

RECORD OF DECISION
FINAL ENVIRONMENTAL IMPACT STATEMENT
AMENDMENT 16 TO THE
NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN
National Marine Fisheries Service
Northeast Region

This document comprises the record of decision (ROD) for approval/disapproval of Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), as prepared by NOAA's National Marine Fisheries Service (NMFS) pursuant to the National Environmental Policy Act (NEPA). The ROD is based on and incorporates, as described below, the Amendment 16 Final Environmental Impact Statement (FEIS) and all other decision and analytical documents prepared for this action.

Background

The FMP specifies the management measures for twelve groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and ocean pout) off the New England and Mid-Atlantic (MA) coasts. There are distinct populations or stocks of cod, haddock, yellowtail flounder, winter flounder, and windowpane flounder that are associated with more than one geographic region, resulting in 19 individual stocks that are managed under the FMP. Amendment 16 to the FMP is the result of the biennial adjustment process established in the FMP to update status determination criteria for all NE multispecies (groundfish) stocks; adopt rebuilding programs for groundfish stocks newly classified as being overfished and subject to overfishing; and revise management measures necessary to end overfishing, rebuild overfished groundfish stocks, and mitigate the adverse economic impacts of increased effort controls based upon updated information regarding stock status and other information. On November 6, 2006, a notice of intent to prepare an EIS and hold scoping meetings to solicit public input on any revisions to management measures necessary to continue rebuilding overfished groundfish stocks was published in the *Federal Register* (71 FR 64941). Eight scoping meetings were held in November/December 2006 from Maine to New York City. In January 2007, shortly after these scoping meetings ended, Congress passed, and President Bush signed into law, revisions to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that required, among other things, that FMPs include a mechanism for establishing annual catch limits (ACLs) and measures to ensure accountability (accountability measures (AMs)).

Based upon input from scoping meetings and other public meetings, the New England Fishery Management Council (Council) began to develop Amendment 16 for implementation in fishing year (FY) 2009, to not only achieve the objectives outlined for the biennial adjustment process, but also to comply with the new requirements of the Magnuson-Stevens Act. The latest stock assessment (Groundfish Assessment Review Meeting (GARM III)) was completed in August

2008, and concluded that 11 stocks were still subject to overfishing, and that 11 stocks were overfished, with 9 stocks classified as both overfished and subject to overfishing. Updated data available in January 2009 revealed that pollock is also overfished and subject to overfishing. These data indicated that draft effort control measures under development for Amendment 16 were not targeting the correct stocks. As a result, the Council requested that NMFS implement an interim action for the duration of FY 2009 (May 1, 2009-April 30, 2010) to provide sufficient time to revise draft management measures in Amendment 16 to meet the updated biological objectives. It was during this time that NMFS published updated National Standard 1 Guidelines to assist Councils in complying with the new requirements of the Magnuson-Stevens Act (January 16, 2009; 74 FR 3178). A proposed rule to implement interim management measures for FY 2009 published on January 16, 2009 (74 FR 2959), with final interim measures published on April 13, 2009 (74 FR 17030) and effective on May 1, 2009.

The Council finished developing Amendment 16 in early 2009, adopting draft management measures and presenting an associated draft EIS (DEIS) at its February 2009 meeting. A notice of availability for the DEIS, which analyzed the impacts of all of the measures under consideration in Amendment 16, was published on April 24, 2009 (74 FR 18705), with public comments accepted through June 8, 2009. Final measures for Amendment 16 were adopted by the Council at its June 2009 meeting, with revisions to the discard provisions adopted at its September 2009 meeting. A notice of availability under the Magnuson-Stevens Act for Amendment 16, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published in the *Federal Register* on October 23, 2009 (74 FR 54773). The comment period on the Amendment 16 and its associated FEIS ended on December 22, 2009. A notice of availability under NEPA for the Amendment 16 FEIS was published on October 30, 2009 (74 FR 56194), soliciting public comments through November 30, 2009. A proposed rule soliciting public comment on regulations to implement measures in Amendment 16 was published on December 31, 2009 (74 FR 69382), with comments accepted through January 20, 2010.

The following sections briefly describe the alternatives considered in Amendment 16 and highlight the measures that were adopted. Additional discussion regarding the environmentally preferred alternatives, the factors considered in making a decision on the final action, and compliance with National Standards, are included in the following text.

Alternatives Considered in Amendment 16

Amendment 16 includes revisions to a substantial number of measures in the FMP. Unlike previous actions, Amendment 16 did not group different options for all measures into distinct alternatives. Instead, the Amendment 16 DEIS considered and analyzed several options for each measure to be revised under this action. These options are summarized below in the order in which they are discussed in the Amendment 16 FEIS. For a complete description of the options considered, see Sections 4 and 5 of the FEIS for the preferred action and alternatives to the proposed action, respectively. For a full analysis of these alternatives, please see the corresponding sections of Section 7 of the FEIS.

- **Status Determination Criteria** – Two options for status determination criteria were considered: (1) Revised status determination criteria based upon the results of GARM

III, and (2) the existing Amendment 13 status determination criteria (no action). Both options utilize a biomass target based upon spawning stock biomass at maximum sustainable yield (MSY), but the revised status determination criteria specify a fishing mortality rate (F) threshold at 40 percent of maximum spawning potential, while the Amendment 13 criteria retain a F threshold at 75 percent of F_{MSY} .

- **Allowable Biological Catch (ABC) Control Rule** – The ABC control rule is guidance used by the Council to develop ABCs for each stock pursuant to the ACL process detailed further below. Two options were considered: (1) A new ABC control rule based upon catch at 75 percent of F_{MSY} or $F_{rebuild}$, whichever is lower, the level of incidental bycatch for stocks that cannot rebuild absent all fishing mortality after considering reduction in the bycatch rate, or on a case-by-case basis for stocks with unknown status; and (2) the Amendment 13 MSY control rule (no action) based upon a 75 percent of F calculated to rebuild the stock in 10 years when the biomass is greater than 1/2 biomass at MSY.
- **Revised Mortality Targets and Rebuilding Programs** – Two options were considered: (1) Revised mortality targets for all stocks based on the updated information in GARM III, including new rebuilding programs for stocks newly classified as being overfished (witch flounder, Georges Bank (GB) winter flounder, northern widowpane flounder, pollock, and Atlantic wolffish); and (2) the existing mortality targets and rebuilding programs established for individual stocks in Amendment 13 or Framework Adjustment 42 (no action).
- **ACL Process** – The Magnuson-Stevens Act requires each FMP to establish a mechanism or process to specify ACLs for each stock managed in the FMP. Two options were considered to develop such a process for the FMP to maintain compliance with the Magnuson-Stevens Act: (1) A process to specify acceptable biological catch (ABC) and ACLs for stocks in the fishery, including the distribution of ACLs among components of the fishery that catch groundfish; and (2) no process to establish ACLs (no action).
- **Incorporation of Atlantic Wolffish** – Updated stock assessment data indicated that Atlantic wolffish was overfished and subject to overfishing. Consistent with the Magnuson-Stevens Act, the Council was required to develop management measures to end overfishing and rebuild this stock within one year of being informed that the stock is overfished. Two options to incorporate wolffish were considered: (1) To include Atlantic wolffish as a managed stock within the FMP, and (2) not to include this species as a managed stock (no action). In addition, three options were considered regarding the designation of essential fish habitat (EFH) for this species: Designating no EFH for this species (no action), designating the entire U.S. exclusive economic zone (EEZ) as EFH, or basing the designation of EFH on the NMFS trawl survey.
- **Definition of a Sector** – Sectors were established by Amendment 13 and Framework 42 as voluntary, co-operative groups within the multispecies fishery that elect to fish under a common set of rules in exchange for more flexibility in fishing operations and an agreement to abide by such rules. A clear and updated definition of “sector” was needed with the establishment of 16 additional sectors. Three options were considered for defining a sector: (1) Not specifically defining what constitutes a sector (no action), (2) defining a sector as three or more persons none of whom have an ownership interest in one another that voluntarily enter into a contract and agree to certain fishing regulations

for a certain period of time, and (3) allowing permits currently held in confirmation of permit history (CPH) to participate in sectors.

- **Sector Operations Plan Requirements** – Sectors must submit operations plans to NMFS prior to approval. Two options were considered to revise the requirements for such operations plans: (1) Maintaining the existing sector operations plan requirements, or (2) requiring that sector operations plans include additional provisions such as detailed information about an independent third-party weighmaster system, detailed information about a monitoring program for discards, and information about overage penalties.
- **Sector Overage Provisions** – If sectors exceed their allocation in a given year, a provision to account for an incidental overage was considered necessary. Two options were considered: (1) Maintaining the Amendment 13 guidance regarding sector overages specifying that overages are simply deducted in the following year (no action), and (2) specific measures to address an overage should a sector that has exceeded its allocation for a quota not be able to address such overage during the following year due to insufficient allocation during the next year, or because the sector disbands and vessels join other sectors or the common pool (i.e., do not participate in another sector). Two sub-options were considered to identify the overage penalty if participating vessels enter the common pool: A day-at-sea (DAS) penalty proportional to the overage for that sector (i.e., a 20 percent DAS reduction for a 20 percent overage), or a flat DAS reduction based upon the overage divided by the number of vessels in the sector (i.e., 1 DAS for every 1,000 lb overage).
- **Sector Allocations** – Several options were considered for sector allocations. First, two options were considered regarding whether to specify separate allocations for stocks managed by the U.S./Canada Resource Sharing Understanding (Understanding) (i.e., Eastern GB cod and Eastern GB haddock), or not to specify separate allocations for such stocks (no action). Secondly, each sector's allocation of a particular stock (i.e., annual catch entitlement (ACE)) is based upon the cumulative potential sector contributions (PSCs) of vessels participating in that sector. Sectors would be allocated ACE for all stocks except ocean pout, windowpane flounder, Southern New England (SNE)/MA winter flounder, and Atlantic wolffish. Six options were considered regarding the calculation of PSCs for each stock for each vessel, including:
 - Option 1 (no action): This option would maintain the existing allocation of stocks based upon the catch histories of participating vessels over the previous five FYs.
 - Option 2: This option would determine PSCs for each vessel based upon the landing history of each vessel between FYs 1996-2006.
 - Option 3: This option would determine PSCs for each vessel based upon an equal consideration of landings history between FYs 1996-2006 and vessel baseline capacity (i.e., landings history would contribute 50 percent towards the PSC, while capacity would account for the other 50 percent of the PSC) for stocks landed by the permit. A vessel baseline capacity would be calculated using the following formula:

$$\text{Baseline capacity} = (10 \times \text{length} + \text{horsepower}) \times (\text{allocated Category A DAS})$$
 - Option 4: This option would determine PSCs for each vessel based in the same manner as Option 3, but the vessel baseline capacity would apply to all stocks allocated to sectors.

- Option 5: This option would determine PSCs for each vessel based upon an equal consideration of landings history between FYs 1996-2006 and allocated Category A DAS (i.e., landings history would contribute 50 percent towards the PSC, while allocated Category A DAS would account for the other 50 percent of the PSC) for all stocks allocated to sectors.
- Option 6: For vessels that committed to participate in one of the existing sectors as of March 1, 2008, this option would calculate the PSC for GB cod based upon the landings history of each permit between FYs 1996-2001. The PSCs for other stocks for these vessels would be calculated based upon one of the other options listed above.
- **Sector Mortality Controls** – Mortality controls would be needed to ensure that sectors do not exceed sector ACEs on a yearly basis. Two options were considered: (1) No changes to existing sector mortality controls (no action) that include hard quotas for allocated stocks and a requirement to cease fishing once such quotas were harvested; and (2) revisions to existing sector mortality controls to include a cessation of fishing operations once a sector's allocation is harvested, specification of which types of trips would contribute to the catch of a sector's allocation, and prohibitions of the retention of specific stocks (i.e., ocean pout, windowpane flounder, SNE/MA winter flounder).
- **Sector Joint/Several Liability** – This measure determines legal responsibility for any violation of regulations. Four options were considered: (1) Sectors and participating vessels could be held joint and severally liable for any violation of any regulation; (2) sectors and participating vessels would only be jointly/severally liable for violations of the sector operations plan requirements; (3) sectors and participating vessels would be jointly/severally liable only for violations of ACE overages, discarding of legal-sized fish, and misreporting of catch; and (4) sectors and participating vessels would only be jointly/severally liable for ACE overages.
- **Sector Monitoring Requirements** – Monitoring would be needed to require sectors to accurately monitor catch in relation to ACE. Two main options were considered for revising sector monitoring requirements: (1) Maintaining the existing sector monitoring requirements, including monthly sector catch reports and a yearly sector report; and (2) several revisions to existing monitoring requirements, including weekly sector catch reports, an expanded yearly sector report with additional detail regarding sector operations, a dockside monitoring program beginning in FY 2010, an at-sea/electronic monitoring program beginning no later than FY 2012, a requirement to land all legal-sized stocks allocated to sectors, and standards for approving/certifying dockside and at-sea monitoring service providers. Two options were considered for dockside monitoring coverage: 100-percent dockside monitoring, and less than 100-percent dockside monitoring with the precise coverage levels to be determined by sectors and approved by NMFS. Further, two options were considered for at-sea/electronic monitoring coverage, including 100-percent electronic monitoring and less than 100-percent at-sea observation, and less than 100-percent at-sea/electronic monitoring with the precise coverage levels to be determined by sectors and approved by NMFS.
- **ACE Transfers** – ACE is the term given to the allocation each sector would receive, based on the ABC and ACL established for each groundfish stock and the PSC of participating vessels. ACE trading would be necessary if the PSCs of participating vessels is insufficient to cover anticipated catch by sector vessels. Two options were

considered: (1) Allowing sectors to transfer ACE up to and including 2 weeks after the end of the FY and carry over up to 10 percent of unused ACE for each stock for use in the next FY, with 20 percent of each sector's ACE allocation held in reserve until July 1 of each year; and (2) no allowance for transfer of ACE between sectors (no action).

- **Universal Sector Exemptions** – Universal exemptions granted to all sectors would result in sector vessels not being subject to restrictions otherwise applicable to vessels that are not participating in sectors. Two options were considered regarding universal sector exemptions. Option 1 (no action) would maintain the existing requirement for sectors to request exemptions from specific regulations via the approval of the yearly operations plans. Option 2 would exempt all sectors from several key provisions, including trip limits for stocks allocated to sectors, portions of the GOM Rolling Closure Areas, the GB Seasonal Closure Area, DAS restrictions adopted under Amendment 16, and the requirement to use 6.5-inch mesh on GB, provided sectors use 6-inch mesh in selective fishing gear.
- **Area-specific Reporting Requirements** – Two options were considered: (1) No additional area-specific reporting requirements, and (2) a requirement for all operators to declare their intent to fish in one or more broad stock areas prior to each groundfish trip.
- **Assumed Discard Rate Calculations** – Two options were considered for determining the assumed discard rate to be used for trips that were not observed. These options would either be an overall discard rate specific to stock and gear based upon the most recent stock assessment, or a sector-specific discard rate (i.e., a rate for each individual sector and the common pool) calculated for each gear type used in the sector based upon observer data from the previous FY.
- **Commercial/recreational Allocation** – Two overall options were considered regarding the commercial/recreational allocation of groundfish stocks, with two sub-options if an allocation is adopted. Option 1 (no action) would not allocate groundfish stocks between the commercial and recreational fisheries, while Option 2 would allocate stocks that are being fully harvested (i.e., no allocation would be made for stocks in which the yearly ACL is not being harvested) for which recreational harvest is at least 5 percent of overall harvest after considering state-waters catch (currently only GOM cod and GOM haddock). If an allocation is adopted, two options for allocating such stocks were considered based upon catch during either FYs 1996-2006 or catch during FYs 2001-2006.
- **Revisions to the DAS Leasing/Transfer Programs** – Several options were considered regarding revisions to the DAS Leasing and Transfer Programs, including:
 - Option 1 (no action): This option would not revise either program.
 - Option 2: This option would eliminate the DAS conservation tax in the DAS Transfer Program, with sub-option A retaining DAS already lost during previous transfers and sub-option B refunding DAS lost to the DAS conservation tax during previous transfers.
 - Option 3: This option would impose a 20-percent tax on DAS transferred in the DAS Leasing Program.
 - Option 4: This option would eliminate the DAS conservation tax in the DAS Transfer Program for a specific period of between 3 months and 1 year.
 - Option 5: This option would allow permits in CPH to participate in both the DAS Leasing and Transfer Programs.

- **Revisions to Special Management Programs and Special Access Programs (SAPs):** Two main options were considered regarding revisions to these programs: (1) Revisions to existing programs, and (2) no revisions to existing programs (no action). Proposed revisions include:
 - Revised incidental catch total allowable catches (TACs) to include pollock;
 - Revisions to the Closed Area I Hook Gear Haddock SAP, including expanded area and season and elimination of the sector and non-sector season and TAC allocation;
 - Renewal of the Eastern U.S./Canada Haddock SAP, including an exemption from the gear requirements for sector vessels and allowing trawl vessels to use 6-inch mesh codends;
 - Revisions to the Closed Area II Yellowtail Flounder SAP to facilitate the harvest of haddock, including an expanded season, addition of the rope trawl as an approved gear for this SAP, prohibition of the use of a flounder net when there is insufficient ACL to support a targeted yellowtail flounder fishery in this SAP, and an exemption of sector vessels from limits on the number or frequency of trips into this SAP;
 - Suspension of the SNE/MA Winter Flounder SAP;
 - Revisions to the Regular B DAS Program, including a pollock trip limit of 100 lb per DAS, up to 1,000 lb per trip, and allowing trawl vessels to use a 6-inch mesh codend; and
 - Expanded authority of the Regional Administrator (RA) to approve additional gear in any program that requires the use of selective gear.
- **Concurrent Issuance of a Limited Access NE Multispecies and Scallop Permit** – Two options were considered: (1) Restricting the issuance of both a limited access NE multispecies permit and a limited access scallop permit to those vessels already qualified to be issued a NE Multispecies Combination permit (no action), and (2) allowing the concurrent issuance of such permits to all vessels and vessels issued a limited access scallop trawl permit to change to a dredge permit without surrendering their limited access NE multispecies permit.
- **Common Pool Measures** – Four main alternatives were considered regarding common pool measures, including:
 - Option 1 (no action): This option would maintain the existing DAS allocation scheduled for implementation in FY 2009; the current trip limits for specific stocks, including cod, yellowtail flounder, winter flounder, white hake, and Atlantic halibut; gear requirements; and differential DAS counting measures, as implemented under Amendment 13 and Framework Adjustment 42.
 - Option 2A: This option would maintain the existing DAS allocation scheduled for implementation in FY 2009 and gear requirements, as implemented under Amendment 13 and Framework Adjustment 42, but would increase the possession limits for cod and yellowtail flounder; prohibit the possession of SNE/MA winter flounder, windowpane flounder, and ocean pout; and implement revised differential DAS counting areas throughout the Northeast, with DAS charging rates ranging from 1.25:1 to 3:1 (see Section 5.3.2 of the FEIS for more details).
 - Option 3A: This option would reduce the Category A DAS allocation for each vessel by 50 percent compared to 2006 DAS allocations, count DAS used in 24-

hour increments; increase trip limits for cod and yellowtail flounder and eliminate trip limits for most other stocks; prohibit the possession of SNE/MA winter flounder, windowpane flounder, and ocean pout; and establish two restricted gear areas (RGAs) on GB and SNE that only allow the use of selective gear that reduces the catch of flatfish (see Section 4.3.2 of the FEIS for more details).

- Option 4: This option would reduce the Category A DAS allocation for each vessel by 40 percent compared to 2006 DAS allocations, increase trip limits for cod and yellowtail flounder; prohibit the possession of SNE/MA winter flounder, windowpane flounder, and ocean pout; and establish one RGA in SNE that only allow the use of selective gear that reduces the catch of flatfish (see Section 5.3.2 of the FEIS for more details).
- **SNE/MA Gear Requirement** – Two options were considered regarding revising the gear requirements in SNE/MA: (1) Requiring that all vessels using bottom trawl gear within a specific area use a net configured with drop chains to reduce the catch of flatfish species (an exemption is provided for nets with extra-large mesh), and (2) not imposing additional gear restrictions within SNE/MA (no action).
- **GOM Haddock Sink Gillnet Pilot Program** – Two options were considered: (1) Not establishing a new GOM Haddock Sink Gillnet Program (no action), and (2) establishing a 2-year pilot program that would allow vessels to use 30, 6-inch mesh gillnets in the GOM between January through April, provided such vessels declare their intent to participate in this program each year, notify the observer program prior to each trip, and carry a letter of authorization issued by the RA.
- **Size Limits for Haddock and Atlantic Halibut** – Two options were considered for revising the minimum size limits for these species: (1) Maintaining the existing size limits of 19 inches and 36 inches, respectively; and (2) reducing the minimum size limit for haddock to 18 inches and increasing the minimum size limit for halibut to 41 inches.
- **Recreational Measures** – Several options were considered for revising recreational measures, including a no action option for each measure. Revisions to the hook limit would remove the existing two-hook per mainline restriction, and allow recreational vessels to fish with an unlimited number of hooks on one mainline per angler. Revisions to fillet provisions included two options apart from the no action option, including: (1) Allowing recreational anglers to land fillets without skin, and (2) allowing recreational anglers to land fillets with at least 2 inches of contiguous skin that would allow the identification of fish species. Revisions to the GOM cod measures included three options other than no action, including an increased minimum size limit of 26 inches, a reduced possession limit of six cod per angler per trip, and an extension of the GOM cod seasonal prohibition through April 15. Revisions to the GOM haddock measures included four options other than no action, including increasing the minimum size limit to 21 inches, establishing a possession limit of nine fish per angler per trip, a reduction of the minimum size limit to 18 inches and a seven-fish possession limit, and a reduction of the minimum size limit to 18 inches without a possession limit.
- **Retention of Atlantic Wolffish** – In addition to the no action option that would allow vessels to possess an unlimited amount of wolffish, Amendment 16 includes a prohibition on the retention of wolffish.

- **Adoption of Additional Sectors** – Amendment 16 considered not adopting any new sectors (no action) and adopting each of the 17 new and 2 revised sectors under this action.
- **AMs** – Amendment 16 considered three alternative AMs for common pool vessels and four options for recreational AMs, as further listed below. Sector AMs are incorporated into the operations plan requirements and include cessation of fishing operations, an overage deduction, and ACE trading to balance harvest with allocations of ACE.
 - **Common pool AMs:** Options considered for common pool AMs include no AMs (no action), a trimester TAC AM, and a differential DAS counting AM. The trimester TAC AM included trimester TACs for each stock, with inseason closure areas and trip limit adjustments, a white hake trip limit, and 50-percent dockside monitoring by an independent third-party service provider. The differential DAS counting AM included a projection of common pool catch of each stock in February of each year, with a proportional adjustment to the DAS counting rate in certain areas during the following year based upon the percentage of overage/underage of the common pool quotas for each stock.
 - **Recreational AMs:** Options considered for recreational AMs include no AMs for the recreational fishery (no action), a process that would require the Council to develop appropriate AMs for the recreational fishery once recreational catch data from the previous FY are available; a process that would require NMFS to develop appropriate AMs for the recreational fishery in the form of changes to season, adjustments to minimum size, and adjustments to possession limits once recreational catch data from the previous FY are available; and a process that would require NMFS, in consultation with the Council, to develop appropriate AMs for the recreational fishery once recreational catch data from the previous FY are available.
- **Other Alternatives Considered** – Amendment 16 considered many other measures that were, ultimately, excluded from further development in this action. These alternatives are summarized in Section 5.4 of the FEIS and include a research set-aside program; an offshore closure area; an effort control that eliminated all trip limits and reduced DAS allocations; alternative management systems such as area-based management, an individual fishing quota (IFQ) regime, and a points-based system of effort control that allocated all vessels a common currency in the form of points and assigned point values for each pound of a stock landed to control effort; and further revisions to existing management measures.

Measures Adopted by the Council Under Amendment 16

At its June 2009 meeting, the Council adopted the following measures for inclusion in Amendment 16 after considering recommendations from the Groundfish Oversight Committee, Groundfish and Recreational Advisory Panels, the Council's Scientific and Statistical Committee (SSC), and public comments received during the public comment period on the DEIS:

1. Incorporation of Atlantic Wolffish into the FMP

Atlantic wolffish was recently determined to be overfished, with notice provided to the Council

in February 2009. Amendment 16 would incorporate Atlantic wolffish into the NE Multispecies FMP, including incorporating status determination criteria, a rebuilding plan, and management measures to rebuild this species.

2. Status Determination Criteria

Amendment 16 would update the status determination criteria for existing groundfish stocks based upon the best available scientific information regarding stock status resulting from the latest stock assessment (GARM III).

3. Rebuilding Programs

GARM III indicated that witch flounder, GB winter flounder, northern windowpane flounder, and pollock are newly overfished. Amendment 16 proposes new rebuilding programs for these stocks, with a rebuilding end date of 2017, assuming the rebuilding programs would begin in FY 2010. For witch flounder and GB winter flounder, the rebuilding programs would rebuild these stocks with a 75-percent probability of success. The rebuilding programs proposed for pollock and northern windowpane flounder would not include a probability of success, because the status determinations for these stocks are based upon survey indices. It is not possible to determine a rebuilding period or a rebuilding F for Atlantic wolffish at this time.

4. ABC Control Rule

The ABC control rule would specify that the ABC for most stocks should be determined as the catch at 75 percent of F_{MSY} , or $F_{rebuild}$, whichever is lower. For stocks that cannot be rebuilt within existing rebuilding periods, the ABC would be based upon incidental bycatch, including a reduction in the existing bycatch rate. Finally, for stocks with unknown status, ABC would be determined on a case-by-case basis by the SSC.

5. ABC/ACL Specifications and Distribution Process

Under Amendment 16, ABCs/ACLs would be developed as part of the framework adjustment/specifications process established in the FMP, whereby the Groundfish Plan Development Team (PDT) would develop recommendations for setting an ABC, ACL, and overfishing level for each stock for each of the next 3 years following the implementation of the biennial adjustment, or yearly for stocks managed by the U.S./Canada Resource Sharing Understanding, based upon the ABC control rule. The Council's SSC would either approve the PDT's ABC recommendations, or provide alternative recommendations. The Council would then consider the recommendations of the SSC and PDT, and adopt ABCs and ACLs for each stock for implementation by NMFS. ACLs would then be distributed among the various segments of the fishery that catch groundfish, including the Atlantic sea scallop fishery, the Atlantic herring fishery, state-waters fisheries, exempted fisheries, and the directed NE multispecies commercial and recreational fisheries.

6. AMs

For the commercial fishery, separate AMs are proposed for vessels fishing under sectors and for non-sector vessels. For sector vessels, Amendment 16 would prohibit sectors from fishing in a particular stock area unless they are allocated or acquire ACE for each groundfish stock caught in that stock area. Any overages at the end of the FY would be deducted from that sector's allocation during the subsequent FY. Non-sector vessels would be subject to a differential DAS counting AM during FYs 2010 and 2011 that would adjust the DAS counting rate in particular stock areas proportional to the overage of any sub-ACL, and a hard-TAC AM in FY 2012 and beyond involving trip limit adjustments, area closures, and overage deductions. For the recreational fishery, the RA would evaluate whether recreational catch exceeded the recreational allocation for GOM cod or GOM haddock and propose adjustments to recreational measures for the following FY in consultation with the Council. If the overall ACL for a particular stock is exceeded by components of the fishery not subject to AMs (i.e., exempted fisheries, state-waters fisheries, etc.), excessive catch by such components would be proportionately distributed among the commercial and recreational groundfish fishery to determine if the AMs described above would be triggered.

7. Issuance of Limited Access NE Multispecies and Atlantic Sea Scallop Permits

Amendment 16 would allow a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time. In addition, the owner of a vessel currently issued a limited access Atlantic sea scallop trawl permit would be able to convert the permit to a dredge gear permit without relinquishing his/her limited access NE multispecies permit.

8. Recordkeeping and Reporting Requirements

Amendment 16 would establish four broad stock areas for the purposes of providing more accurate and timely data that can be used to apportion catch to individual stock areas. Vessel operators would be required to declare their intent to fish in one or more of these areas prior to each trip to facilitate the attribution of species landings to specific stock areas. When fishing in more than one broad stock area, vessels would be required to submit a trip-level catch report via the vessel's vessel monitoring system (VMS) to specify the catch of each species in each broad stock area.

9. Effort Controls

Amendment 16 would reduce the DAS allocations for non-sector vessels by 50 percent compared to each vessel's 2006 DAS allocation, which is approximately a 32-percent reduction from each vessel's 2009 DAS allocation. All NE multispecies DAS used by non-sector vessels would be counted in 24-hr increments, based upon the time called into the DAS program. Amendment 16 would exempt sector vessels from the DAS allocation reductions because such vessels would be subject to hard TACs to control fishing effort. However, Amendment 16 would retain the existing 2009 DAS allocations for sector vessels for the purposes of participating in the monkfish fishery, which still requires the concurrent use of a groundfish DAS with a monkfish DAS, and to land skate wings. Unlike non-sector vessels, sector vessels participating in the monkfish fishery would be charged NE multispecies DAS to the nearest

minute, based upon the time called into the DAS program.

Amendment 16 also proposes trip limits and two RGAs to control effort by non-sector vessels. RGAs are intended to reduce the catch of flatfish species (predominantly SNE/MA winter flounder and SNE/MA yellowtail flounder) through the required use of selective gear in areas where these species are caught. Trip limits proposed in Amendment 16 include:

- GOM cod: 2,000 lb per DAS, up to 12,000 lb per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption (Category C permit).
- GB cod: 2,000 lb per DAS, up to 20,000 lb per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption (Category C permit); the existing trip limit for GB cod caught within the Eastern U.S./Canada Area or the Eastern U.S./Canada Haddock SAP would remain the same at 500 lb per DAS, up to 5,000 lb per trip; and 1,000 lb per trip, respectively.
- Cod limit for Handgear A vessels: The possession limit would increase to 750 lb per trip.
- Cod limit for Handgear B vessels: The possession limit would increase to 200 lb per trip.
- Cape Cod/GOM and SNE/MA yellowtail flounder: 250 lb per DAS, up to 1,500 lb per trip.
- GB yellowtail flounder: Unlimited, unless revised by the RA.
- Atlantic halibut: The current trip limit of 1 fish per trip is maintained.
- SNE/MA winter flounder, windowpane flounder, ocean pout, and Atlantic wolffish: Landing of these species is prohibited in any fishery.

10. DAS Leasing and Transfer Programs

Amendment 16 proposes several revisions to the DAS Leasing and Transfer Programs that are intended to eliminate unnecessary administrative procedures that would impede participation in these programs, including allowing permits currently held in confirmation of permit history (CPH) to participate in both programs, and eliminating the DAS leasing cap in the DAS Leasing Program and the DAS conservation tax in the DAS Transfer Program.

11. Minimum Fish Size

Amendment 16 would reduce the minimum fish size for haddock from 19 to 18 inches for all vessels to reduce discards and increase landings of this healthy species. The minimum fish size for Atlantic halibut would be increased from 36 inches to 41 inches, for all vessels, to increase opportunities for halibut to spawn prior to capture, thereby increasing the likelihood that this stock will meet rebuilding objectives.

12. Special Management Programs and SAPs

Several revisions to special management programs and SAPs are proposed in Amendment 16 that would reduce the catch of pollock and SNE/MA winter flounder, but facilitate the catch of healthy stocks of haddock. In particular, the Closed Area (CA) I Hook Gear Haddock SAP would be revised to expand both the area and the season, while the CA II Yellowtail Flounder SAP would be revised to facilitate the targeting of GB haddock by revising the season and allowing selective gear to be used within CA II.

13. Recreational Measures

Amendment 16 would allocate an ACL of GOM cod and GOM haddock to the recreational fishery based upon recreational catch between FYs 2001-2006. To achieve the necessary F reductions for GOM cod, Amendment 16 would extend the existing seasonal GOM cod prohibition for recreational vessels for 2 weeks, to run from November 1 through April 15. Amendment 16 would also reduce the minimum size limit for haddock to 18 inches, increase the size limit to 41 inches for Atlantic halibut, and prohibit the retention of Atlantic wolffish.

14. Sector Measures

Amendment 16 would specify a minimum number of participants required to form a sector by defining a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector. Sectors would be allocated portions of the ACLs for all groundfish stocks with the exception of Atlantic halibut, ocean pout, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder. Sector allocations would be in the form of an ACE for each stock, or the maximum amount of a particular stock that a sector could catch – including both landings and discards – on a yearly basis. Each individual sector's ACE for a particular stock would represent a share of that stock's ACL available to commercial NE multispecies vessels, based upon the PSC (an individual vessel's share of the total historical landings of each stock between FYs 2001-2006) of participating vessels. All or a portion of a sector's ACE for any stock may be transferred to another sector at any time during the FY, and up to 2 weeks into the following fishing year.

This action would increase the information that must be submitted by sectors to facilitate monitoring the sector TACs. Sector operations plans would be required to be submitted by September 1 of each year to ensure that the operations plans and associated analyses are reviewed in time to implement such operations by the start of the next FY on May 1. All sectors would be exempt from trip limits, seasonal closed areas, NE multispecies DAS restrictions, the requirement to use a 6.5-inch mesh codend when fishing with selective gear on GB, and portions of the GOM Rolling Closure Areas. Sectors could still request additional exemptions as part of their annual operations plans, subject to approval by the RA. Sectors would be required to submit an annual report to NMFS that details information necessary to evaluate the biological, economic, and social impacts of sectors.

Amendment 16 would require sectors to develop an independent, third-party dockside and at-sea/electronic monitoring program by FYs 2010 and 2012, respectively. During FY 2010, the offloads of 50 percent of trips by each sector would be randomly observed, with 20 percent randomly observed in future years. The at-sea monitoring program would be used to verify area fished and catch (landings and discards) by species and gear type, with coverage levels specified by NMFS on a yearly basis.

Sector vessels would be required to retain all legal-sized groundfish and could only discard undersized fish. All catch, including discards, would be counted against a sector's ACE for each stock. Once a sector's ACE for a particular stock is caught or exceeded, that sector would be

required to cease fishing operations in that stock area until it could acquire additional ACE for that stock. If, in a FY, a sector exceeds its ACE for a particular stock, that sector's ACE for that stock would be reduced by the amount of the overage in the following FY. If insufficient ACE to cover the overage exists, a sector's ACE for that stock would be reduced to zero for the following FY. If the sector disbands, participating vessels would be subject to a reduction in ACE contribution if participating in another sector, or a reduction in allocated DAS if not participating in a sector. In addition to overage penalties, a sector and its participants could be held jointly and severally liable for discarding legal-sized fish or misreporting catch (both landings and discards).

Finally, Amendment 16 would authorize the creation of 17 new and 2 revised sectors. Operations plans for these sectors would still need to be approved on a yearly basis by NMFS, consistent with the sector approval process in Amendment 13.

15. GOM Haddock Sink Gillnet Pilot Program

Under Amendment 16, the Council adopted a pilot program that would allow non-sector vessels to fish with 6-inch mesh stand-up sink gillnets in the GOM from January 1 through April 30 of each year, provided Day gillnet vessels do not deploy more than 30 nets per trip.

Environmentally Preferred Alternative

As required by the CEQ NEPA implementing regulations, NMFS shall identify the "alternative or alternatives which were considered to be environmentally preferable (40 CFR Part 15.05.2(b))." The environmentally preferred alternative is the alternative that causes the least damage to the biological and physical environment, and that best protects, preserves and enhances historic, cultural and natural resources. NMFS has determined that, overall, the measures being implemented represent the environmentally preferable alternative when considering the balance of environmental and economic effects that might accrue from these measures within the context and strictures of the Magnuson-Stevens Act and other applicable law.

The Amendment 16 FEIS evaluates the biological impacts of the options considered, including impacts to the groundfish fishery, other fisheries, marine mammals, endangered species, and EFH. Where sufficient information was available, the options were compared using quantitative criteria, including the Closed Area Model (CAM) described in Section 7.1 and Appendix II of the FEIS. In the case of measures designed to control F, the impacts of measures are analyzed by combining the measures as much as possible. Many of the proposed measures interact with each other, and analyzing the measures individually does not capture the true impact of adopting a suite of measures. However, it is not always possible to quantify the impacts of certain measures for various reasons, including insufficient quantitative information regarding the possible impacts of certain measures (e.g., RGAs); limitations of the CAM, such as the difficulty in identifying the precise impact of a particular measure when such a measure is impacted directly or indirectly by other measures included in this action; or uncertainty regarding the degree of participation in sectors. As a result, most options were analyzed through both quantitative and qualitative analysis, as appropriate. The analysis evaluates the impact of Amendment 16

measures relative to the no action alternative — i.e., a baseline scenario that assumes that the measures implemented by the 2009 interim action would expire and regulations would revert to those implemented under Framework Adjustment 42 in 2006.

In nearly every instance, the proposed revisions to existing management measures are considered the environmentally preferable option over the no action option. This is because the revised measures, as specified above, are intended to prevent overfishing and ensure that overfished stocks continue to rebuild to sustainable levels. The one exception to this is the option related to the GOM Sink Gillnet Pilot Program. In this instance, the no action option is the environmentally preferable option, as it would not allow the use of 6-inch gillnets in the GOM on a fishery-wide basis, which could increase the catch of GOM cod and pollock stocks that are currently overfished and subject to overfishing. This is particularly relevant when considering that other measures proposed in this action would reduce catch of these stocks. Other measures are purely administrative in nature and have minimal, if any, impact on the biological or physical environment. Examples of such administrative measures include the ACL process, definition of a sector, sector operations plan requirements, sector allocation and recreational measures, sector joint/several liability measures, ACE transfer provisions, DAS Leasing/Transfer Program revisions, concurrent issuance of a limited access scallop and NE multispecies permit, and the adoption of new and revised sectors. These administrative measures would have minimal impact because overall catch of groundfish would be limited to the ACLs specified in this fishery. Sector allocations could actually reduce fishing capacity and, therefore, mortality, by reducing the economic viability of vessels only marginally involved in the fishery. While ACE and DAS transfer provisions may change which vessels and, therefore, which gear types are used in this fishery, because any vessel can elect to use any gear type in each FY, there is no certainty regarding the possible future impacts to the physical environment of such changes, and an environmentally preferable option cannot be identified. At this time, it is also not possible to identify an environmentally preferable option for the SNE/MA gear requirement, as a study of the impacts for such gear has not been completed. It is possible that such gear could reduce impacts on flatfish species, but the impacts are uncertain at this time.

Most measures proposed in this action would have positive effects on the biological and physical environment over the no action option. Options to revise the status determination criteria, ABC control rule, and revised mortality targets are based upon updated information regarding stock status, size at maturity, growth rates, and recruitment patterns. This updated information reflects a better understanding of population dynamics. Thus, incorporating this information through revisions to existing measures increases the likelihood that measures implemented will achieve their goals of reducing F and rebuilding overfished stocks. Incorporation of Atlantic wolffish and designation of EFH for this species is environmentally preferable, as without such measures, there would be little protection for this species or its habitat. AMs for sectors, the common pool, and recreational vessels would all help prevent overfishing by ensuring that ACLs are not exceeded, deducting overages from subsequent ACLs, or reducing effort to prevent future ACLs from being exceeded. To the extent that revised sector and non-sector monitoring requirements increase the accuracy and timeliness of catch monitoring data, such revisions would be environmentally preferable in that they would increase the likelihood that AMs could be implemented in a timely manner and prevent ACLs from being exceeded. Calculation of assumed discard rates could be considered an environmentally preferable option because it is

likely discard rates developed using previous data would be more conservative than future discard rates, as it is expected that sector provisions would reduce discarding overall. Revisions to SAPs would facilitate the targeting of haddock while maintaining measures meant to control impacts on stocks of concern. Among the options considered for common pool measures, Option 3A is the environmentally preferred option because it would meet the biological objectives of more stocks than any other option considered. Adjustments to minimum size limits would have a neutral impact on haddock, but would have a positive impact for Atlantic halibut, as it would make the minimum size limit consistent with median length at maturity for female halibut in the GOM, meaning that fish are more likely to spawn at least once before being harvested. Finally, revisions to recreational measures would either have neutral or positive impacts to the biological environment, as they would either maintain existing interim measures for haddock, or reduce catch of GOM cod.

Thus, with the exception of the GOM Sink Gillnet Pilot Program, the measures approved by the Council represent the environmentally preferable option. For additional information on the biological impacts of options considered in Amendment 16, see Section 7 of the FEIS.

Factors Considered in Making a Decision on the Final Action

The Council on Environmental Quality (CEQ)'s regulations for implementing the procedural provisions of NEPA require agencies to not only state the outcome of the decisions, but also to discuss how the decision was affected by the preferences among alternatives and to identify and discuss all factors that led to the decision. In making a decision regarding approval of the measures in Amendment 16, NMFS considered the analysis of alternatives in the FEIS, associated environmental impacts, the extent to which the impacts could be mitigated, and the agency's consideration of the objectives of the final action as they relate to the Magnuson-Stevens Act and other applicable law. NMFS has also considered the public and agency comments received during the NEPA comment periods.

The goals and objectives of the FMP are described in Section 3.4 of the FEIS; the main goals of Amendment 16 are to end overfishing, rebuild overfished stocks, and mitigate the adverse economic impacts of recent reductions in fishing effort consistent with the requirements of the Magnuson-Stevens Act. Since 1996, the number of DAS, the primary means of controlling fishing effort, has been continually decreased in an effort to eliminate overfishing and rebuild overfished stocks. In general, these efforts have been successful at reducing F for many stocks, but most stocks remain overfished with overfishing still occurring. Without additional reductions in F, the fishery is unlikely to eliminate overfishing and rebuild overfished stocks. Further reductions in F lead to adverse economic and social impacts, along with a reduced chance of obtaining optimum yield (OY) for all stocks, particularly due to the commingled nature of this fishery, where it is often difficult to selectively harvest healthy stocks without catching stocks in need of F reductions. Therefore, Amendment 16 seeks to mitigate such economic impacts by facilitating access to healthy haddock resources and increasing the efficiency and reducing the costs of existing measures. Finally, this action must include a mechanism to establish ACLs and AMs consistent with the Magnuson-Stevens Act. Thus, NMFS considered the relevance of the Amendment 16 measures to the goals and objectives of

both the FMP and this action, and the effectiveness of each option in achieving such goals and objectives.

In addition to the effectiveness of alternatives relative to the amendment's goals, NMFS must consider the approval of an FMP amendment relative to the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act states that "Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the ... National Standards for fishery conservation and management." As required, NMFS evaluated Amendment 16 relative to the National Standards described in section 301 of the Magnuson-Stevens Act, and found the action to be consistent with these standards. To the extent that there may be absence of a measure to meet the Magnuson-Stevens Act provisions for a groundfish stock, NMFS has determined that such a failing is not grounds to disapprove all other Amendment 16 measures for other stocks. A summary of the rationale for the determination of compliance is in Section 9.1.1 of the FEIS.

In addition to the National Standards, section 303(a) of the Magnuson-Stevens Act includes 15 required provisions for FMPs. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, must comply with these requirements. Section 9.1.2 of the FEIS describes these requirements and the basis for determining that the measures included in Amendment 16 comply with the required provisions.

Section 303(b) of the Magnuson-Stevens Act also includes discretionary provisions for FMPs that the Council can decide to include if it determines the provisions are necessary and appropriate for the management of the fishery. Several discretionary provisions relevant to Amendment 16 are described below:

Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, may:

- Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- For closure areas that prohibit all fishing, ensure that such closure –
 - Is based on the best scientific information available;
 - Includes criteria to assess the conservation benefit of the closed area;
 - Establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
 - Is based on an assessment of the benefits and impacts of the closure.
- Establish a limited access system for the fishery in order to achieve OY if, in developing such a system, the Council and Secretary take into account –
 - Present participation in the fishery;
 - Historical fishing practices in, and dependence on the fishery;
 - The economics of the fishery;
 - The capability of fishing vessels used in the fishery to engage in other fisheries;
 - The cultural and social framework relevant to the fishery and any affected fishing communities; and
 - Any other relevant considerations.

- Require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for conservation and management of the fishery;
- Include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;
- Include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations.

NMFS has determined that the measures developed in Amendment 16 comply with these Magnuson-Stevens Act discretionary provisions, as described further below.

In addition to the Magnuson-Stevens Act and NEPA, NMFS also considers other laws that relate to the implementation of FMPs and FMP amendments. NMFS evaluated Amendment 16 relative to the laws described below and has determined that all of the approved Amendment 16 measures, singly and combined, comply with the following laws and minimize impacts relevant to these laws. The basis for NMFS's determination of compliance with these laws, and information to meet the requirements relative to these laws, is provided in Section 9.0 of the FEIS and in the RA's decision memorandum included with this ROD for the approval of Amendment 16.

Decision on the Final Action: Measures Approved/Disapproved Under Amendment 16

NMFS approves all measures adopted by the Council under Amendment 16 and listed above with the exception of the GOM Sink Gillnet Pilot Program. The decision to partially approve Amendment 16 is based on the rationale contained in the RA's decision memorandum that accompanies this ROD, the analyses prepared for Amendment 16 and the FEIS, and all other analytical documents prepared for this action during the course of its development. In making the decision to partially approve Amendment 16, NMFS evaluated the proposed action relative to the Magnuson-Stevens Act, including the national standards, associated guidelines, and required and discretionary provisions, in addition to all other applicable law listed above. The FEIS contains detailed discussion and analysis of the basis for NMFS's determination that the action complies with all of these laws and provisions. It is important to note that the no action option for many measures listed below would not achieve the objective of preventing overfishing, rebuilding overfished stocks, or mitigating the economic impact of further effort reductions. Further, the no action option would not ensure that the NE Multispecies FMP maintained compliance with the Magnuson-Stevens Act requirements for FMPs to immediately prevent overfishing and establish a mechanism for specifying ACLs and AMs. A summary of the rationale and justification for approving or disapproving the measures is provided below.

1. GOM Sink Gillnet Pilot Program

This pilot program proposed to allow vessels to target haddock on a fishery-wide basis while using 6-inch mesh gillnets, which is less than the minimum mesh size currently required, from January through April. As specified in earlier letters to the Council, this pilot program is

analogous to a SAP, as defined in Section 3.4.5 of the Amendment 13 Final Supplemental EIS, because it would allow vessels on a fishery-wide basis to fish in a manner that would otherwise be prohibited. Contrary to assertions in Section 4.3.2.2 of the Amendment 16 FEIS, nothing in Amendment 13 suggests that a SAP was intended to only facilitate access to closed areas, or allow the use of a Category B DAS. According to Amendment 13, SAPs are intended to facilitate the targeting of healthy stocks, without compromising efforts to end overfishing or rebuild overfished stocks by using selective gear or fishing when interaction with stocks of concern (i.e., stocks that must have fishing mortality reduced to end overfishing or rebuild the overfished stock) are minimized. Although recent actions have adopted SAPs based upon peer-reviewed research, this is not a formal criterion for the approval of SAPs. However, such research helps identify the expected impacts of proposed measures. Further, public comments received during the public comment period on the Amendment 16 notice of availability requirement of the Magnuson-Stevens Act support the use of peer-reviewed research prior to the approval of any new or revised SAPs.

Research cited to support this pilot program in the Amendment 16 FEIS has several limitations that preclude its ability from adequately supporting the proposed pilot program. First, the work was not conducted throughout the season proposed for this pilot program (January through April), with research trips only being conducted in March and May. Secondly, research trips were conducted in an area not accessible to NE multispecies vessels (the Western GOM Closure Area), resulting in catch rates by experimental vessels that are not directly comparable to those expected under this pilot program. Finally, and most importantly, the catch of the target species (haddock) was too low to adequately evaluate the selectivity of gillnets for haddock, while the catch of cod and pollock was too high to reasonably conclude that this pilot program would not have an adverse impact on these overfished stocks. For example, during this experiment, only 71 haddock were caught, while 264 cod and 873 pollock were caught. The report concludes that “bycatch of cod is likely to be a challenge for a directed springtime haddock fishery on this portion of Jeffreys Ledge,” that “make(ing) a regulatory change based upon this study alone (is) unwise,” and that “further work must be done on avoiding cod bycatch if a haddock gillnet fishery is to be reestablished in this area” (Marciano, et. al, 2005). Researchers suggest gear modifications that raise the webbing of gillnets several feet off the bottom would enhance the selectivity of gillnet gear and promote the objectives of this pilot program. While this work was reportedly conducted in 2006, a final report of such work has not been made available, and has not been used to enhance the effectiveness of this pilot program, as proposed in Amendment 16.

As this research demonstrates, gillnets are effective at catching both pollock and cod, stocks that require reductions in fishing mortality to rebuild under existing/proposed rebuilding programs. Section 7.2.1.3.1.4 of the Amendment 16 FEIS indicates that, if the catch rates of these species remain the same or increases under this proposed pilot program, mortality on these species could increase. While the FEIS also indicates that mortality might decrease if catch rates decrease, the FEIS does not provide any evidence that catch rates of cod and pollock would actually decrease as a result of using smaller mesh in this program. Recent landings data indicate that haddock catches by gillnet gear in the GOM are minimal in January and February, and peak in March. However, large amounts of both cod and haddock are regularly landed in January and February. This suggests that this pilot program, as proposed, would encounter larger amounts of cod and pollock early in the proposed season, while haddock catch rates would not increase until later in

the proposed season. As a result, the proposed pilot program could either maintain or increase catches of these species compared to current measures, particularly considering the proposed use of smaller mesh would likely catch smaller fish, as also suggested in the Amendment 16 FEIS. Thus, there is the possibility that this program could undermine rebuilding programs for these stocks without substantially increasing the catch of haddock – the stated objective of this measure.

Based upon the above rationale, the proposed pilot program is inconsistent with National Standards 1 and 9 and with other provisions of the FMP, including the SAP provisions in Amendment 13 and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, this pilot program is disapproved under Amendment 16. The Council could chose to revise the proposed pilot program in a future action to better reflect months when low catch rates of cod and pollock correlate with higher catch rates of haddock (i.e., March and April) to maximize opportunities to increase the catch of haddock, without unnecessarily increasing mortality on cod and pollock.

2. Incorporation of Atlantic Wolffish into the FMP

Atlantic wolffish is occasionally caught by both commercial and recreational groundfish vessels. In October 2008, a petition was submitted to NMFS to list wolffish under the Endangered Species Act (ESA). In February 2009, wolffish was determined to be overfished which, under the Magnuson-Stevens Act, requires that action be taken to end overfishing and implement management measures to rebuild the stock. Thus, Amendment 16 adds this species to the FMP and prohibits possession to help rebuild this overfished species. Because there is little information and a high degree of uncertainty regarding population status and the reliability of survey data for this stock according to the Amendment 16 FEIS, designation of EFH throughout the EEZ was considered appropriate at this time until further information could be acquired to narrow the scope of the EFH, as necessary.

3. Status Determination Criteria

Updated status determination criteria listed in Amendment 16 were derived from data used in the GARM III and the Data Poor Working Group, which represent the best scientific information available. Because Amendment 16 would update the status determination criteria for all groundfish stocks, and further management measures would be based upon such data, this action is consistent with National Standard 2 (best available science) of the Magnuson-Stevens Act. The no action option was rejected because it would not be consistent with National Standard 2 to use older status determination criteria in the face of new, better information from GARM III.

4. Rebuilding Programs

Available data, including GARM III and updated survey data, indicate that witch flounder, GB winter flounder, northern windowpane flounder, and pollock are overfished, and that overfishing is occurring on these stocks. The Magnuson-Stevens Act and National Standard 1 (preventing overfishing) and its associated guidelines require that Councils immediately end overfishing and

develop management measures to rebuild these stocks in as short a period as possible, not to exceed 10 years, unless otherwise allowed due to the biology of the stock. The no action option would not have adopted rebuilding programs for stocks newly classified as being overfished and subject to overfishing, which would be inconsistent with requirements of the Magnuson-Stevens Act. Instead, Amendment 16 proposes new rebuilding programs for these stocks, with a rebuilding end date of 2017, assuming the rebuilding programs begin in FY 2010. These rebuilding programs are less than 10 years in duration and would immediately end overfishing for these stocks, consistent with the Magnuson-Stevens Act.

The rebuilding program for SNE/MA winter flounder was established under Amendment 13 in 2004. This rebuilding program intended to gradually reduce F for this stock and rebuild the stock by 2014. According to updated information in GARM III, the recruitment assumptions used to support the Amendment 13 rebuilding program for this stock were overly optimistic. As a result, GARM III determined that this stock would not rebuild by 2014, even if F was reduced to zero, but could rebuild by 2015 or 2016 with an F of zero. Fishing mortality on SNE/MA winter flounder would be reduced to as close to zero as practicable under Amendment 16. Although the Amendment 16 measures would end overfishing on this stock, they will not result in it rebuilding by Amendment 13's objective of 2014. However, even a closure of the entire SNE/MA winter flounder stock area would not result in rebuilding this stock by the end of 2014, and would only marginally shorten the date of rebuilding by 1 or 2 years, at the cost of closures of many of the high-value fisheries and substantial adverse economic impacts to vessels and associated fishing communities in the area. It is not possible, therefore, under any scenario, including a complete closure to fishing in the affected stock area, to make adequate progress to meet the 2014 rebuilding timeline. The Magnuson-Stevens Act in Section 304(e)(7) recognizes that in a situation where an FMP amendment may not be able make adequate progress to achieving rebuilding objectives, a Council is allowed an opportunity to recommend other measures to make adequate progress. The Council chose the proposed Amendment 16 measures because it would not result in appreciable delays in rebuilding and, by avoiding a region-wide closure, provide for the sustained participation of fishing communities and minimize the adverse economic impacts on such communities, consistent with National Standard 8. Based on these reasons, therefore, approving the measure to reduce fishing mortality on SNE/MA winter flounder to as close to zero as possible is reasonably justified and legally permissible under Section 304(e)(7).

5. ABC Control Rule

The Amendment 16 DEIS referenced the F control rule in Amendment 13 as a means to develop ABCs and ACLs in this action, but did not specifically include an option to revise the control rule or reclassify it as the ABC control rule. This approach, represented by the no action option, would be consistent with the new requirements of the Magnuson-Stevens Act. However, the SSC reviewed an analysis of the effectiveness of this control rule and recommended a simpler approach to incorporate scientific uncertainty when specifying ABCs. This revised approach, as described above, relies upon setting ABCs at 75 percent of F_{MSY} , or $F_{rebuild}$, whichever is lower, along with considerations for stocks that cannot rebuild within the rebuilding timeline or stocks with unknown status. Although the ABC control rule recommended by the SSC was not developed in time for incorporation into the DEIS, the public had several opportunities to

consider and comment on the application of this control rule in Amendment 16 before the Council formally adopted measures under Amendment 16 in June 2009. Further, the public had an opportunity to comment on this provision during the comment period for the Amendment 16 and the FEIS, as described below. Therefore, because the SSC has considered the ABC control rule in Amendment 16 to be more appropriate than the Amendment 13 F control rule approach in the DEIS, the application of the ABC control rule under Amendment 16 is consistent with the use of the best scientific information available. Further, because the public had several opportunities to comment on this ABC control rule prior to a final decision on the action by both the Council and NMFS, this measure is consistent with the NEPA and the Administrative Procedure Act (APA). Finally, this measure would meet the goals of the FMP and this action by maintaining compliance with the Magnuson-Stevens Act.

6. ABC/ACL Specifications and Distribution Process

The Magnuson-Stevens Act requires that FMPs contain a mechanism for specifying ACLs at such a level that overfishing does not occur. Amendment 16 adopts a process for specifying ABCs/ACLs as part of the framework adjustment/specifications process in the FMP, including the development of ABC/ACL recommendations by the PDT for formal review and approval by the SSC and Council. Under this process, the ACLs adopted by the Council could not exceed the ABC recommendations of the SSC. Accordingly, this measure is consistent with the Magnuson-Stevens Act requirements to develop ACLs that may not “exceed the fishing level recommendations of its scientific and statistical committee.” The no action alternative would have failed to adopt a process to specify ACLs in the fishery, which is not consistent with the Magnuson-Stevens Act.

ACLs developed under this process would be distributed among the segments of fisheries that catch groundfish, including the Atlantic sea scallop fishery, the Atlantic herring fishery, state-waters fisheries, exempted fisheries, and the directed NE multispecies commercial and recreational fisheries. By distributing ACLs among the various components of the fishery that catch groundfish, it is possible to more precisely develop management measures that effectively regulate harvest groundfish, while preventing the overall ACLs from being exceeded. This is necessary to ensure that measures in Amendment 16 accommodate catch of groundfish by other fisheries, and to maintain consistency with Objective 8 of the FMP to “develop biological, economic, and social measures of success for the groundfish fishery and resource that ensure accountability in achieving fishery management objectives.” For certain segments of the fishery, neither the Council nor the NE Multispecies FMP have the authority to regulate catches or revise management measures. Accordingly, the sub-component of the ACL distributed to such fisheries is not considered an ACL and, therefore, not subject to AMs. While such catch would still count towards the overall ACL for each stock, Amendment 16 notes that controls on the segments of the fishery that are subject to AMs (i.e., the directed groundfish fishery) must be sufficient to prevent overfishing of the stock as a whole. Further, the amount of ACL distributed to each sub-component of the fishery would be reevaluated every 2 years as part of the biennial adjustment process. Should catch of groundfish by such components exceed the amount distributed to these fisheries, the Council could revise the amount distributed to that sub-component. Thus, this measure in Amendment 16 is consistent with both the FMP and the Magnuson-Stevens Act.

7. AMs

As noted above, Amendment 16 specifies AMs in the directed groundfish fishery, with separate AMs for sector vessels, common pool vessels, and the recreational fishery. Sector vessels would be required to cease fishing when the ACE for a particular stock is caught, and to deduct any overages from the ACE allocated to that sector during the subsequent FY. Common pool vessels would transition to a similar hard-TAC AM system in 2012, but would first be subject to differential DAS counting if it is projected that the ACLs allocated to common pool vessels would be exceeded. The differential DAS counting AM for common pool vessels would apply to all groundfish stocks, but the hard TAC AM would not apply to ocean pout, windowpane flounder, or Atlantic halibut; stocks that, with the exception of halibut, cannot be possessed by any groundfish vessel. Closures associated with either sector or common pool AMs in Amendment 16 are based upon the best scientific information available, including stock areas used in GARM III, and upon the areas that accounted for 90 percent of landings for each stock in recent years based upon vessel trip reports. Such areas would be evaluated regularly and could be revised based upon the biennial adjustment process in the FMP, consistent with discretionary provisions of the Magnuson-Stevens Act. Due to the delayed availability of catch data for the recreational fishery, it is not possible to develop inseason AMs for this component of the fishery. Therefore, Amendment 16 would require NMFS to develop appropriate AMs for the recreational fishery for the following FY if the ACLs for GOM cod or GOM haddock are exceeded during a FY, after consultation with the Council. Consultation with the Council is considered necessary to develop recreational AMs, as a majority of recreational fishing effort is conducted in state waters, and coordination of Federal and state recreational fishing measures can best be accomplished through the Council process, where the directors of state fishery management agencies participate as Council members. As stated above, for segments of the fishery that are not subject to AMs such as state waters fisheries, exempted fisheries, and the scallop fishery, excessive catch of groundfish by these components would be accounted for by controls on the directed groundfish fishery, including the AMs described above, to ensure that overfishing does not occur. In doing so, all groundfish catch is accounted for under the ACLs developed pursuant to the process described in Amendment 16.

Although ACLs are specified for all stocks, several stocks (SNE/MA winter flounder, ocean pout, windowpane flounder, and wolffish) are not specifically allocated to sectors because these stocks are likely to have small ACLs and vessels have very limited landing history for these predominantly non-directed catch stocks. It would be very difficult to accurately monitor such small ACLs. Rather than further complicate the monitoring requirements for sectors by allocating such stocks to sectors, Amendment 16 would instead prohibit the retention of these stocks to discourage targeting and, therefore, reduce the likelihood that the ACLs for these stocks would be exceeded. Because there would not be a formal allocation of these stocks to sectors, Amendment 16 did not include specific sector AMs for these stocks. In addition, ocean pout, windowpane flounder, and Atlantic halibut would not be subject to the common pool hard-TAC AM beginning in 2012. This approach is intended to maintain vessel access to all stock areas, as allocating such small bycatch TACs to sectors and incorporating such stocks under the hard-TAC AM would likely result in unnecessarily closing large areas and substantial adverse economic impacts to vessels and associated fishing communities due to excessive catch of these

stocks. Although these stocks would not be subject to stock-specific AMs upon the implementation of Amendment 16, it is likely that other measures in Amendment 16 are sufficient to prevent overfishing. Such measures include AMs specified for other stocks that overlap with the distribution of these stocks, restrictive management measures such as DAS reductions and RGAs where only selective gear that avoids catch of particular stocks can be used, further revisions to the FMP as part of the biennial adjustment process, RA authority to approve/disapprove sectors on a yearly basis due to excessive bycatch of these stocks, and inseason adjustments to management measures for common pool vessels to slow or eliminate bycatch of these stocks in particular areas, as proposed in Framework Adjustment 44 (to be implemented at the same time as Amendment 16). Because Amendment 16 includes AMs and other measures for all stocks that should prevent overfishing from occurring on any one stock, NMFS has determined that the lack of specific AMs for these few stocks is not inconsistent with the National Standard 1 Guidelines and rebuilding and overfishing objectives of Amendment 16. Because the Secretary is restricted by the Magnuson-Stevens Act to only approve, disapprove, or partially approve an amendment to an FMP, NMFS cannot insert AMs for these stocks into Amendment 16, and cannot conceptually disapprove the lack of appropriate AMs. It would be non-sensible and be contrary to the requirement of the Magnuson-Stevens Act to immediately end overfishing and rebuild overfished stocks for the Secretary to disapprove the entire amendment or send the amendment back to the Council to address possible shortcomings for a few stocks. Moreover, it is not practicable or even possible that an emergency action could be developed in time to address these shortcomings and implement the full suite of measures included in Amendment 16 before the start of FY 2010 on May 1, 2010. Instead, NMFS intends to inform the Council of the need to revisit the lack of specific AMs for these few stocks.

8. Issuance of a Limited Access NE Multispecies and Atlantic Sea Scallop Permits

Many vessels issued a limited access scallop permit are also issued an open access NE multispecies permit that allows the vessel a limited amount of groundfish when fishing for scallops. Similarly, many vessels issued a limited access NE multispecies permit are also issued a general category scallop permit that allows the vessel to land small amounts of scallops. Amendment 16 would allow a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time. This would increase the economic efficiency of vessels by allowing the vessel to operate in a more profitable manner and reducing operational costs of having to purchase, operate, and maintain multiple vessels to participate in both fisheries. In doing so, Amendment 16 would also increase the value of such permits. The no action option would not contribute to the objectives of this action to increase efficiency of vessel operations and also mitigate the economic impacts of management measures. While this measure is intended to increase the efficiency of management measures, it has no direct detrimental impacts on allocations within or between fisheries, and does not compromise the conservation measures of the fishery, as existing effort controls for both permits would be maintained. Only landings history of limited access NE multispecies permits would be used to contribute to sectors, not the landings history under an open access permit. Further, only in a limited circumstance would a vessel be able to fish for both scallops and groundfish on the same trip. In this circumstance, the vessel would be required to fish with trawl gear and comply with the applicable regulations in both the NE Multispecies and Atlantic Sea Scallop FMPs.

Amendment 16 includes a full analysis of the expected impacts of this measure in Section 7.0 of the FEIS. Although this analysis indicates that this measure may shift effort from New England states to MA states because the scallop fishery is predominantly based in SNE, the analysis notes that such shifts in effort are difficult to predict. If this measure does result in different fishing patterns than previously experienced, F on either groundfish or scallops could change. Because conservation controls in both fisheries are maintained, there is little chance that this measure would adversely impact the F in either fishery. Therefore, NMFS determines that this measure is consistent with the Magnuson-Stevens Act, including National Standard 5 (efficiency in utilization of resources), and other applicable law.

9. Recordkeeping and Reporting Requirements

The reporting requirements included in Amendment 16 are necessary to ensure that accurate and timely data are available to effectively monitor the catch of groundfish toward the harvest of ACLs. Collection of these data is consistent with the provisions of the Magnuson-Stevens Act because the data would be used to implement AMs and help prevent ACLs from being exceeded and overfishing from occurring. Failure to collect such information under the no action option would result in delays in implementing AMs, which could lead ACLs to be exceeded and overfishing to occur in contrast to the objectives of this action and the requirements of the Magnuson-Stevens Act. The Office of Management and Budget is currently reviewing the recordkeeping and reporting requirements outlined in Amendment 16 and the associated proposed rule for consistency with the Paperwork Reduction Act (PRA).

10. Effort Controls

In Amendment 16, the Council adopted Option 3A to control the effort of common pool vessels. Option 3A utilizes further DAS reductions, 24-hr DAS counting, and trip limits, instead of the current differential DAS counting measures, to reduce F for these vessels. This option also includes RGAs that are intended to reduce bycatch of flatfish stocks most in need of additional F reductions. Analysis of these measures is in Section 7.0 of the FEIS. Although the RGAs in Amendment 16 were not relied upon as a means to achieve the conservation objectives, based on existing data regarding the use of gear allowed into these areas, the RGAs would likely reduce bycatch of flatfish species, reducing mortality on these species and increasing incentives for vessels to fish more selectively. Possession prohibitions and gear requirements in this option are intended to reduce incentives to fish for or retain non-target species such as SNE/MA winter flounder, ocean pout, windowpane flounder, and wolffish to continue rebuilding these stocks without unnecessarily reducing the potential to achieve OY for other groundfish stocks and fisheries prosecuted in the same area. Thus, these measures are consistent with the discretionary provisions of the Magnuson-Stevens Act.

Due to uncertainty regarding participation in sectors, the analysis in Amendment 16 for this measure assumes that all limited access NE multispecies vessels would participate in the common pool. This is a conservative approach that is necessary to ensure that the common pool measures are sufficient to prevent overfishing and minimize the possibility that ACLs would be exceeded during a FY. For some stocks, this option achieves more than the necessary reductions in F. To compensate for this, this option increases the trip limits for cod and yellowtail flounder

stocks, and white hake. Other measures in Amendment 16 are intended to help mitigate these impacts, such as SAPs designed to facilitate the targeting of healthy haddock stocks, revisions to the DAS Leasing and Transfer Programs to reduce barriers to participation in these programs, and sectors, which could increase the economic efficiency of vessel operations. Increased trip limits for some stocks under this option would not only increase fishing revenue, but also help reduce bycatch, consistent with National Standard 9. Overall, this option would better achieve the conservation objectives than any other option considered, as described in Section 7.2 of the FEIS. In addition, apart from the no action option, the option adopted by the Council would result in the least reduction to total fishing revenue among the options considered, as described in Section 7.5 of the FEIS. Thus, this measure balances conservation objectives with economic objectives, in compliance with National Standards 1 and 8 of the Magnuson-Stevens Act. As noted above, the no action option is inconsistent with the Magnuson-Stevens Act, as it would not prevent overfishing on overfished stocks.

The Amendment 16 analysis indicates that small gillnet vessels would be more affected by this measure than other types of vessels. In addition, these measures may have localized impacts that differ between communities, based upon the type of vessels that operate out of such communities and the fish stock conditions in areas near such communities. Because overfished stocks are found in all areas managed by the FMP, and stocks are not distributed evenly, there will be distributive impacts associated with any measures designed to end overfishing and rebuild overfished stocks, especially considering the commingled nature of the stocks managed by this FMP. Despite the disparate impacts between vessels of different size and location, all vessels would be subject to the same effort controls, and this measure would not discriminate between permit holders of different states. Thus, NMFS has determined that this measure is consistent with National Standard 4, as it does not discriminate between residents of different states.

Some have claimed that the 24-hr DAS counting provision in Amendment 16 would compromise vessel safety by encouraging vessels, particularly smaller vessels, to fish longer hours and in inclement weather to maximize the value of each DAS charged, in violation of National Standard 10. Similar claims were made for previous actions regarding the differential DAS areas, in that there may be incentives for vessels to fish farther from shore. However, there is no direct evidence to support or refute claims that changes in DAS counting rates directly affect fishing behavior regarding safety, and there is no evidence that the measures adopted in this action would compromise safety any more than previous management measures, as described in Section 7.6 of the FEIS. Examples in the Day gillnet fleet suggest that, despite being charged more DAS than fished, many vessels elect to return to port early, despite being charged more DAS, to reduce operational costs, suggesting that it is not likely that the 24-hr DAS counting measure would compromise vessel safety. Therefore, NMFS concludes that this measure is consistent with National Standard 10.

11. DAS Leasing and Transfer Programs

Since their implementation in 2004, the DAS Leasing and Transfer Programs have enabled vessels to continue fishing for groundfish despite reductions in DAS allocations and the imposition of differential DAS counting. Proposed revisions to the DAS Leasing and Transfer Programs under Amendment 16 are intended to help mitigate the economic impacts of further

effort controls and increase opportunities for vessels to acquire sufficient DAS to remain economically viable by removing barriers to participation in such programs, including the elimination of the DAS leasing cap, the DAS transfer conservation tax, and the prohibition on the participation of permits in CPH in these programs. This is consistent with the goals and objectives of this action and the FMP, as it would help maintain the economic viability of a diverse fleet. Although the removal of the DAS leasing cap was not included in the DEIS, it was adopted by the Council in the FEIS based upon comments received on the DEIS, and it was debated at several meetings accessible to the public.

The other options considered for these measures would fail to achieve the objectives of this action and the FMP. First, the no action option would maintain the existing barriers in these programs that fail to increase participation in these programs or offer an alternative way for vessels to acquire sufficient DAS to remain economically viable following continued effort reductions. Option 2, sub-option B, would have removed the DAS conservation tax in the DAS Transfer Program, but would have refunded DAS lost to the conservation tax in previously approved transfers. This would eliminate all capacity reductions gained as a result of the conservation tax, thereby undermining the primary objective of the conservation tax when first implemented in Amendment 13. Such resurrected DAS could also increase F in the fishery if activated and used to harvest groundfish, in opposition to the objectives of this action and the FMP. Option 3 would have imposed a 20-percent tax on DAS leased. This would add a barrier for participation in this program that did not previously exist. It would likely result in less participation in this program and greater negative economic impacts to groundfish vessels, as less DAS would be available to maintain the economic viability of vessels remaining in the fishery. Finally, while Option 4 would have eliminated the conservation tax for a period of time, that window was never explicitly defined by the Council. Once that window expired, the conservation tax would have been reinstated and would have reduced incentives to participate in this program.

12. Minimum Fish Sizes

Due to slow growth rate of the large 2003 yearclass of haddock, bycatch and associated discards of undersized haddock have increased. According to GARM III, slow growth rates for this stock are apparent across all ages of haddock. Amendment 16 would reduce the minimum fish size of haddock from 19 to 18 inches to reduce discards and increase landings of this healthy species. This would increase revenues, while minimizing bycatch to the extent practicable, consistent with National Standards 8 and 9 of the Magnuson-Stevens Act. Maintaining a 19-inch minimum size limit under the no action option would likely increase discards of haddock, particularly if slow growth rates persist for this species, which would be inconsistent with National Standard 9, and would unnecessarily sacrifice yield for this rebuilt stock, which would be inconsistent with National Standard 1.

GARM III updated data relative to the median size at maturity for Atlantic halibut. Unlike the no action option, by increasing the minimum fish size for this species from 36 inches to 41 inches, Amendment 16 would increase opportunities for halibut to spawn prior to capture, thereby increasing the likelihood that this stock will meet rebuilding objectives, consistent with National Standard 1.

13. Special Management Programs and SAPs

Revisions to special management programs and SAPs are intended to facilitate access to healthy stocks of haddock and redfish without undermining efforts to rebuild overfished stocks. By requiring the use of selective fishing gear or allowing access only during particular seasons, these programs attempt to reduce bycatch and associated mortality on stocks of concern such as cod, pollock, and most flatfish. Such efforts attempt to achieve OY for all stocks and minimize the adverse economic impacts on fishing communities, as required by National Standards 1 and 8, benefits that could not be achieved under the no action options for such programs.

14. Recreational Measures

Amendment 16 would allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001-2006. Both commercial and recreational catch were evaluated using the same time period, a period in which both fisheries were subject to restrictions on the catch of such stocks, to determine the amount of these stocks caught by each fishery. The data used to determine this allocation were peer reviewed by GARM III. Therefore, this measure is consistent with National Standards 2 and 4. To achieve the necessary F reductions for GOM cod, Amendment 16 would extend the existing seasonal GOM cod prohibition for recreational vessels by 2 weeks, to run from November 1 through April 15. This is considered to be the most effective means to reduce F based on previous analysis of possession or size limits, and is necessary to achieve the required reductions in F to end overfishing and rebuild the stock, consistent with National Standard 1. Failure to allocate stocks between these fisheries or implement measures to reduce GOM cod mortality under the no action options for these measures would be inconsistent with the objectives of the FMP and this action, and National Standard 1.

15. Sector Measures

Amendment 16 includes revisions to existing sector measures designed to achieve the conservation and economic objectives of the FMP by increasing the efficiency of vessel operations, reducing discards, and promoting selective fishing practices. By specifying a minimum number of participants required to form a sector, concerns regarding consistency with National Standard 4 and the possibility that one entity may acquire an excessive share of the resource are mitigated. Eligibility of permits in CPH to participate in sectors eliminates an unnecessary administrative barrier to sector participation that can be easily overcome through existing measures. Additional requirements for sector operations plans outline elements considered by the Council to be necessary to implement sector measures effectively. Such elements help identify effort that would be deployed in each sector and how such effort could affect catch in relevant fisheries. Elements such as the weekly sector reports, and dockside and at-sea/electronic monitoring programs, are necessary to collect information regarding the landings and discards of groundfish by all sector vessels to ensure that all catch is accurately accounted for and that cease fishing orders can be implemented and enforced once sector ACEs have been harvested or projected to be harvested. Such reporting requirements are currently under review by OMB for consistency with the PRA. The timing requirements associated with

sector operations plans and associated NEPA analyses are necessary for NMFS and the Council to evaluate the impact of sector operations, provide for public review of proposed sector operations, and approve and implement sector operations plans by the start of each FY on May 1, consistent with NEPA and the APA.

Sector allocations of ACE for each stock are based upon the fishing histories of participating vessels during two periods. For all stocks except GB cod, the PSC of each sector vessel would be based upon landings history during FYs 1996-2006. However, for GB cod, the PSC of each vessel that elected to participate in one of the existing sectors would be based upon individual vessel landing histories during FYs 1996-2001, while the GB cod PSC for all other vessels would be based upon the landings histories between FYs 1996-2006. These two allocation windows were intended to preserve the business plans developed by participants in the existing sectors and to maintain the value of investments in permits made by such participants based upon previous Council decisions regarding the allocation of GB cod. In a similar manner, the Council indicated its intent to freeze catch history as of the implementation of Amendment 16 to preserve the allocation decisions made in Amendment 16 and promote economic stability in the fishery by increasing the confidence that allocations are unlikely to change in the future. In doing so, Amendment 16 treats future participants in sectors in the same manner as participants in the existing sectors by indicating its intent to preserve existing allocations in future management actions to offer more stability in the fishery that will enable the development of longer-term business plans. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreside infrastructure, consistent with Goal 4 of the FMP. In addition, because these sectors represent cohesive groups of smaller vessels fishing with hook and gillnet gear, preserving existing sector allocations promotes the continuation of a diversified fishery in both size and gear type near Chatham, MA, consistent with Objective 7 of the FMP. Revising existing sector allocations by selecting another sector allocation option could reduce fishing opportunities for these sectors and adversely affect associated communities. Therefore, NMFS has determined that sector allocations under Amendment 16 are consistent with the goals and objectives of the FMP, are fair and equitable, and are reasonably calculated to promote conservation consistent with National Standard 4.

The allocation options adopted in Amendment 16 are intended to reflect current participation in the fishery. The 11-yr period for allocation of most stocks is meant to minimize the impact on catch history that result from changes to groundfish regulations during this period. At the time these options were developed, the Council was attempting to implement Amendment 16 by the start of FY 2009 on May 1, 2009, and complete landings data were only available through FY 2006. Therefore, these data represented the best scientific information available at the time they were first developed. Other options considered for sector allocation included either vessel capacity and/or allocated DAS as part of the allocation formula. These factors would have resulted in all vessels being allocated at least some PSC for some or all stocks, even though not all vessels actually fished for and landed groundfish during this period. As a result, such options do not reflect current participation in the fishery and would be inconsistent with the objectives of the FMP and the discretionary provisions of the Magnuson-Stevens Act cited above.

Based upon the proportional allocations of overall stocks of GB cod and GB haddock, sectors would be allocated portions of the Eastern U.S./Canada Area TACs for GB cod and GB

haddocks stocks. This measure ensures that access to the Eastern U.S./Canada Area by common pool and sector vessels is not adversely affected by the actions of other sectors or the common pool. This is consistent with Objective 8 of the FMP to insure accountability in achieving fishery management objectives and to distribute fishery access based upon recent participation in the fishery.

Amendment 13 first implemented an allocation cap that prevents sectors from being allocated more than 20 percent of the yearly TAC for a particular stock, due to concerns that one sector could control an excessive share of a particular stock. Acquiring an excessive share of a resource relates to the ability of one entity to exert market control for that resource. Analysis by the PDT during the development of Amendment 16 suggests it is unlikely that any one sector could acquire a sufficient share of a stock to exercise market power over the rest of the fishery. Further, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector would be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Finally, Amendment 16 would allow sectors to trade ACE for use during that FY. This would minimize the influence of the sector allocations regarding market control, as a sector could acquire ACE from another sector. While ACE trading is optional, and sectors are not required to trade with one another, trading is likely to occur on some level, as sectors would need to rely upon one another to acquire additional ACE for stocks for which their allocations may be insufficient. Therefore, Amendment 16 would eliminate this cap to increase the flexibility and efficiency of sector operations, without allowing one entity to acquire an excessive share of a fishing resource, consistent with National Standard 4.

ACE transfers are considered important to not only increasing the economic efficiency of sector operations, but to decrease incentives to discard fish and, therefore, increase F on individual stocks. Analysis from other similar management regimes in other countries detailed in Section 7.0 of the FEIS suggests that ACE trading after the end of the fishing year, and carry-over provisions included in Amendment 16, should reduce incentives to fish aggressively toward the end of the FY to fully utilize allocations of each stock and, therefore, reduce the likelihood that an overage would occur. Selecting the no action options for these measures would likely increase incentives to discard and misreport, undermining the conservation objectives and increasing management uncertainty in the fishery due to non-compliance with existing provisions, in contrast to the options adopted in Amendment 16.

Several options were considered for sector joint/several liability. Under Amendment 16, sectors and participating vessels would be jointly/severally liable only for violations of ACE overages, discarding of legal-sized fish, and misreporting of catch. This measure would reduce concerns that sector vessels would be held liable for any violation by any other sector member. In doing so, this measure is likely to increase participation in sectors, which is likely to result in benefits to both the environment and fishery participants, as discussed throughout this ROD and the FEIS. The no action option would retain the existing language regarding joint/several liability, leaving open the possibility that sector vessels could be held liable for any violation of any sector rule or other Federal regulation and, thus, depress participation in sectors, in conflict with the objectives of this action.

Under the sector approval process first implemented in Amendment 13, sectors are required to request and analyze exemptions to existing regulations as part of yearly review and approval process of sector operations plans by NMFS. To reduce the costs and burden associated with such analysis, Amendment 16 classifies several measures as universal sector exemptions that would not require any additional analysis by sector proponents. Instead, the analyses for these exemptions are included in Section 7.0 of the Amendment 16 FEIS. Because F for sector operations is limited by the amount of ACE allocated to the sector for each stock, such exemptions would not compromise the conservation objectives of this action, but would serve to increase the economic efficiency of sectors by reducing operational costs and allowing sector vessels to operate in a more profitable manner. Further, these exemptions would also encourage the use of selective gear and, thus, reduce discards and associated mortality. Finally, the public has the opportunity to comment on these universal exemptions through the notice of availability of Amendment 16 and its FEIS, as well as through the proposed rule for this action. Therefore, NMFS has determined that this measure is consistent with the objectives of this action and applicable law. Failure to implement universal sector exemptions under the no action option for this measure would fail to reduce costs and burdens to sectors and would not be consistent with the objectives of this action.

Amendment 16 would authorize the creation of 17 new and 2 revised sectors. This expansion of sector management would create a dual management system where vessels could elect to fish under sectors and be subject to hard TACs for most groundfish stocks, or fish under the existing DAS effort controls of the common pool. The approval of additional sectors offers more opportunities for vessels to work cooperatively with other like-minded vessels to more effectively manage allocated stocks. As stated above, this should increase the economic efficiency of participating vessels by reducing operational costs and increasing catch per unit effort due to exemptions from existing effort controls such as trip limits, area closures, and gear restrictions, while restricting F to that associated with ACE allocated to each sector. The no action option would fail to achieve these benefits and would be inconsistent with the objectives of this action. As a result, NMFS has determined that authorization of additional sectors is consistent with the goals and objectives of this action and the FMP, and with the Magnuson-Stevens Act and other applicable law.

For a description of the approved action, see Section 4 of the FEIS. For a full analysis of the measures adopted by the Council in this action, see the corresponding sections in Section 7 of the FEIS.

Mitigation

CEQ NEPA regulations require that agencies identify in the ROD whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why. The regulations further state that a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation. Mitigation measures are the practical means to avoid, minimize and reduce impacts, and compensate for unavoidable impacts.

No significant environmental harm relative to the status quo is expected to result from the implementation of Amendment 16. Therefore, specific management measures to mitigate environmental impacts are not necessary. NMFS worked closely with NMFS Office of Law Enforcement (OLE) to ensure that enforcement considerations were incorporated throughout the development of management measures in the Council process. In addition, the U.S. Coast Guard (USCG) sits on the Council and provides similar input during Council deliberations. Once final measures are adopted by the Council, NMFS continues to seek OLE input to ensure that measures can be enforced, as implemented. Further, NMFS conducts outreach sessions with Federal and state enforcement personnel, including our state partners through Joint Enforcement Agreements (JEA) and the USCG, to ensure that enforcement agents understand proposed measures and what will be necessary to enforce them. Quarterly meetings between NMFS's Northeast Region Sustainable Fisheries Division, NMFS OLE, and the USCG continue this dialogue and help identify enforcement priorities and concerns. Once implemented, NMFS OLE, JEA partners, and USCG work together to monitor the fishery for compliance with measures adopted in recent actions through at-sea boardings, dockside intercepts, examination of catch records, VMS data for area violations, and other available information, as necessary.

Response to Comments

NMFS issued the notice of availability for the FEIS on October 30, 2009 (74 FR 46218), with a 30-day comment period through November 29, 2009. NMFS received 1,192 letters from commenters on the FEIS via letter, fax, and email. Of these, 1,169 were of one type of form letter commenting on the FEIS via email. Many of the comments received on the FEIS reflected comments submitted to the Council during the development of Amendment 16 at Council and Groundfish Oversight Committee meetings, public hearings during the DEIS comment period, and formal comments submitted during the notice of availability for the DEIS (these comments are summarized and responded to in Appendices V and VI of the FEIS and incorporated herein). Two comments by representatives of the Mashpee Wampanoag tribe stated that tribal input was not solicited during the development of Amendment 16, and requested more direct involvement in future management actions. In addition, a number of comments recommended adopting measures that were not included in Amendment 16. As a general matter, NMFS responds that the Magnuson-Stevens Act restricts its discretion by only allowing it to approve, disapprove, or partially approve measures. NMFS cannot unilaterally add substantive measures to Amendment 16. The following is a summary of comments relevant to Amendment 16 submitted during the FEIS comment period, followed by NMFS's responses:

Comment 1: As part of a mass mailing campaign by an environmental group (PEW), 1,169 comment letters supported efforts in Amendment 16 to end and prevent overfishing and rebuild overfished stocks by implementing science-based ACLs and promoting sectors. Two other comments as a result of this mass mailing letter also suggested that effective enforcement is critical to the success of this action.

Response: The goals of the FMP and Amendment 16 are to end and prevent overfishing and to rebuild overfished stocks, as mandated by the Magnuson-Stevens Act. While there are many ways to accomplish these goals, the Council chose to further develop sectors, while maintaining the existing DAS management regime as a means to transition to the long-term goal of

implementing an output-based system that the Council intends to further develop in Amendment 17 to the FMP. Amendment 16 establishes a process to specify ACLs, but the quantitative ACLs for 2010 through 2012 were developed in Framework Adjustment 44 to the FMP and, if approved, are scheduled to become effective on May 1, 2010. This latter action utilizes the best scientific information available from the GARM III, Transboundary Resource Assessment Committee, and other sources to establish science-based ACLs for FYs 2010-2012. NMFS OLE and the USCG have been directly involved throughout the development of Amendment 16, offering input to enhance the ability of enforcement agents and boarding officers to enforce Amendment 16 measures. Coordination of enforcement efforts and outreach with state JEA partners will further enhance the capacity to effectively enforce these measures.

Comment 2: The 1,169 letters associated with the PEW mass mailing campaign urged the implementation of comprehensive monitoring and reporting systems across all fishery participants. Two other environmental groups, The Nature Conservancy (TNC) and Conservation Law Foundation (CLF), the two existing sectors, one industry organization (Cape Cod Commercial Hook Fisherman's Association (CCCHFA)), and one commercial fisherman also indicated that comprehensive at-sea and dockside monitoring programs are important to the success of this action. Another environmental group (Oceana) that Amendment 16 did not specify the monitoring standards and specific data collection and reporting requirements.

Response: Amendment 16 and the associated proposed rule greatly expand upon the existing monitoring and reporting systems and should provide sufficient and timely data that are to effectively monitor catch of groundfish, as detailed throughout Section 4.0 of the FEIS. In addition, NMFS has hosted a series of catch monitoring administration and implementation workshops since the Council's adoption of Amendment 16 to work with industry to better develop and communicate the monitoring standards and data collection and reporting requirements necessary to effectively administer Amendment 16. NMFS agrees that comprehensive monitoring programs are critical to the success of Amendment 16. Accordingly, Amendment 16 requires sectors to develop dockside monitoring programs as part of their yearly operations plans beginning in 2010 and at-sea monitoring programs beginning in 2012. Fifty percent of trips landed by sector vessels are required to be observed by dockside monitors during FY 2010, with 20 percent of trips monitored thereafter. The level of at-sea monitoring would be determined by NMFS on a yearly basis after considering the number of vessels and types of gear participating in each sector in a manner consistent with the standardized bycatch reporting methodology (SBRM) established by the Council in 2008. This level of coverage must be sufficient to at least meet the level of precision outlined in the SBRM. For FY 2010, NMFS has made available sufficient funding to provide approximately 38-percent at-sea monitoring coverage for sector trips and 30-percent coverage for common pool trips. Beginning in FY 2012 with the transition to hard-TAC AMs, common pool vessels would be subject to 20-percent dockside monitoring for all groundfish trips.

Comment 3: Several commenters, including Oceana, CLF, PEW, CCCHFA, the Island Institute (a community-based organization), the Midcoast Fisherman's Association (an industry group), the Port Clyde Sector and the two existing sectors, the North Atlantic Marine Alliance (NAMA) (an environmental group), and one commercial fisherman suggested that observer coverage should be 100 percent for all groundfish vessels. If there is insufficient Federal funding to

provide such coverage, funds should be shifted from supporting dockside monitoring coverage to providing observer coverage. Most of these commenters recommended that such coverage should be maintained for at least the first 2 years of Amendment 16 implementation to provide baseline data on discard rates and sector performance. Oceana further claimed that Amendment 16 does not specify the precise level of observer coverage in the FMP, as alleged in a lawsuit brought against NMFS based on the approval of Amendment 13 to the FMP.

Response: When the Council adopted Amendment 16, the Council neither selected the option to require 100-percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in 2010. However, NMFS agrees with the basic concept advocated by the commenters that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16. As stated in the response to comment 2, NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, and about 30-percent at-sea monitoring coverage for common pool vessels, in addition to fully funding 50-percent dockside monitoring coverage. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the SBRM, while providing the additional coverage suggested by commenters to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goals of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated. Shifting resources to emphasize one over the other would not be consistent with the objectives of this action. Additional coverage would provide more data on groundfish catch, but even if available funds were shifted to emphasize at-sea monitoring over dockside monitoring, there may not be sufficient funding to provide 100-percent observer coverage across the entire fishery. Further, there is no guarantee that such funding will be available for future years. Requiring 100-percent coverage would, therefore, require the fishing industry to bear such costs, absent additional funding for NMFS to pay for such coverage. Finally, the Court's findings in the Amendment 13 lawsuit required that FMPs establish SBRM's, but does not mandate the inclusion of specified levels of observer coverage. As referenced in the response to Comment 3, because Amendment 16 is in compliance with the omnibus amendment which implemented SBRMs for all FMPs managed in the NE in January 2008, Amendment 16 is not at odds with the Court's findings in the lawsuit referred to by the commenters.

Comment 4: Three commenters associated with the CCCHFA and existing sectors opposed the use of assumed discard rates under Amendment 16, advocating the use of actual discard data derived from observer data whenever possible, including species-specific discard mortality data. These commenters also supported the use of electronic vessel trip reports (VTRs).

Response: NMFS agrees that actual observer data are likely more accurate than the assumed discard rates proposed in Amendment 16. Amendment 16 would apply discard rates derived from observer data for observed trips, and would extrapolate observer-derived discard rates to unobserved trips once sufficient data are available to do so. However, until there are sufficient observer data to develop sector-specific observed discard rates for particular gear/species combinations identified in Section 4.2 of the FEIS, NMFS must apply an assumed discard rate to all landings to ensure that catch, including both landings and discards, can be accurately monitored in the fishery. Species-specific discard mortality rates are already incorporated into

each updated stock assessment based upon observer data. Current regulations allow the RA to authorize the use of electronic VTRs instead of the conventional paper VTRs. To date, the RA has not authorized the use of such electronic VTRs, as the existing technology has not been determined to be adequate. Should efforts to develop and test new electronic VTR systems that meet the goals of the FMP and the existing regulations be determined to be successful, the RA can authorize the use of such systems.

Comment 5: The CCCHFA and the existing sectors supported the broad stock area requirements in Amendment 16, but suggested that such areas should be smaller to reflect different fishing areas, and that vessels should not be allowed to fish in multiple areas without 100-percent observer coverage. These commenters also cautioned about the adequacy of using self-reported data.

Response: The broad stock areas in Amendment 16 are aggregations of statistical areas that reflect the existing regulated mesh areas and stock boundaries to the extent possible. These areas were intended to be defined as large as possible to accommodate stock boundaries without overly complicating administration of the proposed reporting requirements. These broad stock areas would be used only for attributing species caught to the proper stock area. Nothing in Amendment 16 would restrict a vessel from fishing in more than one broad stock area, and the Council did not adopt the restriction that vessels fishing in multiple areas must have an observer on board. Specifying smaller stock areas would not affect vessel operations, but would complicate the proposed reporting requirements. The Council did consider restricting vessels to fish in only one broad stock area per trip to simplify administration, but concluded that such an approach would be overly restrictive on vessel flexibility and efficiency of vessel operations. Various sources of data are used to validate one another, including self-reported catch data. Accordingly, VMS positional data would be used to validate self-reported catch data by stock area to increase the accuracy of monitoring data and enforce the proposed Amendment 16 measures.

Comment 6: The 1,169 letters associated with the PEW mass mailing campaign recommended that Amendment 16 implement strong AMs that end fishing once limits are reached across all fishery participants. The CCCHFA and another individual also supported the implementation of hard quotas and fishery closures for all components of the fishery. Several commenters, including Oceana, CLF, PEW, and the CCCHFA, suggested that similar AMs across the entire fishery are necessary to comply with National Standard 4 and that different AMs for sectors and the common pool are unfair and inequitable, because not every segment of the fishery is subject to hard TAC backstops, and common pool vessels are not limited in the amount of fish they can catch.

Response: Neither the Magnuson-Stevens Act, nor the National Standard 1 Guidelines mandate the use of fishery closures as AMs. As outlined in the National Standard 1 Guidelines, reactionary AMs are just as valid as inseason AMs. Amendment 16 would use a combination of accepted approaches to implement AMs beginning in 2010, shifting to area closures for the entire directed groundfish fishery by 2012 to transition from a full effort-controlled fishery to one managed by hard TACs and fishery closures. Although fishery closures would not be triggered upon the catch of common pool ACLs during FYs 2010 and 2011, management

measures would be revised through the implementation of differential DAS counting if these ACLs are exceeded to prevent overfishing and exceeding such ACLs in the future – the purpose of the new requirements of the Magnuson-Stevens Act. Further, if measures adopted under Framework Adjustment 44 are approved, the RA would have the authority to revise common pool trip limits and DAS charging rates inseason to offer further assurance that common pool catch rates would be restricted and would not exceed ACLs for all stocks. NMFS disagrees that all segments of the fishery must be subject to the same measures to be fair and equitable. The AMs in Amendment 16 reflect a balancing of different factors regarding the multiple types of management measures to be implemented, are reasonably calculated to promote conservation, and would not allocate fishing privileges among fishery participants, or discriminate between residents of different states. All AMs proposed in Amendment 16 would apply to all vessels in all states, even though the AMs applicable to individual vessels may be different. Each vessel owner has the choice to fish under hard TACs and fishery closure AMs in sectors, or fish under the current DAS system and its associated differential DAS counting AM. Thus, all vessel owners would be treated equally based upon their choice of the preferred management system. Under Amendment 16, common pool vessels would be subject to hard-TAC management and restricted in the amount of fish that they could catch in the form of ACLs for each stock beginning in FY 2012.

Comment 7: NAMA supported the participation of community fishing associations in permit banks, recommending that such associations be formally recognized in Amendment 16. This group stated that these associations are necessary to help ensure that sectors do not lead to the elimination of community-based fisheries, consistent with, and furthering the purposes of, the Magnuson-Stevens Act.

Response: As the group pointed out in their comment, the current regulations do not prohibit community fishing associations from forming or participating in the current DAS Leasing/Transfer Programs or in an approved sector. NMFS agrees that such organizations are consistent with the Magnuson-Stevens Act, but notes that formally recognizing such associations in Amendment 16 or any other action would not affect their ability to participate in the fishery or achieve their goals. Such organizations were not formally recognized by the Council in Amendment 16. Because NMFS can only approve/disapprove measures adopted by the Council in Amendment 16, NMFS cannot unilaterally recognize such organizations through this action.

Comment 8: Two environmental groups (Oceana and CLF) suggested that the ABC control rule in Amendment 16 is not lawful, in that the FEIS does not consider a reasonable range of alternatives for this measure, and does not rigorously explore and objectively evaluate the alternatives considered. CLF specifically suggested that Amendment 16 should specify the scientific basis for the SSC's recommendation. These groups indicated that the Amendment 16 ABC control rule should specify a probability that an actual catch equal to the ABC for each stock would result in overfishing, consider whether F should be reduced as stock size declines, identify a stock biomass level below which no fishing should occur, and incorporate uncertainty associated with stock assessments.

Response: NMFS does not agree that the ABC control rule is unlawful. Given that the FEIS considered the revised ABC control rule and the existing MSY control rule (i.e., the no action

alternative), Amendment 16 did consider a reasonable range of alternatives under NEPA. Initially, Amendment 16 was going to rely upon the existing MSY control rule to specify ABCs as part of the process to establish ACLs for all stocks. As a result, the DEIS did not anticipate specifying an ABC control rule as a separate measure. However, as highlighted in Section 4.1.2 of the FEIS, the National Standard 1 Guidelines were published just before the Council adopted the DEIS. These guidelines emphasize that FMPs should establish specific ABC control rules. Further, in May 2009, the SSC recommended an alternative ABC control rule to be used in the absence of a quantitative approach that would allow for a more explicit determination of scientific uncertainty for specific stocks. The SSC made its recommendation after evaluating analysis prepared by the Groundfish PDT regarding the efficacy of the existing MSY control rule in preventing overfishing when used to specify ABCs for previous FYs. The SSC concluded that there was insufficient information currently available to quantify scientific uncertainty for each groundfish stock and that the MSY control rule would not have ended overfishing for several stocks if it had been used to set ACLs for previous FYs. Based upon the SSC's advice and the National Standard 1 Guidelines, the Council adopted the SSC's recommendations as the ABC control rule in Amendment 16 in June 2009. Even though the PDT analysis is not formally incorporated into the Amendment 16 FEIS, this analysis is part of the administrative record for this action and contributed to the decisions made by the Council when adopting Amendment 16. Further, Section 7.2.1.1.2 of the FEIS provides a qualitative assessment of the impacts of the ABC control rule on overfishing. As proposed, the ABC control rule would specify the ABC of a particular stock at the median catch associated with 75 percent F_{MSY} or $F_{rebuild}$, whichever is lower. This approach relies upon the most recent assessment, an effort that was subject to substantive peer-review, and is the subject of other peer-reviewed research, as detailed in Section 7.2.1.1.2 of the FEIS. Because the ABC for most stocks is set at the median catch associated with a level of F that is already below the level associated with overfishing (i.e., at 75 percent of F_{MSY}), the ABC control rule would always result in ABCs with at least a 50-percent probability of avoiding overfishing. Thus, the ABC control rule would specify a level of catch such that the resulting F will always be less than the maximum F threshold when the stock is less than the biomass at MSY or its proxy, especially when additional information is not available to more accurately estimate uncertainty. This provides a measure of caution even before the ACL is determined, after the consideration of management uncertainty. Since ACLs cannot exceed the ABC, the risk that overfishing will occur is even further reduced. Although the Amendment 16 FEIS does not include a systematic evaluation of the probability that the proposed ABC control rule will result in overfishing for each stock, such a precise analysis is not necessary for the ABC control rule, as it is an administrative measure. Instead, it is more appropriate to evaluate whether the actual catch amounts that result from the application of that ABC control rule would have at least a 50-percent probability of avoiding overfishing, or whether there is sufficient information to more accurately estimate scientific uncertainty for a particular stock using another method. Therefore, because Framework Adjustment 44 is the Council action that would actually apply the ABC control rule included in Amendment 16, the analysis of the scientific uncertainty associated with the ABC control rule is included in the environmental assessment (EA) supporting that action. In general, if stock size declines below the biomass threshold, a rebuilding plan must be developed that would reduce F to ensure the stock rebuilds within a specified period of time. Even stocks that are not overfished and not subject to overfishing may experience declines in stock size, but that would not necessarily require reductions in F . Analysis included in the EA prepared for Framework Adjustment 44 indicates that although

probabilities that overfishing would occur cannot be determined for all stocks, the FY 2010-2012 ABCs that result from the application of the control rule proposed in Amendment 16 would have between a zero and 20-percent chance of resulting in overfishing for stocks for which such a probability can be calculated. Thus, the application of the Amendment 16 ABC control rule has less than a 50-percent chance of resulting in overfishing, and is consistent with applicable court rulings. Therefore, NMFS disagrees that fishing mortality must be decreased, unless doing so is necessary to rebuild an overfished stock. Finally, as specified in the response to comments in the final rule promulgating National Standard 1 Guidelines (74 FR 3190, January 16, 2009), NMFS does not agree that the ABC control rule must stipulate a level of biomass below which fishing is prohibited. Although ABC control rules could specify such a threshold, failure of this ABC control rule to specify such a threshold does not mean that the ABC control rule is inconsistent with National Standard 1.

Comment 9: Oceana claimed that Amendment 16 delays implementation of yellowtail flounder AMs until 2011 and fails to analyze the impacts of yellowtail flounder allocation to the Atlantic sea scallop fishery consistent with National Standards 4 and 9 of the Magnuson-Stevens Act.

Response: Amendment 16 would establish AMs for all stocks of yellowtail flounder in 2010. However, the groundfish fishery would be responsible for any overages by the scallop fishery until appropriate AMs for the scallop fishery are implemented via Amendment 15 to the Atlantic Sea Scallop FMP in 2011. Amendment 16 would establish the process for distributing ACLs for all groundfish stocks among the various segments of the fishery that catch groundfish, but would not allocate any specific amount of any stock to any fishery. Instead, such allocations are a part of Framework Adjustment 44 to the FMP. The EA for that action, not Amendment 16's FEIS, includes the analysis of impacts of the ACL distributions to various fisheries. Therefore, this comment is relevant to that action, not Amendment 16. The Amendment 16 FEIS does consider the relevant impacts associated with the process to establish and distribute the ACL among various fisheries that catch groundfish to the extent that it can, with Sections 7.2.1.2.1 and 7.5.1.2.1 including a qualitative description of the biological and economic impacts of this measure, respectively.

Comment 10: Oceana suggested that Amendment 16 exempts components of the total catch from the ACL, stating that Amendment 16 fails to specify ACLs and AMs for stocks that are prohibited from being landed. Further, Oceana claims that Amendment 16 does not evaluate reasonable alternatives for these stocks, and does not identify the rationale or provide analysis for treating catch by other fisheries as other non-specified components of the ACL. CLF agreed, stating that an absence of AMs for these fisheries reduces incentives for them to reduce bycatch.

Response: All catch of groundfish stocks, including both landings and discards by all vessels, count toward the total ACL for each stock. The rationale for the distribution of ACL among the various fisheries that catch groundfish is detailed in Section 4.2.1.3 of the FEIS. As stated in this section, for segments of the fishery that are not subject to AMs such as state waters fisheries, exempted fisheries, and the scallop fishery, excessive catch of groundfish by these components would be accounted for by controls on the directed groundfish fishery, including the AMs described above, to ensure that overfishing of groundfish stocks does not occur. In doing so, all groundfish catch is accounted for under the ACLs developed pursuant to the process in

Amendment 16. It is possible that the absence of AMs for fisheries outside the control of the NE Multispecies FMP may reduce incentives for such fisheries to reduce bycatch. However, alternatives to implement AMs in those fisheries could not be considered in Amendment 16. Neither the Council, nor NMFS has authority over state-waters fisheries and cannot impose regulations or incentives for those fisheries to reduce bycatch. For these fisheries, participation on the Council by the leaders of state marine resource agencies increases the likelihood that state groundfish regulations will continue to reflect Federal regulations and constrain catch to existing levels. For fisheries subject to Council jurisdiction, the Magnuson-Stevens Act requires reduction of bycatch to the extent practicable, under National Standard 8. Similar to yellowtail flounder AMs in the scallop fishery, AMs can be developed within those other FMPs to minimize the bycatch of groundfish. Although ACLs are specified for all stocks, several stocks (SNE/MA winter flounder, ocean pout, windowpane flounder, and wolffish) are not specifically allocated to sectors because these stocks are likely to have small ACLs and vessels have very limited landing history for these predominantly non-targeted stocks. Because there would not be a formal allocation of these stocks to sectors, Amendment 16 did not establish specific sector AMs. In addition, ocean pout, windowpane flounder, and Atlantic halibut would not be subject to the common pool hard-TAC AM beginning in 2012, although these stocks would be subject to the differential DAS counting AM during FYs 2010-2011. This approach is intended to maintain vessel access to all stock areas, as allocating such small bycatch TACs to sectors and incorporating such stocks under the hard-TAC AM would likely result in unnecessarily closing large areas and substantial adverse economic impacts to vessels and associated fishing communities due to excessive catch of these stocks. Although these stocks would not be subject to stock-specific AMs upon the implementation of Amendment 16, it is likely that other measures in Amendment 16 are sufficient to prevent overfishing. Such measures include AMs specified for other stocks that overlap with the distribution of these stocks, restrictive management measures such as DAS reductions and RGAs where only selective gear that avoids catch of particular stocks can be used, further revisions to the FMP as part of the biennial adjustment process, RA authority to approve/disapprove sectors on a yearly basis due to excessive bycatch of these stocks, and inseason adjustments to management measures for common pool vessels to slow or eliminate bycatch of these stocks in particular areas, as proposed in Framework Adjustment 44 (to be implemented at the same time as Amendment 16). Because Amendment 16 includes AMs and other measures for all stocks that should prevent overfishing from occurring on any one stock, NMFS has determined that the lack of specific AMs for these few stocks is not inconsistent with the National Standard 1 Guidelines and rebuilding and overfishing objectives of Amendment 16. Because the Secretary is restricted by the Magnuson-Stevens Act to only approve, disapprove, or partially approve an amendment to an FMP, NMFS cannot insert AMs for these stocks into Amendment 16, and cannot conceptually disapprove the lack of appropriate AMs. It would be non-sensible and be contrary to the requirement of the Magnuson-Stevens Act to immediately end overfishing and rebuild overfished stocks for the Secretary to disapprove the entire amendment or send the amendment back to the Council to address possible shortcomings for a few stocks. Moreover, it is not practicable or even possible that an emergency action could be developed in time to address these shortcomings and implement the full suite of measures included in Amendment 16 before the start of FY 2010 on May 1, 2010. Instead, NMFS intends to inform the Council of the need to revisit the lack of specific AMs for these few stocks. The biological impacts of distributing the ACL among such fisheries are described in Section 7.2.1.2.1 of the FEIS.

Comment 11: An individual fisherman indicated that the ACEs derived from the ACL process adopted in Amendment 16 are insufficient to maintain a viable fishery and do not reflect recent catches. This individual also noted that the 2010 ACEs do not include quota set aside for research. Three other commenters, including CLF, the existing sectors, and the CCCHFA, support the overall ACL process established in Amendment 16.

Response: The ACE for each stock that results from the ACL process included in Amendment 16 was developed and analyzed by the Council under Framework 44 to the FMP and, therefore, not technically part of this action. As detailed in that action and its associated EA, the ACEs that result are based upon the best scientific information available and reflect the ABC recommended by the SSC and the ACLs adopted by the Council. It is true that ACLs specified for fishery at large and the resulting ACEs to individual sectors are not likely to be similar to recent catches, because F for many stocks must be reduced during FY 2010, and the ABCs/ACLs specified must incorporate consideration of both scientific and management uncertainty, as required by the Magnuson-Stevens Act. NMFS believes that the ACL process in Amendment 16 is necessary and consistent with the requirements of the Magnuson-Stevens Act. The Council considered a research set-aside quota for groundfish, but ultimately chose not to include that measure in Amendment 16.

Comment 12: Oceana stated that Amendment 16 is unlawful because the FEIS does not identify target stocks or stocks in the fishery, discuss catch and discards of such stocks, or fully analyze the impacts of proposed measures on stocks in the fishery.

Response: Amendment 16 specifies the stocks in the fishery in Section 6.1.7. These stocks reflect the stocks already managed by the fishery, as revised since the FMP was first developed. According to the National Standard 1 Guidelines (74 FR 3204, January 16, 2009), all stocks listed in a FMP are considered to be in the fishery, unless otherwise specified as ecosystem component species. Therefore, Amendment 16 is fully consistent with the National Standard 1 Guidelines. Moreover, a full description of the catch and discards of groundfish stocks is included in Section 6.0 of the FEIS, with analysis of the impacts of proposed measures on groundfish stocks and other species detailed in Section 7.0 of the FEIS. Therefore, NMFS disagrees that Amendment 16 is unlawful as claimed by the commenter.

Comment 13: CLF and CCCHFA suggested that small gillnet boats are disproportionately burdened by the 24-hr DAS counting measure for the common pool. They also indicate that this measure would cause safety concerns, which would make this measures inconsistent with National Standard 10.

Response: The Amendment 16 analysis indicates that small gillnet vessels would be more affected by 24-hr DAS counting than larger vessels and vessels using other gear types. Despite the disparate impacts between vessels of different sizes and gear types, all vessels would be subject to the same effort controls, and this measure would not discriminate between permit holders from different states. The 24-hr DAS counting measure more accurately reflects the manner in which DAS allocations were first calculated in the FMP, and is designed to end overfishing and rebuild overfished stocks consistent with the conservation objectives of the FMP

and the requirements of the Magnuson-Stevens Act. Based upon this, NMFS has determined that this measure is consistent with National Standard 4. During previous actions, safety concerns were raised regarding differential DAS areas because vessels could be encouraged to fish farther from shore. There is no evidence to support or refute claims that changes in DAS counting rates affect fishing behavior related to safety concerns, and there is no evidence that the measures adopted in this action would compromise safety any more than previous management measures, as described in Section 7.6 of the FEIS. Examination of historical fishing patterns in the Day gillnet fleet suggest that, despite being charged more DAS than fished, many vessels elect to return to port early, even though they are charged for more DAS to reduce operational costs, suggesting that it is not likely that the 24-hr DAS counting measure would compromise vessel safety. Moreover, there is nothing in this measure that requires a vessel to operate in an unsafe manner to catch or harvest fish. Therefore, NMFS concludes that this measure is consistent with National Standard 10.

Comment 14: One industry organization (the New Hampshire Commercial Fisherman's Association (NHCFA)) stated that Amendment 16 does not adequately describe the economic impacts of proposed measures.

Response: NMFS disagrees. The expected economic impacts of proposed measures are detailed in Section 7.5 of the FEIS. While this analysis notes that there is a great deal of uncertainty regarding the economic impacts of proposed measures, more precise estimates of likely impacts are not possible, given the fact that sector rosters continue to change, and that the ABCs/ACLs for 2010 and beyond in Framework Adjustment 44 were not adopted by the Council until months after final measures in Amendment 16 were adopted in June 2009. A more accurate description of the expected economic impacts for FY 2010 is included in the analysis of Framework Adjustment 44 based upon updated sector rosters and the ABCs/ACLs adopted by the Council.

Comment 15: Ten commenters supported the development of sectors and their implementation in 2010, including 1,169 letters associated with the PEW mass mailing campaign. NAMA recommended that the Council encourage future sectors to form based on the concept of area management. However, two commenters, including one commercial fisherman and the NHCFA, suggested that development of sector measures in Amendment 16 was rushed, and that sector implementation should be delayed.

Response: Sectors may form for any number of reasons and may adopt area-specific management measures if they so choose. In fact, the existing sectors were originally restricted to fishing in specific areas surrounding the communities in which they were based. The Council did not mandate similar area-based restrictions in Amendment 16 to provide the maximum flexibility for the formation of sectors. Sector measures have been under development as part of Amendment 16 for over 3 years. Sector measures were the subject of extensive debate during this time, including numerous meetings open to the public. Therefore, NMFS disagrees that the implementation of sectors has been rushed and should be delayed. In fact, the Council was originally scheduled to implement Amendment 16 at the start of FY 2009 on May 1, 2009, but delayed the action to further develop Amendment 16, including its sector measures. Therefore, further delay of sector implementation is not warranted to further develop sector provisions.

Comment 16: CLF and the two existing sectors recommended that sectors should be categorically excluded from future NEPA analysis based upon the analysis already contained in the Amendment 16 FEIS, and that NMFS should prepare the appropriate analysis of environmental impacts with the assistance of individual sectors.

Response: The analysis of sector formation in the Amendment 16 FEIS was never intended to address the particular operations of individual sectors, but rather to evaluate the overall impacts of the formation of sectors and their compliance with other sector-specific measures proposed in this action. Another, more detailed analysis of the specific impacts associated with the intended operations plans and rosters of participating vessels for each FY is required to allow the Council, NMFS, and the public to evaluate the expected impacts of these sectors and to comply with NEPA. Information on the vessels participating in each sector or the intended operations was not available at the time the Amendment 16 FEIS was being prepared and finalized. Therefore, a supplemental analysis is necessary to fully comply with NEPA. To assist new sectors in developing such analysis, NMFS hired contractors to work directly with NMFS and individual sectors to prepare EAs for sector operations in FY 2010. In addition, NMFS worked very closely with sector proponents to ensure that such documents complied with the NEPA and other applicable law. NMFS will continue to offer support in the future, although funding to draft future EAs may not be available. Upon the completion of this initial analysis of sector operations, if sector participants and operations in future years are similar to those incorporated in the original analysis, more abbreviated NEPA compliance may be possible in future FYs.

Comment 17: Four commercial fishermen, along with the two existing sectors and the CCCHFA, supported the sector allocation measures in Amendment 16, including using landings history for all stocks except GB cod between FYs 1996 – 2006 and landings history between FY 1996 – 2001 for existing sectors. One of these fisherman, the existing sectors, and CCCHFA supported sector-specific allocations for stocks managed by the Understanding. Two of these fishermen and the existing sectors opposed incorporating capacity into the sector allocation decisions, stating that it would redistribute allocation from those vessels that caught the fish to those who were less active in the fishery.

Response: The allocation options adopted under Amendment 16 are intended to reflect recent participation in the fishery in the form of recent landings of groundfish. The 11-yr period for allocation of most stocks is meant to minimize the impact on catch history that results from changes to groundfish regulations, such as trip limits and area closures during this period. Based upon the proportional allocations of overall stocks of GB cod and GB haddock, sectors would also be allocated portions of the Eastern U.S./Canada Area TACs for GB cod and GB haddock stocks. This measure ensures that access to the Eastern U.S./Canada Area by common pool and sector vessels is not adversely affected by the actions of other sectors or the common pool. This is consistent with Objective 8 of the FMP to insure accountability in achieving fishery management objectives, and to distribute fishery access based upon recent participation in the fishery. Other options considered for sector allocation included either vessel capacity and/or allocated DAS as part of the allocation formula. These factors would have resulted in all vessels being allocated at least some PSC for some or all stocks, even though not all vessels actually fished for and landed groundfish during this period. As a result, such options do not reflect current participation in the fishery and would be inconsistent with the objectives of the FMP and

the discretionary provisions of the Magnuson-Stevens Act relied upon to develop measures in Amendment 16.

Comment 18: One other commercial fisherman and NHCFA suggested that sector allocation measures were inconsistent with National Standards 4 and 8 because such measures were based upon fishing history that advantaged one group over another and would jeopardize the continued participation of traditional fishing communities. Five commenters, including TNC, CLF, the Island Institute, the Midcoast Fisherman's Association, and the Port Clyde Sector supported the Amendment 16 commitment to freeze catch history upon implementation of this action.

Response: Under Amendment 16, all vessels would be subject to the same sector allocation measures (i.e., PSC calculations) for all stocks with the exception of GB cod. For that stock, a different allocation window was adopted to preserve the business plans developed by participants in those existing sectors and to maintain the value of investments in permits made by such participants by maintaining Council decisions regarding the allocation of GB cod from previous management actions. In a similar manner, the Council indicated its intent to freeze catch history for newly formed sectors as of the implementation of Amendment 16 to preserve the allocation decisions made in Amendment 16 and promote economic stability in the fishery by increasing the confidence that allocations are unlikely to change in the future. In doing so, Amendment 16 treats current participants in sectors in the same manner as participants in the existing sectors regarding allocation decisions. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreside infrastructure, consistent with Goal 4 of the FMP. In addition, because these sectors represent cohesive groups of smaller vessels fishing with hook and gillnet gear, preserving existing sector allocations promotes the continuation of a diversified fishery in both size and gear type near Chatham, MA, consistent with Objective 7 of the FMP. Revising existing sector allocations by not treating GB cod sector allocations differently than other stocks could reduce fishing opportunities for these sectors, increasing costs and economic impacts to such sectors, and adversely affect associated communities. Therefore, the decisions made under Amendment 16 are justified based upon furthering the goals and objectives of the FMP, providing for the sustained participation of fishing communities, and minimizing the economic impacts on such communities consistent with National Standard 4 and 8 Guidelines. Finally, sector allocations would be calculated in such a manner that only 100 percent of the GB cod ACL would be allocated in any FY, thereby ensuring that sector measures achieve the conservation measures of the FMP. Based on the above, NMFS has determined that sector allocations under Amendment 16 are consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act, including National Standards 4 and 8.

Comment 19: NHCFA claimed that sectors are analogous to an IFQ program and require a referendum under the Magnuson-Stevens Act. Therefore, this group claimed that Amendment 16 is in violation of the Magnuson-Stevens Act because it failed to develop a referendum to implement sectors. This group also opposed the need to comply with sector deadlines prior to the implementation of Amendment 16 in May 2010.

Response: The Magnuson-Stevens Act explicitly states that a sector allocation is not an IFQ for the purposes of the referendum requirement. Moreover, NMFS has determined that the sector

program, as currently implemented in the FMP and revised in Amendment 16, is not an IFQ program and, therefore, is not subject to a referendum under the Magnuson-Stevens Act. The sector-related deadlines in Amendment 16 and communicated to the public since the Council adoption of Amendment 16 are necessary to ensure that sector measures can be implemented by the start of the 2010 FY on May 1, 2010. While these deadlines are not mandatory, NMFS has made the industry aware that failure to comply with these deadlines could result in the delayed implementation of individual sectors beyond the start of the 2010 FY.

Comment 20: NHCFA believes that the economic impacts of sector allocations do not consider the impacts to vessels heavily invested in permits with many DAS, but little landings.

Response: Section 7.5.1.2.3.3 of the FEIS discusses the economic impacts of PSC options adopted in Amendment 16 on those vessel owners that invested in permits to increase their access to DAS under the existing DAS effort controls. This discussion acknowledges that vessel owners may have invested in permits with allocated DAS, but little landings history in the area in which the owner has traditionally operated. Thus, the value of such permits may be lower if the owner elects to participate in sectors. Part of this reduced value due to lower sector ACE can be reconciled through acquiring additional ACE through the ACE transfer provisions in Amendment 16. In addition, owners who invested heavily in DAS could also continue to participate in the common pool and be regulated by DAS instead of sector allocations. Thus, owners must make decisions as to which management system is most advantageous to them based upon opportunities presented by either management system. Therefore, NMFS believes that Amendment 16 has adequately considered the impacts on such vessels.

Comment 21: Three industry organizations (NHCFA, CCCHFA, and Midcoast Fisherman's Association), both existing sectors and the Port Clyde Sector, CLF, the Island Institute, and one individual fisherman were concerned that the removal of the 20-percent sector allocation cap under Amendment 16 could compromise small-vessel operations due to consolidation of fishing effort by larger corporations. NAMA was concerned about consolidation in general, indicating that consolidation reduces diversity of the fleet and threatens biological diversity in the ecosystem.

Response: Amendment 13 first implemented an allocation cap that prevented sectors from being allocated more than 20 percent of the yearly TAC for a particular stock due to concerns over the possibility that one sector could control an excessive share of a particular stock and exert market control for that resource. Analysis by the PDT during the development of Amendment 16 suggests it is unlikely that any one sector could acquire a sufficient share of a stock to exercise market power over the rest of the fishery. Further, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector would be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Amendment 16 would allow sectors to trade ACE for use during that FY. This would minimize the influence of the actual sector allocation regarding market control, as a sector could acquire ACE from another sector. Consolidation in the fleet has already occurred under the DAS management regime due to continued effort controls, DAS Leasing/Transfer Programs, and other provisions. It is possible to allow for consolidation in the fleet without compromising the diversity of the fleet. Maintaining a diverse

fleet is one of the objectives of the FMP, and future Council actions could be directed to explicitly increase or at least maintain the existing diversity of the fleet.

Comment 22: Several commenters, including TNC, CLF, the two existing sectors, the Port Clyde Sector, the Island Institute, CCCHFA, Midcoast Fisherman's Association, and one commercial fisherman stated that ACE trading is critical to the success of sectors, would facilitate the accurate accounting of catch and discards, and would contribute to achieving OY in the fishery. TNC suggested that NMFS should develop a clearinghouse for ACE trading, while three other commenters indicated that allowing ACE to be traded within bins of vessel size, gear, or other criteria would help protect the small-boat fleet.

Response: NMFS agrees that ACE trading is critical to the success of sector management for the reasons stated by the commenters. Under Amendment 16, ACE could be freely traded between sectors without the restrictions recommended by three commenters. However, there is no reason that a sector could not stipulate such conditions as part of its negotiations to trade ACE with another sector. Further, the Council could implement such restrictions in a future action if data suggest that the small-boat fleet is being adversely affected by unrestricted ACE trading under Amendment 16. Because ACE trading is a private business arrangement between sectors, NMFS is not inclined to serve as a clearinghouse for ACE trades. NMFS is considering posting ACE balances online to provide the data necessary for various sector managers to negotiate ACE trades.

Comment 23: Both existing sectors and one commercial fisherman supported the Amendment 16 overage penalties for sectors. These commenters, along with CCCHFA, agree that sectors should be insulated from the overages of common pool vessels, but they also contended that Amendment 16 should include overage penalties that follow common pool vessels if they join a sector the FY after they contributed to an overage of the common pool allocations of a particular stock.

Response: Amendment 16 does not include any overage penalties for common pool vessels if they contributed to an overage of common pool allocations, but later join a sector to avoid the increase in DAS counting associated with the differential DAS counting AM. NMFS can only approve or disapprove Amendment 16 and cannot revise or add measures. However, the Council could consider adding such penalties in a subsequent action.

Comment 24: CCCHFA and the two existing sectors both expressed general support for the revisions to existing SAPs under Amendment 16. CCCHFA, however, would only support revisions to the CA II Yellowtail Flounder SAP if they were supported by similar standards of research as were required to approve revisions to the CA I Hook Gear Haddock SAP. Further, they support increased access to haddock, but only by gear proven to selectively harvest that species, specifically hook gear.

Response: The CA II Yellowtail Flounder SAP was originally approved under Amendment 13 based upon research reviewed by the Council prior to the approval of that action. That research evaluated the catch of yellowtail flounder, cod, haddock, and other species using trawl gear in the proposed SAP area. Other research to support the Eastern U.S./Canada Haddock SAP using

a haddock separator trawl, the expansion of the CA I Hook Gear Haddock SAP, and the development of the Ruhle trawl demonstrate that such gears can selectively target haddock, while reducing the catch of cod and flatfish species. Although these gears had different successes at increasing the selectivity of the fishery, they were all evaluated in the same manner and all contribute to furthering the objectives of the FMP and the Magnuson-Stevens Act. Only gear supported by applicable research was approved for use by the Council in Amendment 16, as listed in Table 182 of the Amendment 16 FEIS.

Comment 25: CCCHFA supported continuing the delayed access to the Eastern U.S./Canada Area by trawl vessels until August 1, but recommended that the 5-percent cod bycatch TAC be eliminated for hook gear.

Response: The RA has the authority to modify access to the Eastern U.S./Canada Area under existing regulations. The RA will consider whether to continue delayed access to the Eastern U.S./Canada Area by trawl gear either unilaterally, or as part of Framework Adjustment 44, which would implement the 2010 ACLs and U.S./Canada Management Area TACs. Therefore, this comment is not relevant to Amendment 16, but may be applicable to a future action.

Comment 26: CLF is concerned about “inadequate measures” for SNE/MA winter flounder. They suggested that higher trip limits for other species under Amendment 16 may increase targeting of such species and lead to higher discards for SNE/MA winter flounder.

Response: Because sectors would be exempt from all trip limits under Amendment 16, CLF’s concern that trip limits would increase discards of SNE/MA winter flounder is limited to common pool measures. Amendment 16 would increase the common pool trip limits for some species caught within the SNE/MA winter flounder stock area. Although trip limits for some stocks would increase, common pool vessels would also be subject to a further 50-percent reduction in their 2006 DAS allocations, 24-hr DAS counting, and two RGAs within the SNE/MA winter flounder stock area. These RGAs require the use of gear that has been proven to reduce the catch of flatfish stocks in particular, including the Ruhle trawl, the rope trawl, and hook gear. These areas are based upon areas of high catch rates of both SNE/MA winter flounder and other stocks requiring F reductions under Amendment 16 such as SNE/MA yellowtail flounder. Therefore, it is unlikely that high trip limits adopted under Amendment 16 would increase fishing effort to such a degree that the increased effort would overcome the substantial effort reductions also implemented under Amendment 16 and increase discards for SNE/MA winter flounder. In addition, if measures in Framework Adjustment 44 are approved, the RA would have the authority to adjust the DAS counting rates inseason to offer further protection, should increased trip limits for some stocks increase the bycatch of SNE/MA winter flounder. Finally, the two AMs in Amendment 16 would offer further protection that measures would compromise efforts to rebuild this stock, even if triggered by the excessive catch of another stock. Therefore, NMFS believes that there are sufficient measures in Amendment 16 to end overfishing and rebuild SNE/MA winter flounder.

Comment 27: NHCFA and one commercial fisherman suggested that there are equity concerns with the allocation of GOM cod and GOM haddock to the recreational fishery that makes

Amendment 16 inconsistent with National Standard 4. NHCFA also stated that this allocation is inconsistent with National Standard 8, as well.

Response: The National Standard 4 guidelines indicate that management measures must not discriminate between residents of different states, and that any allocations of fishing privileges must be fair and equitable to all fishermen and reasonably calculated to promote conservation. Amendment 16 would allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001-2006. Both commercial and recreational catch would be evaluated using the same time period, a period during which both fisheries were subject to restrictions on the catch of such stocks, to determine the amount of these stocks caught by each fishery. These allocations are necessary to provide accountability to every segment of the fishery that catches groundfish, and to develop more segment-specific management measures that more effectively reduce F for such segments. Fishing communities affected by this measure include both commercial and recreational participants in the fishery. Measures affecting either groups have indirect economic impacts on supporting business within such communities, such as restaurants, marinas, fish processors, fuel suppliers, etc. An allocation of available resources among both groups facilitates the development of effective management measures for each group that can selectively address overages by one group, while avoiding unnecessarily penalizing the other group for such excessive catch due to implementing effort reductions on both groups, similar to previous actions. In doing so, this measure contributes to the overall effort of Amendment 16 to provide for the sustained participation of such communities in the groundfish fishery through the furtherance of sustainable fisheries, while minimizing the adverse economic impacts associated with broadly applied effort reductions for both groups that would result without an allocation of available resources to each group. Therefore, NMFS believes that this measure is consistent with National Standards 4 and 8, as described in Section 9.1.1 of the Amendment 16 FEIS.

Comment 28: CLF suggested that Amendment 16 should develop the tools necessary to increase estimates of recreational catch and improve inseason AMs.

Response: Recent amendments to the Magnuson-Stevens Act call for the development of an angler registry. Such a registry will identify the specific subset of the population that participates in the recreational fishery and allow the Marine Recreational Information Program to collect the data information it needs to more accurately estimate recreational catch. Once such data are available, the Council may be able to obtain more reliable inseason estimates of recreational catch and develop the appropriate inseason AMs, as necessary. However, such data are not currently available and could not be used to develop inseason AMs under Amendment 16.

Comment 29: Both CLF and TNC support adding Atlantic wolffish to the FMP. However, CLF and the existing sectors believe that Amendment 16 overstates the extent of the EFH for this species and that the Council should have a more restricted EFH based upon data from the trawl survey.

Response: Atlantic wolffish was added to the FMP to end overfishing and implement management measures to rebuild the species through a possession prohibition. Because the Amendment 16 FEIS notes that there is little information and a high degree of uncertainty

regarding population status and the reliability of survey data for this stock, designation of EFH throughout the EEZ was considered appropriate at this time, until further information can be acquired to narrow the scope of the EFH, if necessary.

Comment 30: Six commenters, including NAMA, CCCHFA, the two existing sectors, the Island Institute, the Midcoast Fisherman's Association, and the Port Clyde Sector strongly opposed the measure in Amendment 16 that would allow the concurrent issuance of a limited access Atlantic sea scallop and a limited access NE multispecies permit, claiming that it would eliminate incentives to reduce scallop bycatch and turn the scallop fishery into a directed groundfish fishery. CLF opposed this measure because of concerns that it would have major allocation effects on the fishery by restricting access to the fishery, and because the Council did not perform a sufficient analysis under section 303(a)(9) of the Magnuson-Stevens Act.

Response: Many vessels issued limited access permits in either the Atlantic sea scallop or the NE multispecies fisheries are issued open access permits in the other fishery that allow a minimal harvest of managed stocks. Amendment 16 would allow a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time to allow vessels to operate in a more profitable manner and reduce the costs of having to purchase, operate, and maintain multiple vessels to participate in both fisheries. In doing so, Amendment 16 would also increase the value of such permits. While this measure is intended to increase the efficiency of management measures, it has no direct impacts on allocations within or between fisheries, and does not compromise the conservation measures of the fishery, as existing effort controls and permit restrictions in both fisheries, including DAS allocations, gear restrictions, trip limits and permit-splitting provisions, would be maintained. Only landings history of limited access NE multispecies permits would be used to contribute to sectors, not the landings history associated with an open access NE multispecies permit. Further, only in a limited circumstance would a vessel be able to fish for both scallops and groundfish on the same trip. In this circumstance, the vessel would be required to fish with trawl gear and comply with the applicable regulations in both the NE Multispecies and Atlantic Scallop FMPs. A limited access scallop dredge permit vessel could not retain more groundfish than is already allowed. Further, the scallop fishery would still be subject to any groundfish ACLs distributed to the fishery, and limited in the amount of groundfish that could be caught. Therefore, this measure, by itself, would not eliminate incentives to reduce the catch of groundfish in the scallop fishery and would not have effects on the allocations detailed in Amendment 16 or Framework Adjustment 44. Because conservation controls in both fisheries are maintained, there is little chance that this measure would adversely impact the F in either fishery. A full analysis of the expected impacts of this measure is described in Section 7.0 of the FEIS. This analysis, along with the other analyses contained in the FEIS, complies with all of the elements of a fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act and no further analysis is required.

Comment 31: Respondents offered general support for a number of other measures specified in Amendment 16, including revisions to status determination criteria, new rebuilding programs with a 75-percent probability of success, revisions to the DAS Leasing and Transfer Programs, universal sector exemptions, sector annual reports, revisions to sector joint/several liability measures, eligibility of permits in CPH to participate in sectors, and sector overage penalties.

Response: NMFS agrees that these measures are necessary to achieve the goals and objectives of the FMP, effectively administer and enforce measures included in Amendment 16, and to maintain compliance with the Magnuson-Stevens Act.

Comment 32: CLF suggested that cusk be added to the FMP.

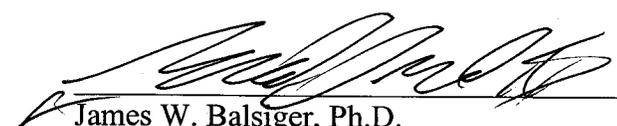
Response: The notice of intent to prepare a SEIS seeking comment on measures to incorporate during the development of measures in Amendment 16 suggested that the Council was considering incorporating cusk and wolffish into the FMP, pending the results of stock assessments for both species. As part of the Data Poor Working Group, a stock assessment was completed for Atlantic wolffish, but a stock assessment for cusk was not completed. Therefore, there is not enough information available to add cusk to the FMP. Once this information becomes available, the Council could add that stock to the FMP through another Council action.

Summary

After careful review of the proposed measures, the associated analyses, and the public comments that NMFS received on Amendment 16 to the NE Multispecies FMP, NMFS is partially approving Amendment 16 by approving all proposed measures except for the GOM Sink Gillnet Pilot Program, as described above. This action is intended to immediately end overfishing, rebuild overfished groundfish stocks, comply with requirements of the Magnuson-Stevens Act to establish a mechanism to specify ACLs and AMs, and help mitigate the economic impacts of continued reductions to fishing effort required to rebuild overfished stocks. NMFS has determined that the measures being approved represent the environmentally preferable alternative when considering the balance of environmental and economic effects that might accrue from these measures within the context and strictures of the Magnuson-Stevens Act and other applicable law. In addition, NMFS has determined the preferred alternative will promote the national environmental policy as discussed in Section 101 of NEPA. NMFS also concludes that all practical and legally justifiable means to avoid, minimize, or compensate for environmental harm from the final action have been adopted.

The Council and NMFS have considered all applicable public comments received on Amendment 16. Responses to all comments on the Amendment 16 DEIS are available in Appendix V of the FEIS, with comments received on the Amendment 16 FEIS listed in this ROD.

Further information concerning this Record of Decision may be obtained by contacting George H. Darcy, NMFS Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930, (978) 281-9331.


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JAN 21 2010

Date