allowing fishing in a closed area in the multispecies fishery should be modeled after the sea scallop exemption program. For instance, vessels would not be allowed to harvest yellowtail outside of the Exemption Area, must not enter or exit the Exemption Area more than once per trip and provide daily fishing reports through VMS. Additionally, vessels electing to fish in the Exemption Area would have a specific number of DAS subtracted from its DAS allocation. If the vessel exceeds the specific DAS, then DAS would be charged as actual time.

This scheme proposes allowing vessels to fish for other species; (i.e. GB cod) after leaving Closed Area II. Permitting vessels to fish in a closed area for a specific species, then exit the area and continue to fish for other species would pose considerable enforcement concerns. Distinguishing between fish (i.e. cod) caught in the exempted area or outside of the area is highly unlikely.

All limited access multispecies vessels intending to fish in this Exemption Program would be required to have a working VMS unit. Prior to fishing in the Exemption Program, each vessel should give advanced notification for each trip. Increasing the use of VMS would escalate enforcement resources requiring additional manpower for monitoring, system evaluation and investigative matters. As the demands and functions of VMS increase, so does the cost of the VMS unit.

*The proposed action adopts a VMS requirement.*

#### **5.5.1.4.2 Southern New England/Mid-Atlantic Winter Flounder Incidental Catch Program**

This alternative will allow a by-catch of 200 pounds of winter flounder while fishing for summer flounder west of 72-30W. The enforcement issues are similar to those previously described under area access programs. Enforcement of this management scheme are best achieved utilizing VMS and USCG surface patrols in conjunction with at-sea boardings. Dockside enforcement would be difficult without the usage of VMS tracking.

#### **5.5.1.5 Closed Area Administration**

Consideration of allowing additional gears into closed areas will "complicate enforcement of closed areas." Increasing the number of vessels allowed to fish in closed areas without VMS will compromise enforcement, whereas vessel identification and fishing activity will be difficult to monitor. Monitoring of the additional vessels would also expand resource needs of enforcement to effectively ensure vessels do not possess multispecies.

*No changes are being made to the vessels allowed into closed areas with the exception of approved special access programs, all of which include a VMS requirement.*

#### **5.5.1.6 Leasing of DAS**

This alternative proposes the leasing of DAS from one vessel to another. Allocation or DAS leasing (trading) is a current management scheme in the surf clam/ocean quahog fisheries and is authorized by NOAA/NMFS. Development of a DAS leasing alternative should incorporate the leasing/trading of allocation of the surf clam/ocean quahog system into the multispecies fishery.

Program requirements must be clearly identified with an adequate administrative process in place prior to implementation. At a bare minimum, leases would have to be arranged, documented and approved and ample notification provided to enforcement and fishermen, detailing each vessel's new DAS allocation prior to the upcoming fishing year.

#### **5.5.1.6.1 Conservation Equivalency Alternatives**

These alternatives propose varying methods of leasing and subleasing DAS between multispecies vessels. As described in these alternatives, these measures do not pose any concerns to enforcement other than, those detailed in 5.5.1.6.

#### **5.5.1.6.2 Limitations on Number of DAS Leased**

Enforcement issues regarding DAS leasing are addressed in 5.5.1.6 and are applicable to this proposal.

#### **5.5.1.6.3 Permit History Revisions**

This alternative does not present any new enforcement concerns.

#### **5.5.1.7 Recreational Fishing Permit**

This alternative proposes four options;

- (1) no federal permit required
- (2) possessing regulated multispecies in the EEZ requires a permit
- (3) fishing for regulated multispecies in the EEZ requires a permit
- (4) fishing for and possessing regulated multispecies in the EEZ requires a permit

This alternative does not present any new enforcement related concerns as currently written. Enforcement of this management scheme relies primarily on at-sea boardings. Dockside enforcement of recreational permits would be extremely difficult without the ability to determine where the vessel had fished.

Should recreational vessel operator permits and fishing vessel trip reports be required, these provisions would require an increase in enforcement resources in order to effectively monitor the recreational fleet and the new permit requirements.

The proposed action does not adopt a recreational fishing permit.

#### **5.5.1.8 Running Clock Alternatives**

Running clocks can only be enforced via a dockside presence. NMFS Law Enforcement does not support the use of running clocks.

NMFS Law Enforcement supports the use of an "Industry funded weighmaster."

Permitting vessels to land overages and continually altering DAS poses several enforcement concerns. Vessels participating in this program should be required to do so under an extended period of time.

The "Extended Modified Running Clock" or similar versions have not been a reliable and manageable method to determine DAS. In the past, individuals who landed overages simply called-out of the DAS program upon landing, when they believed enforcement was not around. They did not call the "cod hail line" and if gone undetected, the overage was not accounted for. This proposal is manpower intensive and enforcement is unlikely.

*The proposed action does not change the modified running clock.*

#### **5.5.1.9 Observer Coverage**

Increasing observer coverage does not present any specific enforcement concerns and provides additional methods of discard and by-catch reporting, as well as monitoring of fishing activity. An increase in the amount of observer coverage in other fishery management plans, has added instances requiring enforcement involvement.

#### **5.5.1.10 Vessel Monitoring System Requirements**

In conjunction with this measure, NMFS Law Enforcement is of the opinion that any potential cost savings may be offset by deactivation/reactivation charges by the vendor.

In an effort to maintain enforcement consistency in VMS requirements, NMFS Law Enforcement does not support allowing any VMS vessel to be at-sea without a working/active unit. NMFS Law Enforcement recommends modification of the measure to allow vessels to opt out of VMS only if the vessel is to remain in port or tied to the dock.

*The proposed action does not allow a vessel to be at sea without an operable VMS. Cost savings for many vessel include not just communication costs, but the costs associated with running a generator to provide power to the VMS.*

#### **5.5.1.11 Day Gill Net Block Out of the Fishery**

Removing all requirements to take blocks out of the multispecies fishery does not present any specific enforcement concerns. NMFS Law Enforcement supports this measure for purposes of decreased enforcement requirements.

*The proposed action does not change the day gillnet block out requirements.*

#### **5.5.1.12 DAS Counting**

This alternative does not present any new enforcement concerns. *The proposed action does not change DAS counting provisions.*

#### **5.5.1.13 Reporting Requirements**

These reporting requirements are described as “broad” alternatives and can only be addressed in a very general manner.

Daily electronic dealer reporting does not present any enforcement concerns as described in the scheme. Reporting through the DAS call-in system and a separate call-in number are addressed in 5.5.3.4.2.1 and are applicable.

#### **5.5.1.14 Open Access Hand Gear-Only Permit Alternatives**

These alternatives do not pose any new enforcement related concerns.

#### **5.5.1.15 Sector Allocation**

Sector allocations are described to be an “OPTION” and voluntary. This option is designed to augment the primary overall management program selected for Amendment 13.

##### **5.5.1.15.1 Enforcement of Sector Provisions**

Under this provision, the sector “is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors.” As written, the language regarding enforcement’s role is unclear. Enforcement recommends clear concise language detailing its responsibilities concerning “violations of regulations pertaining to sectors.”

From the enforcement perspective, this option is vague, convoluted and complex. Given the absence of a specific detailed plan, NMFS Law Enforcement does not support this alternative.

*The proposed action adopts a sector allocation system.*

#### **5.5.1.15.1.1 VMS Requirements**

There is no VMS requirement specific to this alternative; however, if other alternatives must be used in conjunction with the sector allocation alternative, then any VMS requirements under those alternatives will be imposed on the sectors. Sectors may establish their own VMS requirements as long as they remain in compliance with any other VMS requirements established by other alternatives adopted in conjunction with sector allocation.

#### **5.5.1.15.2 Georges Bank Hook/Gillnet Sector Allocation**

This alternative is voluntary and creates two distinct areas for Georges Bank cod. The sectors are split between gillnetters and hook fishermen. This measure is to be utilized in conjunction with other management measures.

##### **5.5.1.15.2.1 GB Cod Hook Sector**

###### Gear

Refer to enforcement concerns previously detailed in 5.5.3.1.5, these comments are applicable to the above.

###### Trip/Possession Limits

NMFS Law Enforcement's recommendation is to define "landing" under this section as currently stated in the regulations. Land is defined as "means to begin offloading fish, to offload fish, or enter port with fish."

###### Monitoring

VMS has proven to be an extremely valuable enforcement monitoring tool.

##### **5.5.1.15.2.2 GB Cod Gillnet Sector**

###### Gear

The USCG has commented that enforcement of gillnet limits at-sea is unlikely due to their inability to haul gear.

##### **5.5.1.15.2.3 Hook/Gillnet sector GB Closed Area I Access Program**

As with vessels authorized to fish in exempted fisheries at the present time, vessels who elect to participate in this closed area access program should be required to have a letter of authorization. Vessels should also be restricted to only fishing in the closed area during these trips. Enforcement of this program can be accomplished with VMS, USCG aerial and surface patrols along with at-sea boardings by USCG units. Dockside enforcement can be conducted in combination with VMS tracking to determine area fished.

##### **5.5.1.15.2.4 VMS Requirements**

VMS is required for both the vessels in the longline sector and the vessels in the gillnet sector, as indicated above.

#### **5.5.1.16 GOM Inshore Conservation and Management Stewardship Plan**

This area management proposal is solely for the stocks in the GOM. This option was not selected.

##### **5.5.1.16.1.1 Management Areas**

Enforcement concerns of vessels electing to fish in specific zones are addressed in 5.5.3.3.3 Movement Between Areas. Enforcement issues regarding possession limits, gear restrictions, and closed areas are discussed in 5.5.3.1.3, 5.5.3.1.4, and 5.5.3.1.5 and are applicable to these proposals.

##### **5.5.1.16.1.2 Observer Coverage**

This measure would implement 100% coverage on all mid-water trawl vessels and 20% on all multispecies

vessels in the GOM. Increasing observer coverage does not present any new specific enforcement concerns and provides additional methods of discard and by-catch reporting, as well as monitoring of fishing activity. Consequently, NMFS Law Enforcement recognizes that any increase in the amount of observer coverage will also result in increased referrals requiring enforcement involvement.

## **5.5.2 Alternatives to Control Capacity**

### **5.5.2.1 Capacity Committee Alternatives**

As currently described, this alternative poses no new enforcement concerns.

### **5.5.3 Management Alternatives to Address Rebuilding Requirements**

These specific alternatives were not adopted. Many of the provisions, however, have been incorporated into the proposed action..

#### **5.5.3.1 Alternative 1 – Up to 65% Reduction in Used DAS**

This alternative was not selected, but many of the measures in this alternative are part of the proposed action.

##### **5.5.3.1.1 Effort Controls**

##### **5.5.3.1.2 DAS Restrictions**

This option may require vessels fishing in SNE and MA regulated mesh areas to be charged DAS at a 1.5:1 rate. The proposal would require monitoring of each vessel's activity to accurately document their time in the aforementioned areas. From NMFS Law Enforcement's perspective, the only effective manner to accurately document the DAS ratios associated with this alternative would require mandatory VMS on all vessels fishing in these areas. Consequently, increasing the number of participants into the VMS system would require additional enforcement resources for monitoring and investigative inquiries due to the increased vessel monitoring load.

Utilization of the DAS call-in system to document time spent in specific areas would be considerably less enforceable, whereas there is no discernable method to document how long a vessel was in the area.

*The proposed action adopts differential DAS counting in the SNE/MA RMA in future years.*

##### **5.5.3.1.3 Closed Areas**

###### **Year-Round Closed Areas and Seasonal Closed Areas**

NMFS Law Enforcement's general guidance concerning implementation of closed area management is consistent for all management plans and is based in the "Precepts for Efficient Fisheries Enforcement". This alternative proposes two types of areas (closed and rolling). As identified in our Precepts, enforcement of closed areas is enhanced when the areas are "plain-shaped and clearly defined", straight lines on a straight north/south or east/west axis and their status (open, closed, open to some vessels) is maintained for reasonably long periods of time.

It is suggested that closed areas should be designed with a surrounding buffer to prevent brief incursions into the protected area. Use of VMS to enforce closed areas is less effective whereas VMS is voluntary for limited access multispecies vessels. Mandatory VMS on all multispecies vessels would greatly enhance enforcement's ability to track vessels and determine any closed area incursions. Enforcement of closed areas can be conducted with aerial and surface patrols and at-sea boarding by USCG units.

#### **5.5.3.1.4 Possession Limits**

Vessels restricted to possession limits while fishing in specific areas can be enforced by VMS and USCG enforcement through aerial and surface patrols in combination with at-sea boardings.

#### **5.5.3.1.5 Gear restrictions**

As with the current gear restrictions, enforcement relies on at-sea boardings to measure compliance. Enforcement of at-sea gill net limits is difficult to enforce, whereas the USCG has indicated they do not have the ability to haul gear.

Under this measure, large mesh vessels are restricted to certain mesh sizes based solely on the area fished. VMS is an extremely valuable enforcement monitoring tool and would increase the ability to determine areas fished by vessels with both mesh and landing limit restrictions.

Also under this alternative, long line vessels would be allowed to fish with no more than 4,500 12/0 hooks. From an enforcement perspective, this limitation on the number of hooks in use is virtually unenforceable. Additionally, the 12/0 size hook needs to be defined whereas the 12/0 hook is sold by several different companies and differ in size. NMFS Law Enforcement recommends identification and comparison by each manufacturer as to their 12/0 hook standard.

#### **5.5.3.1.6 Minimum Fish sizes**

Minimum fish sizes as described in the settlement agreement will continue to be in effect. The minimum fish sizes do not present any new enforcement concerns.

#### **5.5.3.1.7 VMS Requirements**

There is no VMS requirement automatically implemented by this alternative. The current call-in system and voluntary VMS will be maintained.

The only effective manner to accurately document the DAS ratios associated with this alternative would require mandatory VMS on all vessels fishing in these areas. Likewise, VMS is an extremely valuable enforcement monitoring tool and would increase the ability to determine areas fished by vessels with both mesh and landing limit restrictions.

### **5.5.3.2 Alternative 2 - Reduction in Allocated DAS/Gear Modifications**

*This alternative was not selected.*

#### **5.5.3.2.1 Effort Controls**

##### **Option 1**

This option reduces allocated DAS by 30% for all vessels fishing in the GOM MA. All vessels intending to fish in the GOM must declare into the fishery for a minimum of 30 days. If the TAC is not met at the end of third quarter of the fishing year, the vessels revert back to the allocated DAS initially implemented on August 1, 2002 (20%).

From an enforcement perspective, the most effective method to track each vessel's location is to require the installation of VMS on each vessel fishing in the GOM. Since vessels allocated DAS are limited to 30% less while fishing in the GOM, the most feasible method to keep track is through the use of VMS. Without VMS, vessels electing to fish in the GOM could do so without the knowledge of the NMFS, thereby circumventing the reduction in DAS.

Another enforcement issue concerns the notification process. There must be timely notice to fishermen regarding the GOM cod landings exceeding or not surpassing 75 % of the TAC at the end of the third quarter.

### **Option 2**

Option 2 differs from Option 1 in that a vessel is limited to using no more than 70% of its allocated DAS while fishing in the GOM MA. If vessels intend to fish in the GOM they must enroll for a minimum of 30 days and all DAS used will be charged against the GOM limit.

NMFS Law Enforcement's comments described in Option 1, above, would also apply to this option.

#### **5.5.3.2.2 Closed Areas**

NMFS Law Enforcement's recommendation concerning closed area management measures is documented in our "Precepts for Efficient Fisheries Enforcement". In addition to the issues raised in 5.5.3.1.3, NMFS Law Enforcement suggests fisherman and enforcement are given appropriate notification regarding the closure of specific areas.

#### **5.5.3.2.3 Possession Limits**

This measure proposes to reduce the daily/trip limit if 75% of the GB cod or haddock TAC is harvested. The only enforcement concern is proper advanced notification to all fisherman and enforcement of the change to the possession limit.

This measure also proposes trip limits for Cape Cod yellowtail while fishing in statistical areas 514 and 521 or in certain thirty minute squares in the inshore GOM. Vessels should be required to declare into this fishery and would be limited to the aforementioned trip limit while enrolled. Therefore vessels choosing to fish outside of this area while enrolled would still be subject to the 50/lb trip limit. Possession limits while fishing in specific areas are more readily enforced by VMS and USCG aerial and surface platforms, as well as at-sea boardings by USCG units. Dockside enforcement can only be conducted if the vessels are enrolled to fish in the above referenced statistical areas and are limited to 50 lbs of yellowtail per trip, regardless of the area fished

#### **5.5.3.2.4 Gear Restrictions**

##### Georges Bank and Gulf of Maine

This measure requires the mandatory use of separator trawl net and/ or a flounder net. A flounder net is not defined in current regulations, but this Amendment proposes the following definition: "a flounder net is defined as a two-seam low-rise groundfish net." It is still unclear what a low-rise net is from this definition. For example, would low-rise be less than some height, the distance between top and bottom, etc.

Further, a separator trawl is defined as:

A separator trawl is defined as a groundfish trawl modified to a vertically-oriented trouser trawl configuration, with two codends arranged one above the other. The bottom cod end is left open. A horizontally oriented large mesh (6 ½ inch square mesh minimum) separating panel is installed between the selvages joining the upper and lower panels, extending from the front of the trouser junction forwards to the aft section of the first belly behind the fishing circle.

Trip and Day gillnet vessels are restricted to the number of nets they can possess, fish, haul or deploy. Establishing restrictions on "no tie-down gillnets" can only be enforced with at-sea boardings.

Also proposed in this measure is the requirement of all multispecies permitted vessels to use 12/0 hooks while fishing with long line gear. 12/0 hooks must be clearly defined as this size hook differs from company to company. NMFS Law Enforcement recommends a comparison by each manufacturer as to acceptable

standard. Without a concise definition, this limitation on the number of hooks in use is virtually unenforceable.

The USCG has indicated at-sea enforcement of gillnet and hook limits at-sea are unlikely because of there inability to haul gear.

#### Gulf of Maine

Specifically in the GOM, trawl gear used inshore of 70 W must be a separator trawl net and/or flounder net, trawl gear would be restricted to the Raised footrope trawl in blocks 114,115,123,124 and 125, no-tie down gillnets in blocks 114, 115, 123, 124 and 125 and 10 inch twine top for scallop dredges while fishing in blocks 114, 115, 123, 124, and 125. Gear requirements should be uniform regardless of the area fished. Gear restrictions in specific areas are more readily enforced if vessels are restricted to possessing only the gear type described in this management measure. Vessels fishing in gear restricted and non restricted areas during the same trip and possessing different gear types would be very difficult to catch and require more enforcement manpower. Enforcement of these measures would only be conducted through at-sea boardings. Effective enforcement is improbable under this measure.

#### **5.5.3.2.5 VMS Requirements**

VMS is required for all vessels that fish in both the Gulf of Maine and Georges Bank. It is unclear whether this means only those fishing in both areas, and vessels fishing in either GOM or GB are not required to use VMS, or not.

From an enforcement perspective, the most effective method to track each vessel's location is to require the installation of VMS, on each vessel, fishing in the GOM. Possession limits while fishing in specific areas are more readily enforced by VMS and USCG aerial and surface platforms, as well as at-sea boardings by USCG units.

#### **5.5.3.3 Alternative 3 - Area Management**

*This alternative was not selected.*

##### **5.5.3.3.1 Calculation of TACs**

These two options determine the how the TACs will be identified for six different management areas. Enforcement does not have any specific concerns regarding which option is used to establish the TACs.

##### **5.5.3.3.2 Consequences for Exceeding TACs**

No new specific enforcement concerns.

##### **5.5.3.3.3 Movement Between Areas**

This measure describes five options allowing vessels to fish and move into one or more management areas at any time, during a trip, a different area on each trip, or one area during the entire fishing year.

Using the DAS call-in system to elect an area fishers intend to fish while at-sea or before leaving the dock would dramatically increase the need for at-sea enforcement presence to determine the specific area(s) fished. Although Options one, two and three requires vessels to be held to the more restrictive trip limit if they fish in more than one area, using the call-in system can not ensure enforcement's ability to determine any of the areas fished, except as reported by the vessel. Monitoring of hundreds of multispecies permitted vessels would be conducted through USCG aerial and surface patrols in conjunction with at-sea boardings by USCG units. Dockside enforcement would not be possible without the use of VMS.

(The use of the DAS call-in system for these proposals would increase resource needs by enforcement in order to determine if this system could be utilized effectively to track movement between areas. Modifying

the current DAS call-in system would require reprogramming and script changes at additional costs. ) Option one and two also require using Vessel Trip Reports in conjunction with the DAS call-in system to evaluate the management measures for each area. Enforcement's concern is raised with the use of VTRs as a management measure. Enforcement has encountered numerous instances where individuals have submitted inaccurate and incomplete VTRs, as well as not submitting them at all. Often times VTRs are submitted in an untimely fashion.

Under Option four vessels may fish in one area per trip, however if they choose to fish in more than one area during the fishing year, they are required to install a Vessel Monitoring System. VMS is a valuable enforcement tool in identifying each vessels location. Vessels that are not required to have a VMS will be able to enter different management areas without the knowledge of enforcement.

Option five limits vessels to fishing only one management area per fishing year. Enforcement's concern is with vessels limited to fishing in a specific area, and is addressed in the other four options above.

Enforcement recommends any vessel electing to fish in any area should be required to enroll with a letter of authorization indicating the area(s) to be fished. Each vessel must fish in the selected area for a minimum period of time.

Use of VMS for all involved vessels would enhance enforceability of unauthorized fishing in management areas and aid in the enforcement of species quotas trip limits.

An increase in observer coverage would assist in monitoring both discards and fishing activity, whereas the TAC management scheme mandates accurate and dependable reporting.

#### **5.5.3.3.4 VMS Requirements**

VMS is required for all vessels moving between areas within a single trip. This applies to movement between areas options 1-4 but not option 5.

Determining the location of hundreds of vessels could only be enforced through the use of VMS. Use of VMS for all involved vessels would enhance enforceability of unauthorized fishing in management areas and aid in the enforcement of species quotas trip limits.

#### **5.5.3.4 Alternative 4 - "Hard" Total Allowable Catch (TAC)**

This alternative will develop TACs for "all stocks in the multispecies FMP on a single or multi-stock basis". A TAC may be designed for the recreational fishery and if one is developed, it will be observed independently from the commercial TAC. *This alternative was not selected.*

##### **5.5.3.4.1 Hard TAC with Input Controls**

This management measure incorporates a hard TAC with input controls. The term "input controls" should be clearly defined to identify which management measures they incorporate. The input controls as described in this alternative are derived from one of three options:

##### Option 1

The input controls in option 1 are the management measures outlined in Alternative 2 (5.5.3.2- Reduction in Allocated DAS/Gear Modifications). The enforcement issues are outlined in Alternative 2 and are the same for this option.

##### Options 2 and 3

Option 2 is based on the measures implemented by the Framework 33 court order effective April 30, 2004. In other words option 2 is the management measures currently in place. Option 3 is the management schemes implemented during the 2001 fishing year. Option 3 is also described as the No Action Alternative.

Option 2 and option 3 are very comprehensive management schemes. Enforcement reiterates its recommendations outlined in the “Precepts for Efficient Fisheries Enforcement”.

NMFS Law Enforcement does not foresee any new enforcement related concerns associated with this measure. NMFS Law Enforcement recommends review of previous enforcement comments relating to VMS, closed areas, Days-at-Sea, trip limits, possession limits, special access programs, and gear restrictions.

#### **5.5.3.4.2 Monitoring the TAC**

This measure requires up to date information to NMFS in order to accurately manage the TACs. Increased reporting (real time) of catches will be necessary as the TAC becomes closer to being fulfilled. Successful implementation of this management plan will require comprehensive monitoring, and as part of the monitoring system, enforcement recommends increasing observer coverage to monitor fishing activity.

##### **5.5.3.4.2.1 Reporting System Options**

The concept of “daily electronic dealer reporting” is supported by enforcement. At this time, this alternative does not identify the details regarding electronic dealer reporting and a vessel’s trip identifier number. NMFS Law Enforcement’s general concern regarding reporting is accountability and veracity of the reports and ensuring that these issues are sufficiently addressed.

Under option one, two and three dealer reporting will be accomplished by way of electronic reporting. Also under option one all limited access multispecies vessels will be required to have a VMS system and use this system to report the area they intend to fish. Vessels who have been issued a small vessel permit and open access vessels will be able to report utilizing a call-in number. Option two and three do not insist on VMS for limited access multispecies vessels and rely on call-in systems for all vessels.

Mandatory VMS for all limited access DAS multispecies vessels is supported by enforcement. Determining vessel incursions into areas which may be closed or have stock restrictions can be accomplished through the use of VMS and to a lesser extent at-sea enforcement. Determining where a vessel has fished is unlikely through dockside enforcement.

The expansion of VMS to hundreds of vessels would likely increase resource needs of enforcement to effectively oversee the administrative tasks and monitoring of escalated VMS usage.

Establishing a call-in number for “small vessel permit category and open access vessels” to report specific information would expand resource needs by enforcement and require implementation of infrastructure and administrative processes set up to collect, extract, and break down the information. The cod hail line was a variation of this call-in number and was set up for fishermen to report information regarding their cod landings. Very few fishermen called the cod hail line, and from the enforcement perspective, was an unsatisfactory mechanism to document the required information.

Enforcement concerns requiring fishermen to identify area fished through the DAS call-in system have been raised in 5.5.3.3.3 and are applicable under this option.

##### **5.5.3.4.2.2 VMS Requirements**

VMS is required for all vessels in Option 1 only. There are no VMS requirements for Options 2 and 3.

Mandatory VMS for all limited access DAS multispecies vessels is supported by enforcement. Determining vessel incursions into areas which may be closed or have stock restrictions can be accomplished through the use of VMS and to a lesser extent at-sea enforcement. Determining where a vessel has fished is unlikely through dockside enforcement.

### **5.5.3.4.2.3 Reaching the Total TAC**

This management measure has two options:

#### Option 1- Closure of Stock Area

Under this proposal, the NMFS would close a particular area or entire statistical area(s) to gear capable of catching a particular species, if all of the TAC for that stock is projected to be caught. However, fishing gear believed to be incapable of catching the species for which the TAC would be reached, will still be able to fish in the closed area(s).

With area specific TACs, there will be an increased emphasis on enforcement of closed areas, possession limits, vessel inspections at sea (to determine gear used and retention of prohibited species), and accurate and timely reporting.

NMFS Law Enforcement strongly suggests that closed areas should be clearly defined in large, plain shapes and maintained for sensibly long periods of time. Multiple possession limits for various stocks in different areas will be difficult to enforce, particularly without ubiquitous VMS coverage. Use of VMS for all limited access multispecies vessels would greatly enhance enforceability of closed areas regardless of the reason for the closure. *See comments in 5.5.3.1.3 with regards to VMS and closed area enforcement and 5.5.1.5 concerning closed area administration.*

Possession limits can be monitored via dockside enforcement, however, enforcement would be limited without the ability to determine the specific area where the fish were caught. See comments in 5.5.3.1.4 with regards to possession limit enforcement.

To effectively monitor and report the catch in these TAC management areas this alternative may require an increase in observer coverage. The enforcement concerns related to increased observer coverage are addressed in 5.5.1.16.1.2. and 5.5.3.4.2.

#### Option 2 - Prohibition on Retention

Under this alternative, possession of a species is prohibited in an area for which all of the TAC for a specific stock is projected to be harvested, except for transiting purposes. If the vessel possesses the same species harvested from other stock areas, this alternative allows the vessel to transit the closed area as long as the gear is stowed appropriately and prohibits the vessel from fishing in the closed area.

NMFS Law Enforcement is concerned that this scheme would allow vessels to fish in the closed stock area with gear capable of catching the prohibited species and then move to other stock areas and catch the same species. Enforcement of the closed stock areas would be most effective through VMS, however, VMS can not identify where the closed species were caught. Vessels allowed to fish in closed stock areas with gear capable of catching closed stocks would require at-sea or aerial patrol units to enforce the closed areas.

As previously identified, multiple possession limits for various stocks in different areas along with transiting in closed stock areas while possessing prohibited stocks pose significant enforceability concerns.

*With regards to both Option 1 and Option 2, NMFS Law Enforcement suggests appropriate advanced notification to industry and enforcement regarding any upcoming closed stock areas.*

### **5.5.3.5 Recreational Fishing Measures**

The minimum size and bag limits listed under the recreational fishing measures do not present any new enforcement issues.

Option 3 states “any trip in excess of 15 hours and covering two consecutive calendar days will be considered more than one day.” Enforcement of this option with out being able to verify period of time

fished would be difficult and extremely resource intensive.

*Option 3 is part of the proposed action. Vessels subject to this restriction are required to file VTRs recording time of sailing and the end of the trip.*

#### **5.5.4 Alternatives to Minimize the Adverse Effects of Fishing on Habitat**

##### **Alternative 2 – Complementary Benefits of Other Amendment 13 Alternatives (*Preferred Alternative*)**

See the other alternatives.

##### **Alternative 3 – Habitat Closed Areas**

Enforcement recommends following the guidance provided in the “Precepts for Efficient Fisheries Enforcement”. Closed Areas that are clearly defined in large, plain shapes for reasonably long time spans with minimal exceptions, exemptions or transiting provisions (except for compelling safety reasons). Again, use of VMS for all involved vessels would enhance enforceability of the closed area regardless of the reason for the closure. Increased use of VMS would, in all cases, require additional enforcement resources for monitoring as well as verification that the system is prepared to handle the increased vessel monitoring load.

##### **Alternative 4 – Modified Groundfish closed areas with habitat subsets identified**

This alternative would create “blocks”, “each approximately 75 square nautical miles in size, by the existing grid of latitude and longitude lines at 10 minute intervals.” The blocks would be further grouped into five areas (Gulf of Maine, Georges Bank, South Channel, Hudson Canyon, Southern). Closures would be applied to these areas in various ways by this alternative. From the enforcement perspective, the discussion of possible scenarios of closed and open areas created by this alternative seems fairly complicated. We again recommend a simple, long term closure practice whenever possible.

*This alternative was not selected.*

##### **Alternative 5 - Closed areas designed to protect important EFH and balance fishery productivity)**

Enforcement recommends following the guidance provided in the “Precepts for Efficient Fisheries Enforcement”. Alternatives 5A, 5B, and 5C show narrow, fishable corridors between two closed areas. Alternative 5D is preferred because it has the shortest corridor, but enforcement would prefer no narrow corridors at all. Again, use of VMS for all involved vessels would enhance enforceability of the closed area regardless of the reason for the closure.

*This alternative was not selected.*

##### **Alternative 6 - Closed areas consistent with the Framework Adjustment 13 Scallop Closed Areas Access Program (*Preferred Alternative*)**

The shapes/sizes of some of the areas designed off of the New England coast (such as CAI and NLCA) do not meet the general enforcement recommendation of large, plain shaped. Larger areas with straight line boundaries and the ability to provide a buffer between the area boundary and the stocks would enhance enforceability of this alternative.

*This alternative was not selected.*

##### **Alternative 7 – Expand the list of gears prohibited in closed areas**

Echoing the general enforcement comments on page 5, with respect to closed area enforcement, areas must be clearly defined with limited access to the areas in order to allow for efficient and effective offshore enforcement. Expanding the list of gears prohibited in year-round closed areas will further limit access, thus making offshore enforcement more efficient and effective. Transit rules are necessary, particularly for pots

and traps.

*This alternative was selected, but only hydraulic clam dredges were added to the list of prohibited gear.*

**Alternative 8 – Restrictions on the use of rockhopper gear and/or roller gear (Preferred Alternative)**

Like the proposed scallop restriction on rock chains, region wide (i.e., throughout the entire range of the multispecies fishery) restrictions on rockhopper and roller gear do not pose any significant enforcement related concerns. Any gear restrictions *by area* do pose enforcement concerns similar to the general enforcement comments on area management measures (page 6). As with other gear restrictions, this alternative would rely on at-sea boardings.

Additionally, clear and concise definitions of ‘rockhopper’ and ‘roller’ gear, and stowage rules, are necessary.

*This alternative was not selected.*

**Alternative 9 – VMS on all groundfish vessels**

One of the Enforcement Precepts is ‘Assisted by VMS’. Vessel Monitoring Systems are a tremendous asset to enforcement for monitoring days at sea as well as closed areas. Additionally, the knowledge of the whereabouts of fishing vessels eases the logistical burdens of extensive surveillance, which can be extremely manpower intensive. When developing new management plans consideration should be given to requiring implementation of VMS on vessels. This alternative does just that.

*This alternative was not selected.*

**Alternative 10 – Habitat Closed Areas the are modifications of existing mortality closures and other proposed habitat closures (Preferred Alternative)**

Alternative 10A modifies the borders of existing closed areas, or areas proposed for closure under the other alternatives. Alternative 10B is actually the same as scallop habitat alternative 8b; thus, a larger area is preferable to a small area, and an area with fewer edges is preferable to one with lots of edges. All other general enforcement comments relative to all gears being prohibited, VMS requirements, stowage and transit, apply.

*This alternative was selected.*

**5.5.5 Other Issues**

**5.5.5.1 Northern Shrimp Fishery Exemption**

This alternative does not pose any new enforcement related concerns.

**5.5.5.2 Tuna Purse Seine Vessel Access to Groundfish Closed Areas**

This alternative does not pose any new enforcement related concerns, other than those described in 3.4.7.

**5.5.5.3 SNE General Category Scallop Vessel Exemption Program.**

This alternative does not pose any new enforcement related concerns.

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