

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 990226056-9213-02; I.D. 122498C]

RIN 0648-AL31

Northeast Multispecies Fishery; Amendment 9 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved portions of Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). This rule adds Atlantic halibut to the species managed under the FMP, implements a 1-fish per vessel halibut possession limit with a minimum size of 36 inches (66 cm); postpones implementation of the Vessel Monitoring System (VMS) requirement; modifies the framework process to allow for aquaculture projects and changes to the overfishing definitions (OFDs); and prohibits brush-sweep trawl gear when fishing for multispecies. The chief purpose of Amendment 9 is to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA).

DATES: This rule is effective November 15, 1999.

ADDRESSES: Copies of Amendment 9, its Regulatory Impact Review, and the Final Environmental Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906-1097.

Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

Comments regarding burden-hour estimates for the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978-281-9221.

SUPPLEMENTARY INFORMATION:**Background**

Amendment 9 was prepared by the New England Fishery Management Council (Council) mainly to address requirements of the Magnuson-Stevens Act, as amended by the SFA on October 11, 1996, eliminate overfishing, and rebuild many of the groundfish stocks. Amendment 11 to the FMP identifies and describes essential fish habitat (EFH) of groundfish stocks as required by the SFA. NMFS approved Amendment 11 on behalf of the Secretary of Commerce (Secretary) on March 3, 1999. Background concerning the development of Amendment 9 was provided in the preamble of the notice of proposed rulemaking (64 FR 13952, March 23, 1999) and in the supplement to the proposed rule (64 FR 19111, April 19, 1999), and is not repeated here. This final rule implements approved measures contained in Amendment 9 to the FMP intended to eliminate overfishing and rebuild many of the groundfish stocks. Specifically, the measures establish new overfishing definitions (OFDs) for various groundfish species and stocks, add Atlantic halibut to the FMP's management unit to begin rebuilding this severely overfished stock, and prohibit brush sweep gear until the Council better understands its fishing efficiency given the overall short-term goal to reduce fishing effort. Implementation of the VMS requirement is postponed so the Council can address outstanding policy, equity, and operations issues.

On behalf of the Secretary, NMFS disapproved on April 7, 1999, two measures proposed in Amendment 9 after evaluation of the amendment, as authorized in section 304(a)(3) of the Magnuson-Stevens Act. The disapproved measures include an increase in the size limit for winter flounder for both the commercial and recreational fisheries to 13 inches (33.0 cm) from its current 12 inches (30.5 cm), and the OFD for the Gulf of Maine (GOM) winter flounder stock. Amendment 9 did not provide an OFD for GOM winter flounder. Since none was provided, the OFD does not meet the requirements of the SFA or the Magnuson-Stevens Act. NMFS has notified the Council that it should revise the OFD at the next available opportunity using the most recent assessment conducted at the 28th Stock Assessment Workshop (SAW-28).

Amendment 9 Measures

This final rule revises the regulations implementing the Northeast Multispecies FMP to add Atlantic halibut (*Hippoglossus hippoglossus*) to the management unit of the FMP and to implement management measures for that species. This rule implements a 1-fish halibut possession limit with a minimum size of 36 inches (66 cm); postpones implementation of the VMS requirement beyond May 1, 1999; modifies the framework process to allow for aquaculture projects and changes to the OFDs; and prohibits brush-sweep trawl gear when fishing for multispecies.

Comments and Responses

Eighteen written comments on Amendment 9 were received during the comment period established by the notice of availability of the amendment, which ended March 8, 1999. These comments were considered by NMFS in its decision to partially approve Amendment 9 on April 7, 1999. In addition, NMFS received two comments during the comment period specified for the proposed rule, which ended on May 3, 1999. Comments pertaining to both the amendment and the rule that were received during the respective comment periods are addressed here.

Comment 1: Several comments were received that did not support the increases in minimum fish size for winter flounder. Some of these comments stated that the size increases: (1) merely postpone mortality, rather than reduce it, (2) would have a disproportionate impact on participants west of 72°30', (3) are not consistent with mesh in place west of 72°30', (4) would increase discards, and (5) favor fishermen in Northern states at the expense of southerly fishermen. These commenters generally supported a 12-inch (30.5 cm) size limit west of 72°30', trip limits, limits on the length of trawl sweeps, and 6-inch (15.2 cm) codend in the Southern New England management area. At least one comment on this measure noted that the final report of SAW-28 indicated that this stock is not overfished, and that with no further management measures, the stock could rebuild in 2 to 5 years.

Response: On April 7, 1999, NMFS disapproved the size increases for winter flounder. The Council used preliminary information (the draft Atlantic States Marine Fisheries Commission assessment of winter flounder) to support the size increase. The final SAW-28 report was not complete or available at the time the

Council initially considered the increases. Draft documents for SAW-28 indicated the Southern New England/Mid-Atlantic stock is overfished and would benefit from mortality reduction. However, the final interpretation of the results with respect to the revised national standard 1 guidelines (63 FR 24212, May 1, 1998) indicated that the stock is not overfished, and that the mortality reduction is not necessary. Instead, the stock could rebuild to maximum sustainable yield (MSY) in 2 to 5 years under the management measures currently in place. Since a reduction is not necessary under the final assessment results, the costs imposed by the restrictive size limits are not justified. Therefore, this provision was disapproved.

Comment 2: One commenter supports a 13-inch (33-cm) fish size as an incentive not to use illegal net liners.

Response: While NMFS supports measures that would decrease illegal activity, NMFS found no compelling scientific or social benefit to increasing the fish size solely to achieve that goal. Further, revision to the interpretation of the SAW-28 results indicating that the stock is not overfished has changed the scientific basis used to support the proposed minimum fish size increases. As discussed in the response to Comment 1, NMFS has disapproved the measure.

Comment 3: One commenter supports a prohibition on brush-sweep (—streetsweeper”) trawl gear.

Response: NMFS agrees and approved this provision on April 7, 1999.

Comment 4: One commenter supported implementation of the VMS as soon as possible as an aid to enforcement, whereas another expressed concern and disappointment that NMFS was considering disapproval of the recommended VMS postponement, and urged approval of the delay.

Response: The mandatory use of VMS by individual days-at-sea (DAS) vessels was originally implemented under Amendment 5 to the FMP. At the time, the Administrator, Northeast Region, NMFS (Regional Administrator) authorized the alternative call-in system as a method of notification for these vessels until the VMS was determined operable. The VMS requirement was due to become effective May 1, 1999. For the reasons stated in the proposed rule, NMFS considered disapproving measures in Amendment 9 which would postpone implementation of the VMS requirement until the Council addresses outstanding policy, equity and operations issues. NMFS specifically invited comments from the public on the issue during its review.

Upon completion of its review, NMFS concluded that the existing call-in system is adequate for the needs of the fishery and that the framework mechanism would be the appropriate place to re-initiate the program, should the Council resolve the outstanding issues listed above. NMFS approved the indefinite postponement of the VMS requirement for individual DAS vessels.

Comment 5: Several commenters expressed concern that Amendment 9 does not address bycatch. One supported a comprehensive bycatch review to address bycatch of unmanaged species, such as barndoor skate.

Response: NMFS and the Council are both active participants in the Atlantic Coastal Cooperative Statistics Program which is a long-term effort to improve the collection and utility of fisheries data - including bycatch. Currently, NMFS employs both the mandatory Vessel Trip Reports (VTRs) and information gathered in the Northeast Fisheries Observer Program. Both of these systems review discards of both managed and unmanaged species, as they are comprehensive. Assessment scientists have recently expanded their analysis of discards in stock assessments for some species.

NMFS recognizes that bycatch, as defined under the Magnuson-Stevens Act, can include both managed and unmanaged species. Measures contained in the FMP, such as DAS, fish sizes, closed areas, and mesh requirements, are designed to minimize bycatch and bycatch mortality. Specific measures adopted under Amendment 9, such as the 1-fish halibut possession limit, recognize that the multi-species nature of the fishery prevents complete cessation of bycatch. The Council believes that additional management measures regarding bycatch, beyond those adopted in Amendment 9, are impracticable and unnecessary at this time.

Regarding barndoor skate, this species is the focus of recent media attention but was not of special concern when the Council developed Amendment 9. As a result, the species was not added to the FMP's management unit under Amendment 9. However, the Council recently requested that NMFS designate it as the lead Council for skate management. NMFS will decide on the Council's request after inviting public comment on it.

Comment 6: One commenter stated that the Council did not accurately note the changes SFA made to the definition of —optimum” as it relates to optimum yield (OY). The commenter points out that the Magnuson-Stevens Act defines “optimum” as the yield as reduced by

relevant social, economic and ecological factors, and also requires that OY take into account protection of marine ecosystems. Thus, the commenter argues, Amendment 9 is deficient in that it ignores fishing gears' effect on marine ecosystems and relies solely on mortality and the use of landings as a proxy for mortality, which are not the same. The commenter does not support management by mortality reduction.

Response: The impacts of fishing gears' differential impacts on marine ecosystems, to the degree that they are known, were fully considered in Amendment 11 to the FMP. That discussion and its findings were found to be acceptable under the requirements of the SFA, and as a result, Amendment 11 was approved on March 3, 1999 (64 FR 199503, April 21, 1999). The OY specified in Amendment 9 was found to be in accordance with the SFA, and was approved on April 7, 1999. The Magnuson-Stevens Act allows for a multi-faceted approach to achievement of OY, including mortality reduction, which by definition includes the reduction of bycatch and bycatch mortality (bycatch is defined as fish that are harvested but not sold or kept for personal use), stock rebuilding, and habitat protection. The Council and NMFS have never defined mortality as synonymous with landings, as this comment letter states.

Comment 7: Two commenters do not support management by fishing mortality (F) reduction and instead support opening closed areas to jigging.

Response: Reduction of F to rebuild overfished stocks is an appropriate mechanism that has proven successful in the Northeast Multispecies FMP and other FMPs. Additionally, the commenters' suggestion of opening closed areas to jigging was not taken to public hearings for Amendment 9. Therefore, under Section 304 of the Magnuson-Stevens Act, NMFS could not implement such a measure in the final rule implementing the approved measures of Amendment 9. NMFS encourages the commenters to forward their suggestions to the Council for consideration under future FMP amendments.

Comment 8: Several comment letters were received on the EFH provisions. One commenter stated that EFH was not considered, and called Amendment 9 “shallow avoidance.” Another stated that Amendment 9 fails to comply with EFH provisions and interpreted statements in the Council's EFH omnibus Amendment (including Amendment 11 to the FMP) to indicate that Amendment 9 would contain provisions to satisfy the EFH

requirement of the Magnuson-Stevens Act.

Response: Amendment 11 to the FMP conducted a methodical evaluation of impact from fishing gears on EFH. That amendment indicated that some of the management measures contained in Amendment 9 that are designed to curb F will also serve to limit impacts on EFH. Those measures, therefore, warrant consideration in determining the Council's compliance with the requirements to minimize the effects of fishing on EFH, to the extent practicable. Amendment 11 includes the EFH information required by the Magnuson-Stevens Act and was approved by NMFS on March 3, 1999.

Comment 9: Several commenters did not specifically comment on any one measure or provision of Amendment 9, but expressed support for the small boat fleet of Cape Cod, and do not want regulations that would cause it undue harm.

Response: This comment did not specifically address any one provision of Amendment 9. Regardless, NMFS reviewed Amendment 9 for consistency with the national standards and other applicable law. The approved measures of Amendment 9 were found to be consistent with national standard 8, which specifies the measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse impacts on such communities. Management measures enacted by this rule will have few impacts on communities, the exceptions being the halibut restrictions and the brush-sweep trawl gear prohibition.

The Council drafted an Initial Regulatory Flexibility Analysis (IRFA) to examine impacts of the brush-sweep trawl gear prohibition, and 1-fish halibut possession limit. NMFS supplemented that analysis and considered the impact of Amendment 9 on small entities prior to making the decision to implement these measures. The IRFA includes a discussion of the various alternatives considered and rejected. This analysis is summarized in the Classification section and is incorporated within the FRFA for this final rule.

Comment 10: Several commenters found the OFDs confusing and difficult to understand. As a result, the commenters were unsure of the

consequences of the OFDs. Further, one of the commenters questioned the stock definitions, and urged that the stock definitions be rejected and improved.

Response: NMFS acknowledges that the OFDs are very technical and, thus, can be confusing, particularly to the lay person. Consequently, NMFS has made every effort, where practicable, to encourage or employ the use of easily understood language. The purpose of these definitions is to aid managers in identifying the status of the stock relative to the goals of the FMPs, and to adopt measures to rebuild stocks (as appropriate) so that the stocks may produce the MSY on a continuing basis.

Stock definitions were approved with the original FMP adopting management measures for these species. The definitions were not revisited in Amendment 9 and, consequently, cannot be rejected at this time. The authority granted to NMFS is the approval, partial approval, or disapproval of the measures contained within Amendment 9.

Comment 11: One commenter supported the OFDs and is pleased that both a stock biomass component and an F component are included.

Response: Comment noted. NMFS approved the OFDs, except for GOM winter flounder, which was not included in the amendment. The OFDs are not described in this rule, which makes changes to the text of regulations implementing the FMP. While OFDs appear in the FMP, they do not appear in the regulations.

Comment 12: One commenter supported halibut conservation, and recommended a prohibition on halibut possession, rather than a 1-fish possession limit of 36 inches (91.4 cm).

Response: NMFS recognizes that this fishery is seriously depleted in comparison to historical levels. The measures approved in Amendment 9 will allow for the occasional incidental catch of halibut, but not a directed fishery for that species. However, a complete prohibition on halibut possession would not provide any substantive conservation benefits, since mortality would still occur due to incidental catch.

Changes from the Proposed Rule

To clarify the DAS notification requirements for vessels issued a limited access multispecies, occasional scallop, or combination permit, the regulations in §§ 648.4(c)(2)(iii), 648.10(b), and 648.14(c)(2) have been revised.

In § 648.10, paragraph (b) has been revised to incorporate the applicable requirements contained in the final rule

implementing the Monkfish FMP (64 FR 54732, October 7, 1999).

Section headings for §§ 648.80, 648.83, 648.86, 648.88, and § 648.90 have been revised to reflect revisions contained in the final rule implementing the Monkfish FMP (64 FR 54732, October 7, 1999).

NMFS disapproved the fish size increases for winter flounder. As a result, the regulations proposed in §§ 648.83(a)(1) and 648.89(b)(1), as they relate to winter flounder only, have been removed from this final rule. The size limits for halibut that are specified in those same paragraphs, remain and are unchanged from the proposed rule.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0307 for § 648.10.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 9 is necessary for the conservation and management of the Northeast Multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law, except for the disapproved provisions.

This final rule has been determined to be significant for the purposes of E.O. 12866.

Regulatory Flexibility Act

NMFS prepared an FRFA as part of the regulatory impact review, which describes the impact this rule would have on small entities. The FRFA is comprised of the IRFA and its supplement prepared by the Council, dated December 14, 1998, and supplement prepared by NMFS, dated January 27, 1999, public comments and responses that are included in this document, the analysis of impacts and alternatives in Amendment 9, and the summary that is included here.

The Council, in its IRFA, had determined that this action would not have a significant impact on a substantial number of small entities. However, NMFS concluded that a determination of non-significance could not be made because of the inability to identify the number of vessels that may

be impacted by measures in the proposed rule, namely the brush-sweep trawl gear prohibition, the 1-fish halibut possession limit, and the winter flounder fish size increase. In its supplement to the IRFA, NMFS revisited each of these measures and concluded that the degree of economic impacts on small entities varied depending on whether the number of vessels impacted includes all permitted vessels, all active vessels, or just those vessels directly impacted by a measure. A copy of the FRFA is available from NMFS (see ADDRESSES).

The following section discusses (1) the need for, and objectives, of the rule; (2) public comments on the IRFA; (3) the number of small entities to which the rule will apply; (4) reporting and recordkeeping requirements; (5) reasons for selecting the alternatives adopted in the final rule and rejecting the alternatives; and (6) the measures that minimize the economic impact of this action.

The need for, and objectives of, the rule are mainly to address requirements of the Magnuson-Stevens Act, as amended by the SFA on October 11, 1996, eliminate overfishing, and rebuild many of the groundfish stocks. Several comments were received that opposed regulations that caused undue harm to the Cape Cod small boat fleet. Those comments, and the agency's response, are summarized in the preamble. No changes were made to the rule as a result.

This rule prohibits the possession of brush-sweep trawl gear while in the possession of Northeast multispecies and fishing for, landing, or possessing Northeast multispecies harvested with brush-sweep trawl gear, unless the vessel has not been issued a multispecies permit and fishes for Northeast multispecies exclusively in state waters. This measure was selected in order to allow time to study the effect of this gear on habitat and to protect the integrity of the DAS system. The Council rejected the "no-action" alternative (no prohibition) because continued use of brush-sweep trawl gear may significantly increase trawl efficiency and thereby reduce the benefits of the FMP's effort reduction program. The potential number of vessels that would be impacted by the brush-sweep trawl gear prohibition is approximately 900 vessels, based on the number of permit holders, according to the NMFS Regional Office database, that fish for multispecies with otter trawl gear, and assuming all 900 vessels are currently using brush-sweep gear.

This action implements a 1-fish per vessel halibut possession limit with a

minimum fish size of 36 inches (91.4 cm). These measures were selected to promote the rebuilding of this overfished resource. Alternatives to these measures that were considered but rejected were status quo (no action); a 1-fish possession limit with a maximum fish size of 48 inches (137.1 cm); a 1-fish possession limit combined with a maximum fish size of 48 inches (137.1 cm) and a minimum fish size of 36 inches (91.4 cm); and a total prohibition on halibut possession. The Council rejected the status quo alternative because of the need to reduce directed fishing mortality on this overfished resource. The Council rejected the maximum size provisions based on concerns that the associated discard mortality would negate the intended conservation benefits. The Council rejected a total prohibition as that measure would not provide any substantive conservation benefits, since mortality would still occur due to incidental catch.

The number of vessels affected by the proposed 1-fish halibut possession limit may amount to 1,050 vessels based on the number of permitted vessels in the multispecies fishery. This number includes active limited access multispecies permit holders (1,000) combined with a subset of one-half the estimated 100 active participants in the directed halibut fishery that do not possess a Federal fisheries permit. Active vessels (those that reported landings of halibut in recent years) are estimated to be only those vessels that caught at least one halibut (134 - 139 vessels) in 1996 or 1997.

The postponement of the VMS requirement (measure) mitigates impacts of this rule on small entities because they do not have to invest in VMS equipment at this time. The measure was selected, and the "no action" alternative (no postponement of VMS) was rejected, because of unresolved uncertainties regarding the equity among permit categories, system efficiency, and costs. Between 91 and 110 vessels that fished as Individual DAS vessels in 1998 would be required to have an operational VMS unit under the "no-action" alternative if those vessels remained in that permit category in 1999.

This rule also modifies the framework process to allow the Council to make recommendations on adjustments or additions to selected management measures and OFDs. Modification of the framework process will not have any immediate impact on small entities. Specific framework actions will be evaluated, including their economic impacts, when they are developed and

proposed by the Council. The Council rejected the "no-action" alternative (no modification) as that would prevent the Council's use of the procedure to recommend timely adjustments or additions to management measures and OFDs.

NMFS disapproved the proposed fish size increases for winter flounder as inconsistent with the Magnuson-Stevens Act and other applicable law.

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The rule restates requirements concerning the installation of a vessel tracking system, documentation of installation of a vessel tracking system, declarations of a vessel being in or out of a fishery, and call-in systems.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The requirement for installation of vessel tracking systems has been approved under OMB control number 0648-0307, with an estimated response time of 60 minutes. The other requirements have been approved under OMB control number 0648-0202, with an estimated response time of 2 minutes for each requirement.

The contents of this rule also affect two other information collection requirements. The requirement that a vessel must have a NE multispecies permit in order to land or possess one halibut will subject additional persons to the existing permit requirement approved under OMB number 0648-0202. Those persons who are newly subject to the permit requirement will also automatically be subject to the requirement that permit holders submit VTRs, a requirement which has been approved under OMB number 0648-0212. This request for the expanded coverage of these requirements has been approved by OMB. The estimated response time for these requirements is 35 minutes for the permit and 5 minutes per day for the logbook entries beyond those made in vessel logbooks as part of normal fishing operations and includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of

Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by revising under 50 CFR the following entry in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *
(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR	
648.10	-0202 and -0307

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for “Brush-sweep trawl gear” is added, and the definitions for “Nonregulated multispecies” and “Northeast (NE)

multispecies or multispecies” are revised to read as follows:

§ 648.2 Definitions.

* * * * *

Brush-sweep trawl gear means trawl gear consisting of alternating roller discs and bristle brushes that are strung along cables, chains, or footropes, and aligned together to form the sweep of the trawl net, designed to allow the trawl sweep to maintain contact with the ocean floor, or any modification to trawl gear that is substantially similar in design or effect.

* * * * *

Nonregulated multispecies means the subset of Northeast multispecies that includes silver hake, red hake, ocean pout, and Atlantic halibut.

Northeast (NE) multispecies or multispecies means the following species:

- American plaice—*Hippoglossoides platessoides*.
- Atlantic cod—*Gadus morhua*.
- Atlantic halibut—*Hippoglossus hippoglossus*.
- Haddock—*Melanogrammus aeglefinus*.
- Ocean pout—*Macrozoarces americanus*.
- Pollock—*Pollachius virens*.
- Redfish—*Sebastes fasciatus*.
- Red hake—*Urophycis chuss*.
- Silver hake (whiting)—*Merluccius bilinearis*.
- White hake—*Urophycis tenuis*.
- Windowpane flounder—*Scophthalmus aquosus*.
- Winter flounder—*Pleuronectes americanus*.
- Witch flounder—*Glyptocephalus cynoglossus*.
- Yellowtail flounder—*Pleuronectes ferrugineus*.

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3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

* * * * *

- (c) * * *
- (2) * * *
- (iii) * * *

(A) An application for a limited access multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the

designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

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4. In § 648.10, paragraphs (b) and (d) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) **VMS Notification.** (1) A scallop vessel issued a full-time or part-time limited access scallop permit, or issued an occasional limited access permit when fishing under the Georges’ Bank Sea Scallop Exemption Program specified under § 648.58, or a scallop vessel fishing under the small dredge program specified in § 648.51(e), or a vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit whose owner elects to provide the notifications required by this paragraph (b) using the VMS specified in paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). The owner of such a vessel must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that have crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel’s owner or authorized representative declares the vessel out of the scallop or NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

(ii) A part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b) begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(1)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in paragraph (b) of this section.

(2)(i) A vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected under paragraph (b)(2)(iii) of this section to provide the notifications required by paragraph (b) of this section.

(ii) Upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and

presumptions described under paragraphs (b)(1)(i) through (b)(1)(v) of this section.

(iii) A vessel issued a limited access multispecies, monkfish, occasional scallop, or combination permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (b) of this section using the VMS specified in paragraph (b) of this section. The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an individual or combination vessel limited access multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(1)(i) through (b)(1)(v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

* * * * *
(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of use of the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. A multispecies vessel issued an Individual DAS or Combination Vessel (regarding the multispecies fishery) permit are authorized to use the call-in system of notification specified in paragraph (c) of this section, unless otherwise notified as specified in paragraph (b)(2) of this section.
* * * * *

5. In § 648.14, paragraphs (a)(117), (a)(118) and (c)(31) are added, and paragraphs (b), (c)(1), (c)(2) introductory text, (d)(1), (e) and (g)(2) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *
(117) Fish for, land, or possess NE multispecies harvested with brush-sweep trawl gear unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(118) Possess brush-sweep trawl gear while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b) and (c), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) * * *
(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) For purposes of DAS notification, if required or electing to have a VMS unit under § 648.10:

* * * * *
(31) Possess or land per trip more than the possession or landing limit specified under § 648.86(c) if the vessel has been issued a multispecies permit.

(d) * * *
(1) Possess, at any time during a trip, or land per trip, more than the possession limit of NE multispecies specified in § 648.88(a), unless the vessel is a charter or party vessel fishing under the charter/party restrictions specified in § 648.89.
* * * * *

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of NE multispecies specified in § 648.88(c), or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.
* * * * *

(g) * * *
(2) Possess cod, haddock, and Atlantic halibut in excess of the possession limits specified in § 648.89(c).
* * * * *

6. In § 648.80, paragraph (g)(4) is added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(g) * * *
 (4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

* * * * *

7. In § 648.83, paragraph (a)(1) is revised to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * * (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (T.L.):

Minimum Fish Sizes (T.L.)

Species	Size (Inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

8. In § 648.86, paragraph (c) is revised and paragraph (e) is added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

* * * * *

(e) *Other possession restrictions.*

Vessels are subject to any other applicable possession limit restrictions of this part.

9. In § 648.88, paragraphs (a)(1), (b), (c), and (d) are revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, and unlimited amounts

of the other NE multispecies, per trip, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated multispecies permit.* A vessel issued a valid open access nonregulated multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other nonregulated multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

10. In § 648.89, paragraphs (b)(1) and (c) are revised to read as follows:

§ 648.89 Recreational and charter/party restrictions.

* * * * *

(b) * * *

(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (T.L.) as follows:

Species	Size (Inches)
Cod	21 (53.3 cm)
Haddock	21 (53.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

(c) *Possession restrictions—(1) Cod and haddock.* Each person on a recreational vessel may possess no more than 10 cod and/or haddock, combined, in, or harvested from, the EEZ.

(i) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(ii) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(iii) Cod and haddock must be stored so as to be readily available for inspection.

(2) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

* * * * *

11. In § 648.90, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

* * * * *

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets which form the basis for selecting specific management measures.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and an opportunity to comment on them prior to, and at, the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data

reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP. The Council's recommendation on adjustments or additions to management measures for the purposes of facilitating aquaculture projects must come from one or more of the following categories: Minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones, and any other management measures currently included in the FMP.

* * * * *

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

Introduction to FHA Programs

CFR Correction

In Title 24 of the Code of Federal Regulations, parts 200 to 499, revised as of Apr. 1, 1999, on page 72, § 200.1301 should precede § 200.1302. Section 200.1301 was published in the **Federal Register** at 60 FR 47262, Sept. 11, 1995, but never correctly incorporated into the CFR. Section 200.1301 reads as follows:

§ 200.1301 Expiring Programs—Savings Clause.

No new loan assistance, additional participation, or new loans are being insured under the programs listed below. Any existing loan assistance, ongoing participation, or insured loans under these programs will continue to be governed by the regulations in effect as they existed immediately before October 11, 1995:

Part 205 Mortgage Insurance for Land Development [Title X]
Part 209 Individual Homes; War Housing Mortgage Insurance [Sec. 603]
Part 224 Armed Services Housing—Military Personnel [Sec. 803]
Part 225 Military Housing Insurance [Sec. 803]
Part 226 Armed Services Housing—Civilian Employees [Sec. 809]

Part 227 Armed Services Housing—Impacted Areas [Sec. 810]
Part 228 Individual Residences; National Defense Housing Mortgage Insurance [Sec. 903]
Part 240 Mortgage Insurance on Loans for Fee Title Purchase
Part 277 Loans for Housing for the Elderly or Handicapped
Part 278 Mandatory Meals Program in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in November 1999. Interest assumptions are also published on the PBGC's web site (<http://www.pbgc.gov>).

EFFECTIVE DATE: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment

adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during November 1999.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for October 1999. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefit is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for October 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during November 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 73 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.