Framework Adjustment 48
To the Northeast Multispecies FMP

Prepared by the
New England Fishery Management Council
In consultation with the
Mid-Atlantic Fishery Management Council
National Marine Fisheries Service

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8.11.1.4.2.7 Trawl Gear Stowage Requirements

A detailed description of this alternative can be found in Section 4.2.7 of this document.

8.11.1.4.2.7.1 Option 1 – No Action

Under Option 1, trawl gear stowage requirements will remain unchanged. There are no economic impacts expected.

8.11.1.4.2.7.2 Option 2 – Removal of Trawl Gear Stowage Requirements (Preferred Alternative)

Option 2 will remove the trawl gear stowage requirements for groundfish trawl trips. The impact of covering nets with tarps when transiting closed areas has very little pecuniary cost and is assumed not substantial enough to alter navigational course, so this option is expected to have very little economic impact. It will however have a positive impact on the safety of fishermen, especially in rough sea conditions. There may be a slight cost to the Coast Guard resulting from increased difficulty in assessing whether or not a vessel is fishing in a closed area. By removing gear stowage requirements it could cause the Coast Guard to have to repeat flyovers in order to observe trawl gear in use. VMS provides indication of when vessels are in a closed area but only average speed is calculated between VMS polls causing a delay in the notification of possible fishing activity (VMS/Enforcement meeting Sheraton Harborside Portsmouth, NH, 2011). Since VMS cannot explicitly determine whether or not a vessel is actively fishing, trawl gear stowage requirements still have some value in terms of monitoring, though the impact to fishermen safety may not justify their continuance.

8.11.1.5 Determination of Significance

The Preferred Alternatives/Proposed Action is not predicted to have an adverse impact on fishing vessels, purchasers of seafood products, ports, recreational anglers, and operators of party/charter businesses in excess of $100 million. Many of the alternatives such as the revised status determination criteria, the scallop fishery and other sub-component sub-ACLs, and revisions to AMs will have impacts on the way that ACLs are set and managed, however it is the ACL values themselves that will dictate the likelihood of overages occurring and thus the impact on revenues and operating costs. Proposed ACL values for groundfish species are being treated as a separate regulation from FW 48.

8.11.2 Regulatory Flexibility Act

8.11.2.1 Introduction

The purpose of the Regulatory Flexibility Analysis (RFA) is to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria; instead the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct an IRFA for each proposed rule. The IRFA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An IRFA is conducted to primarily determine whether the proposed action would have a "significant economic impact on a substantial number of small entities." In addition to analyses conducted for the RIR, the IRFA provides: 1) A description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the proposed rule; 3) a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; 4) a description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; and, 5) an identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule.

8.11.2.2 Description of reasons why action by the agency is being considered

The need and purpose of the actions are set forth in Section 3.2 of this document and are incorporated herein by reference.

8.11.2.3 Statement of the objectives of, and legal basis for, the proposed rule

The primary objectives of this action are set forth in Section 3.2 of this document and are incorporated herein by reference. In general, FW 48 is intended to modify management measures to ensure that overfishing does not occur, while at the same time achieving optimum yield (OY).

8.11.2.4 Description and estimate of the number of small entities to which the proposed rule will apply

The Small Business Administration (SBA) defines a small business as one that is:

- independently owned and operated
- not dominant in its field of operation
- has annual receipts not in excess of -
  - $4.0 million in the case of commercial harvesting entities, or
  - $7.0 million in the case of for-hire fishing entities
- or if it has fewer than -
  - 500 employees in the case of fish processors, or
  - 100 employees in the case of fish dealers.

This framework action impacts mainly commercial harvesting entities engaged in the limited access groundfish as well as both the limited access general category and limited access scallop fisheries.

Regulated Commercial Harvesting Entities

Limited Access groundfish harvesting permits

The limited access groundfish fisheries are further sub-classified as those enrolled in the Sector allocation program and those in the Common Pool. Sector vessels are subject to sector-level stock-specific Annual

Catch Entitlements (ACE) that limit catch of allocated groundfish stocks. Accountability measures (AMs) include a prohibition on fishing inside designated areas once 100% of available sector ACE has been caught, as well as area-based gear and effort restrictions that are triggered when catch of non-allocated groundfish stocks exceed Allowable Catch Limits (ACLs). Common Pool vessels are subject to various days-at-sea and trip limits designed to keep catches below ACLs set for vessels enrolled in this program. In general, sector-enrolled businesses rely more heavily on sales of groundfish species than common pool-enrolled vessels. At the beginning of the 2012 Fishing Year (May 1, 2012) there were 1,382 individual limited access permits. Each of these was eligible to join a sector or enroll in the common pool. Alternatively they could also allow their permit to expire by failing to renew it. 827 permits were enrolled in the sector program and 584 were in the common pool.

Limited access scallop harvesting permits
The limited access scallop fisheries are further sub-classified as Limited Access (LA) scallop permits and Limited Access General Category (LAGC) scallop permits. LA scallop permit businesses are subject to a mixture of days-at-sea (DAS) and dedicated area trip restrictions. LAGC scallop permit businesses are able to acquire and trade LAGC scallop quota and there is an annual cap on quota/landings. At the beginning of the 2012 Fishing Year (March 1, 2012) there were 342 active LA scallop and 603 active LAGC permits.

Permit-level data are presented for illustrative purposes, with gross receipts averaged across CY 2010-2012.

Table 109 - Number of permits held in potentially impacted fisheries

Year	Total permits	Sector permits	Common Pool permits	Limited Access Scallop permits	Limited Access GC Scallop	Both Sector and LA Scallop permits	Both Sector and LGC Scallop permits	Both Common Pool and LA Scallop permits	Both Common Pool and LGC Scallop permits
2010	1916	747	709	343	649	26	239	24	88
2011	1845	804	607	336	613	31	227	25	81
2012	1838	827	584	342	603	35	232	23	77

Table 110 - Gross sales associated with potentially impacted permits

Gross sales category	Number permits	Median gross sales	Median gross sales of groundfish	Median gross sales of scallops
0	644	$0	$0	$0
<$50K	248	$12,143	$3,693	$0
$50-100K	105	$77,518	$15,876	$0
$100-500K	481	$211,653	$62,140	$446,383
$500K-1mil	134	$698,289	$166,705	$495,123
$1-4mil	384	$1,631,354	$194,572	$1,666,564
$4-10mil	26	$4,364,661	$1,002,113	$4,115,054

Ownership entities in regulated commercial harvesting businesses
Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed

action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships or economic dependency. For the purposes of this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

A note about Sectors as ownership entities in the groundfish fishery
Vessels electing to fish under the sector management system may join a sector where their individual allocations of stock-specific fishing quota (called "Potential Sector Contributions" or PSC) become pooled. Vessels individually do not have a right to catch their PSC--it becomes fishable quota (called Annual Catch Entitlement, or ACE) only when that vessel enrolls in a sector.

Section 3 of the Small Business Act defines affiliation as:

> Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

An argument can be made that sectors themselves, and not individual vessels, are impacted by regulations pertaining to the groundfish fishery, especially those that adjust the PSC of individual vessels. For the purposes of this analysis, however, impacted entities will be defined at the ownership entity level and not at the sector level, for three reasons.

1. This proposed action does not directly adjust PSC or ACE for vessels or sectors, the primary driver of sector-level dependency.
2. While sector vessels have substantially identical business interests and are economically dependent on one another through their contractual relationship, many of those vessels—if not most—obtain harvesting receipts outside of the sector system by participating in non-groundfish fisheries. These receipts are not part of their respective sector's operations and in most cases lie outside of the contractual relationship established by the sector program.
3. Many ownership entities have interests inside and outside of the Sector program. Receipts from affiliated vessels that are otherwise unaffiliated with Sectors are difficult to disentangle.

A summary of regulated ownership entities within potentially impacted fisheries
Ownership data are available for the four primary sub-fisheries potentially impacted by the proposed action from 2010 onward. However, current data do not support a common ownership entity data field across years. For this reason only one year's gross receipts will be reported and calendar year 2011 will serve as the baseline year for this analysis. Calendar year 2012 data are not yet available in a fully audited form.

In 2011 there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small and 58 are large entities as per SBA guidelines.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50% of gross sales from sales of either regulated groundfish or from scallops, we are able to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, we find that 135 entities are groundfish-dependent with 131 small and four large. We find that 47 entities are scallop-dependent with 39 small and 8 large.

Table 111 - Description of entities regulated by the Proposed Action

Sales	**Size standard**	**Number of ownership entities**	**Average number permits owned per entity**	**Maximum permits owned per entity**	**Median gross sales per entity**	**Average gross sales per entity**	**Average groundfish sales per entity**	**Average scallop sales per entity**
$0	small	448	1.1	35	$0	$0	$0	$0
<$50K	small	150	1.1	6	$11,809	$16,069	$6,467	$0
$50-100K	small	88	1.1	3	$77,698	$75,342	$18,221	$0
$100-500K	small	334	1.2	4	$222,265	$244,526	$97,889	$0
$500K-1mil	small	103	1.5	7	$680,218	$700,954	$278,618	$546,111
$1-4mil	small	189	1.9	8	$1,806,443	$2,030,334	$704,861	$1,777,724
$4mil+	large	58	7.0	36	$7,950,960	$10,753,380	$2,398,832	$5,137,942
	Total ownership entities:	*1,370*						

Table 112 - Description of groundfish and scallop dependent entities regulated by the Proposed Action

Entity type	**sales**	**Size standard**	**Number of ownership entities**	**Average number permits owned per entity**	**Maximum permits owned per entity**	**Median gross sales per entity**	**Average gross sales per entity**	**Average groundfish sales per entity**	**Average scallop sales per entity**
Groundfish_dependent	<$50K	small	13	1.0	1	$7,944	$13,980	$10,827	$0
Groundfish_dependent	$50-100K	small	6	1.0	1	$81,481	$76,726	$58,902	$0
Groundfish_dependent	$100-500K	small	61	1.6	4	$245,176	$256,524	$205,415	$0
Groundfish_dependent	$500K-1mil	small	23	2.2	7	$791,387	$769,666	$564,253	$0
Groundfish_dependent	$1-4mil	small	28	3.1	8	$1,546,338	$1,636,644	$1,373,636	$0
Groundfish_dependent	$4mil+	large	4	4.8	8	$6,618,976	$6,984,382	$5,575,181	$2,005,277
Scallop_dependent	$500K-1mil	small	4	1.0	1	$711,928	$708,607	$0	$546,111
Scallop_dependent	$1-4mil	small	35	1.5	4	$1,975,662	$2,150,028	$204	$1,958,618
Scallop_dependent	$4mil+	large	8	6.6	13	$10,423,610	$11,075,904	$41,363	$7,292,324
		Groundfish dependent	*135*						
		Scallop dependent	*47*						
		Total dependent	*182*						

8.11.2.5 Description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or records

The proposed rules in FW 48 are not expected to create any additional reporting, record-keeping or other compliance requirements.

8.11.2.6 Identification of all relevant Federal rules, which may duplicate, overlap or conflict with the proposed rule

No relevant Federal rules have been identified that would duplicate or overlap with the proposed action.

8.11.2.7 Significance of economic impacts on small entities

<u>Substantial number criterion</u>

In colloquial terms, substantial number refers to “more than a few.” Given that the majority of entities in the groundfish and scallop industries, both at the permit and ownership entity level, earn less than $4 million annually, all of the proposed alternatives will have impacts on a substantial number of small entities.

<u>Significant economic impacts</u>

The outcome of “significant economic impact” can be ascertained by examining two factors: disproportionality and profitability.

- Disproportionality refers to whether or not the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities.

- Profitability refers to whether or not the regulations significantly reduce profits for a substantial number of small entities.

The proposed action does not place small entities at a significant competitive disadvantage relative to large entities. Impacts on profits from the proposed action are likely to be small, and will not significantly reduce profits for a substantial number of small entities.

8.11.2.8 Description of significant alternatives to the proposed rule and discussion of how the alternatives attempt to minimize economic impacts on small entities

This IRFA is intended to analyze the impacts of the alternatives described in Section 4.0 of FW 48 on small entities. These alternatives include revision of status determination criteria, modification of management measures for GB yellowtail flounder, modification of management measures for at-sea monitoring, allowance of exemption requests from sectors to year-round closures, changes to minimum size restrictions for allocated fish, and modifications to AMs. All of the alternatives have the potential to impact a large number of small entities and while some of the options may significantly alter profitability, it does not seem that any of them would be classified as disproportional. The term groundfish vessel will refer to vessels with limited access groundfish harvesting permits. The term scallop vessel will be used to refer to vessels with limited access scallop harvesting permits. The terms sector vessel and common pool vessel will be used throughout to refer to groundfish vessels that belong to a sector or are part of the common pool. It is assumed that all impacts to vessels are also applicable to ownership entities.

The alternative to adopt new status determination criteria will directly impact how allowable biological catch (ABC) for each species is set. These ABCs in turn will directly impact the ACLs and sub-ACLs for each species, which will ultimately determine the likelihood of overages and the net impact on profitability. If the revised status determination criteria result in much lower ACLs than under the no action option, this alternative will probably be significant in terms of a reduction in fishing revenues. In order to be consistent with the laws of the Magnusson-Stevens Act however it is necessary to incorporate the best use of science. Option 1, No Action, would continue to use out-dated stock assessment data and is therefore not the preferred option.

The sub-ACL provisions for SNE/MA windowpane flounder and for GB yellowtail flounder will impact both the groundfish and scallop fisheries by either shifting accountability for overages or changing the method of sub-ACL calculation. New SNE/MA windowpane sub-ACLs for the scallop and other sub-components fisheries are expected to lower overage uncertainty and reduce overfishing leading to lower operating costs and higher future revenues. The specific economic impacts to each respective fishery are dependent on the allocation received and details of the associated to-be-defined AMs. If sub-ACLs are set below average yearly landings for a given fishery and if AMs are severely restrictive, the impacted vessels could experience a substantial reduction in their profitability. As for modifications to the scallop fishery GB yellowtail flounder sub-ACL, the preferred option, Option 3, will use a fixed percentage of the GB yellowtail ABC to determine the allocation to the scallop fishery. In FY 2013 the percentage will be 40% and in subsequent years it will drop to 16% of the total ABC. Once again, the economic impacts to fishing businesses will depend on the overall GB yellowtail ABC and the probability of an overage based on the sub-ACL, both of which are currently unquantifiable. It seems likely that the 16% fixed rate for the scallop fishery sub-ACL will be quite prohibitive to maximizing the value from scallop landings. In the worst-case scenario, if an overage occurred that closed area CAII, the scallop industry could suffer a $16.9 million dollar loss in economic benefits. Option 2 to this alternative uses a set 90% of estimated scallop catch as the determinant of the scallop sub-ACL. Since the allocation method of Option 2 does not adjust for changes in the ABC, it could lead to a very low groundfish fishery sub-ACL for GB yellowtail. The small-mesh fishery sub-ACL for GB yellowtail alternative, which uses a fixed percentage of catch history to set the allocation, is expected to have similar impacts and unknowns to the aforementioned alternatives but with respect to the small-mesh groundfish vessels.

The provision to modify the groundfish program monitoring requirements will impact all sector vessels. The no action option under this alternative will have a significant impact on these vessels by making them responsible for the full ASM and DSM expenditures in FY 2013. As discussed in Section 7.4.1.2 of this document, had sector vessels absorbed the full ASM/DSM costs in FY 2011 they would have seen aggregate vessel owners' shares of net revenue decrease by a range of 2 to 12 percent and average net revenue per vessel decrease by a range of 1 to 12 percent. The highest percent reductions in net revenue were expected to occur in the 30 to 50 foot vessel category. Since profitability of individual vessels is unknown, it is not possible to estimate the effects of this option on participation levels, but it is likely that vessels operating close to the margin would be forced to exit the industry or lease their quota. Some of the preferred sub-options under Option 3 are designed to minimize the economic impact to sector vessels. Sub-Option B will provide short-term relief to sector vessels by delaying the industry-funded ASM until FY 2014. Sub-Option C will reduce or remove ASM coverage for a subset of groundfish trips, specifically those occurring under a monkfish DAS declaration in the SNE Broad Stock Area using ELM gillnet gear. This is expected to lower the costs of those trips and thus increase net revenues. Option 4, which is also identified as a preferred option, is intended to reduce the overall cost of ASM paid for by the industry. It will ensure that the industry is only responsible for the direct at-sea costs of the ASM program. The government will pay for all other programmatic costs associated with ASM indefinitely. In FY 2010, the direct at-sea costs accounted for approximately 75% of the total per day costs for ASM. Finally, the preferred alternative to remove DSM entirely in FY 2013 is expected to have a substantial positive economic impact on sector vessels by lowering operating costs and thus increasing profitability. The magnitude of this impact will vary with coverage rates and labor costs.

The provision to modify the minimum size restrictions for commercially allocated groundfish species is expected to significantly impact sector vessels as discussed in Section 7.4.3.3 of this document. The preferred option, Option 2, will lower the minimum size restrictions allowing a portion of previously wasted regulated discards to become landings. This option is expected to a positive economic impact on net trip revenues as more fish will be landed for the same amount of expended quota as under the no action alternative. A suggested methodology for modeling this economic impact is presented in Section 7.4.3.3.2, however resource constraints have impeded the analysis. Option 3, to the minimum size restrictions alternative would allow for full retention of caught groundfish species regardless of size or quality. A detailed economic analysis of this option is provided in Section 7.4.3.3.3 of this document. The upper bound revenue estimates from full retention under several ACL scenarios for FY 2013 are in the range of $2.45 million to $3.05 million and the lower bound estimates are in the range of $0.46 million to $0.56 million (Table 88). In addition, full retention could allow for electronic monitoring to replace human labor, which could reduce ASM costs. Option 2 is the preferred option, because it allows for increased revenues from slightly smaller fish, but will likely have less of an effect on the targeting behavior of fishing vessels than Option 3 would have. Under either Option 2 or Option 3, there could potentially be unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue. Gear restrictions will help to mitigate some of this effect.

The alternative to modify the GB yellowtail flounder management measures is potentially significant, since it may substantially impact the profitability of small-mesh vessels. Option 3 to this alternative would require small-mesh vessels use gear types that minimize the catch of flounder species. As a result, these groundfish vessels may experience higher fixed costs associated with gear purchase or modification to existing gears. Given that the new gear types will likely result in a different mix of species landed, revenues could potentially decline as well.

Option 2, the preferred alternative, will modify the discard strata in federal statistical area 522, which has potential positive impacts on revenue for large trawl vessels that predominantly fish this area. Conversely, vessels that fish in the remaining areas may experience reduced profitability as a result of higher discard rates. See Section 7.4.3.4.2 for more information.

The final alternative considered to be significant by the IRFA criteria is the modification of commercial fishery AMs. Option 2, which will modify the timing of AMs for stocks not-allocated to sectors will help to prevent overfishing which could create long-term positive impacts in terms of landings for those species. Under this option, AMs will no longer go into effect mid-season, which will be beneficial to business planning. There is however the potential for short-term decreases in revenue based on faster implementation of AMs. Option 3 will create area –based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder. In the event these AMs are triggered, trawl vessels will be forced to use selective gears within designated closure areas and fixed gear vessels will be forced to cease fishing entirely inside designated closure areas. There is a detailed analysis provided in Section 7.4.3.6.3 of this document. The analysis provides estimates of aggregate landings for the proposed closure areas by gear type using VTR and observer data, but these figures do not account for effort re-distribution. The closed areas for halibut and wolfish generated estimated revenues in the range of $4 million to $5 million dollars in FY 2010 for trawl vessels and around $1 million for fixed gear vessels. Given the vast number of factors that affect effort re-distribution and the spatial bias of VTR coordinates, it is not possible to quantify the net economic impact of this option currently. Option 5 would exempt common pool vessels using handgear or tub trawls from trimester TAC provisions for white hake, allowing them to continue fishing in closed areas. Depending on catch rates in the closed areas, the cost of fishing elsewhere, and the likelihood of AMs being triggered, this could increase revenues over the no action alternative.

8.11.2.9 Economic Impacts of the Proposed Action

The Office of Advocacy at the SBA suggests two criteria to consider in determining the significance of regulatory impacts, namely, disproportional and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities.

Of all affected entities noted herein, only commercial groundfish Sectors are anticipated to be significantly adversely affected. Within this cohort are seven large and ten small entities. The proposed action will significantly reduce short-term profits for regulated small entities relative to the baseline period. Regulated small entities are estimated to be more adversely impacted by the proposed action than large entities (a 63% reduction in gross sales for small, vs. 30% reduction for large). These are short-term impacts, and it is important to note that the reductions in fishing opportunities due to GOM cod and GB yellowtail commercial sub-ACL allocations are necessary to ensure rebuilding of critical groundfish stocks. The ability to lease quota between sectors, and consolidate quota within sectors, will mitigate to some degree the adverse effect on profitability.

However, the proposed action is likely to have significant impact on regulated small entities under the disproportionality criteria. A more detailed treatment of economic impacts may be found in Section 7.4.