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New England Fishery Management Council

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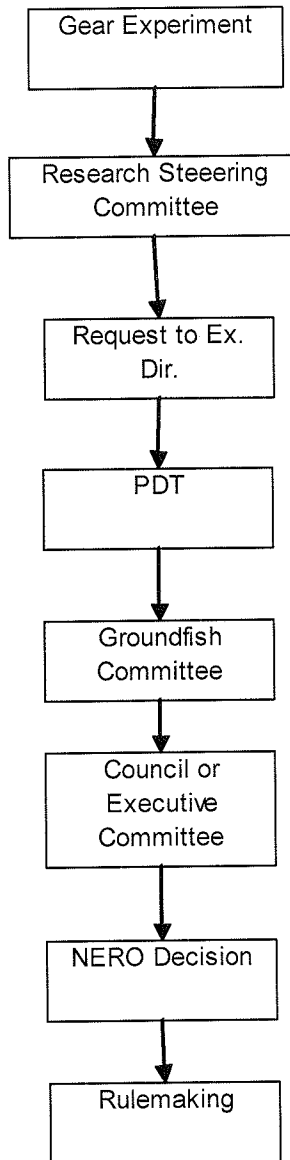
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: June 10, 2011
TO: Council Members
FROM: Paul J. Howard, Executive Director
SUBJECT: NEFMC Gear Policy Discussion

1. The Council requested that staff modify its policy to approve new gears (attached) that would be allowed to operate in the B-regular DAS Program and the Eastern U.S. Canada Haddock SAP. The policy issue was not being considered by the Council at the time, but was associated with a request to NMFS to approve the "mini-eliminator trawl".
2. The current Council policy is illustrated in the flow chart on the following page. Each step was adopted for a specific purpose but there does appear to be some overlap in responsibilities. Steps that appear to be clear candidates for removal are shaded but there may be other steps the Council believes are unnecessary as well.
3. Elimination of one or more of the steps in the Council approval process is an obvious route to shorten the process. The Research Steering Committee (RSC) step could be omitted. Alternatively, the Executive Director step could be omitted since at least one of the Council committees (RSC and/or Groundfish) will provide a level of review; or the Council could leave the RSC step in place and simply forward the RSC's recommendation to the Regional Administrator, as it did with the mini-eliminator trawl project at the April Council meeting. And there may be more variations on this theme. Two alternative paths are illustrated on the following pages with a very brief discussion of arguments for and against the change.
4. There are a number of considerations that the Council may wish to consider before modifying its policy in June. Modification of the policy may not change the NMFS Final Rule on the subject, published in 2008 (attached), nor does it resolve any of the questions associated with the approval of new gears. At least one over-arching question is whether the Council wishes to consider each modification to otter trawl gear, given the current management program in place. Do the approval standards in the policy still apply? Has the Council and the industry considered the ramifications of potential changes to observer coverage as it relates to the discard rates? These and other issues were briefly discussed at the most recent Groundfish Committee meeting.
5. The Council may advise differently, but a staff recommendation would be to forward the stated questions, and there are likely others, to the Groundfish Committee and likely its Plan Development Team. Adequate discussion and any technical issues could then be addressed by the Council bodies that are most concerned with the outcome of any policy modifications.

Current Process



Gear experiment: determine gear performance

Research Steering Committee: Verify experiment adequate for use in management

Request to Executive Director: Demonstrate interest in commercial use of experimental gear

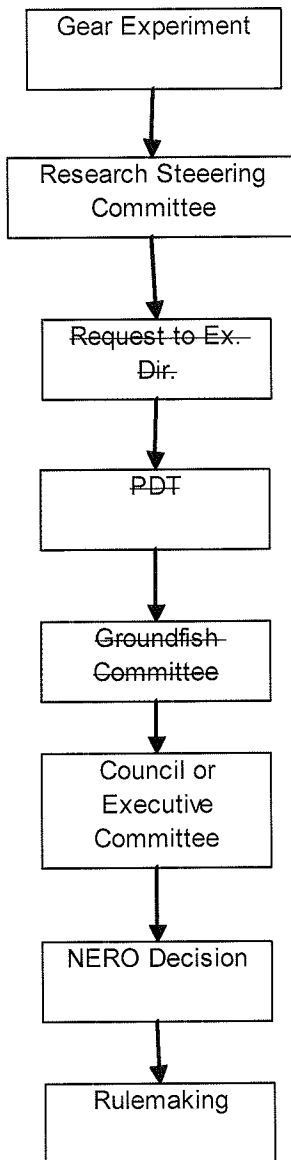
PDT: Verify gear meets performance standards set by Council based on experimental results

Groundfish Committee: Determine if proposed gear use meets management objectives and develop recommendation for Council

Council or Executive Committee: Determine formal Council recommendation and forward to NMFS

NERO: Consider Council recommendation; verify gear meets regulatory standards; initiate regulatory action

Alternative Process 1

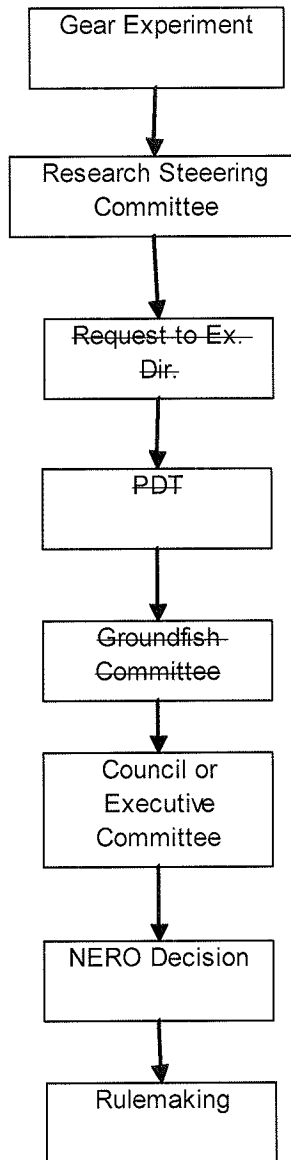


Delete Executive Director step: Presumably experiment would not have been completed unless there was industry interest in using the gear (*But interest may change based on experiment's results; do we want to approve gear that no one wants to use?*)

Delete PDT step: NMFS will have to evaluate if gear meets performance standard defined in regulations; why do this review twice? (*Does Council want to know if standard is met before forwarding recommendation?*)

Delete Groundfish Committee step: Management considerations can be addressed by full Council (*Does Council want Committee advice since Committee is more familiar with specific fishery issues?*)

Alternative Process Two



In addition to comments on Process 1:

Delete RSC review: Funding sources review experimental reports; is RSC review necessary or is it duplicative? (*Different funding sources have different review processes; RSC provides a consistent review.*)

Use of New Gears in the B-Regular DAS Program and the Eastern U.S./Canada Haddock SAP

In response to a Council request in June 2007, NMFS issued a final rule (72 FR 72965) on December 26, 2007 to amend the procedures and requirements for approval of additional gear types for use in the Eastern U.S./Canada Haddock Special Access Program (SAP) or additional trawl gear in the Northeast multispecies Regular B DAS (Days-at-Sea) Program.

The regulations allow the Council or its Executive Committee to request the Regional Administrator to authorize additional gear for use in both programs through a notice action if the proposed gear meets one of two standards in the regulations.

The standards require that new gear either reduce the catch of each regulated stock of species of concern or other non-groundfish stocks that are overfished or subject to overfishing, by at least 50% (by weight on a trip-by-trip basis); or that its catch of each regulated stock of species of concern, or other non-groundfish stocks that are overfished or subject to overfishing, be less than 5% of the total catch of regulated groundfish (also by weight on a trip-by-trip basis). The approval process is as follows:

- 1) Before the Council considers recommending a new gear for either program, the proposed gear must have been the subject of a completed experiment and results reviewed by the Council's Research Steering Committee (RSC) in accordance with that committee's research review policy. (This step is specified in the final rule cited above). The RSC report to the Council will contain a recommendation concerning the sufficiency of the experimental results for management decision-making.
 - 2) If the gear merits further consideration based on the RSC review of the quality of the research, a formal request by the proponents should be made to the Executive Director who will ensure that the Council, through its appropriate groups, consider adding the new gear type to the allowed gears in the two programs.
 - 3) The Council's Groundfish Plan Development Team (PDT) will then determine whether the gear meets the gear performance standards specified in the final rule, taking into account the comments and recommendations provided by the RSC. The PDT's finding will be forwarded to the Groundfish Committee for a review of the technical determination provided by the PDT and consideration of any relevant management considerations.
- 4) The Groundfish Committee will forward its findings to the full Council or the Council's Executive Committee, as appropriate, for development of a recommendation to the Regional Administrator.

§ 64.1200 Delivery restrictions.

* * * *

(c) * * *

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

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[FR Doc. E8-15994 Filed 7-11-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 99-25; FCC 07-204]

Creation of a Low Power Radio Service**AGENCY:** Federal Communications Commission.**ACTION:** Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the revised information collections associated with the *Creation of a Low Power Radio Service*. This notice is consistent and satisfies the Ordering Clause of the Report and Order published at 73 FR 3202-02, on January 17, 2008, which stated that changes to FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License and FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, OMB Control Number 3060-0031, will become effective 60 days after a notice is published in the **Federal Register** announcing OMB approval of the forms.

DATES: FCC Forms 314 and 315 are effective September 12, 2008.**FOR FURTHER INFORMATION CONTACT:** Peter Doyle or Kelly Donohue, Audio Division, Media Bureau at (202) 418-2700.**SUPPLEMENTARY INFORMATION:** This document announces that, on June 23, 2008, OMB approved, for a period of

three years, the revised information collection requirements resulting in changes to FCC Forms 314 and 315 contained in the Commission's Report and Order concerning the Creation of a Low Power Radio Service, FCC 07-204, published at 73 FR 3202-02, January 17, 2008. The OMB Control Number is 3060-0031 for both FCC Forms 314 and 315. The Commission publishes this notice as an announcement of the effective date of the forms and announcement of OMB approval for the information collections. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please write to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060-0031 in your correspondence. The Commission will also accept your comments via the Internet if you send them to PRA@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on June 23, 2008, for the revised information collection requirements resulting in changes to FCC Forms 314 and 315. The OMB Control Number assigned to the information collections is 3060-0031. For revisions to Forms 314 and 315 the total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 4,510 respondents, total annual burden hours of 18,790 hours, and \$33,989,570 in total annual costs.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,*Secretary.*

[FR Doc. E8-15845 Filed 7-11-08; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 080306389-8810-02]

RIN 0648-AW53

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allowance of New Gear (Haddock Rope Trawl, Previously Referred to as the Eliminator Trawl) in Specific Special Management Programs

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

ACTION: Final rule.

SUMMARY: NMFS approves the use of an additional type of trawl gear known as the "haddock rope trawl" (formerly called the "eliminator trawl") in the Regular B Days-at-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP). Vessels fishing in the Regular B DAS Program or the Eastern U.S./Canada Haddock SAP must use approved trawl gear in order to reduce the catch of Northeast (NE) multispecies (groundfish) stocks of concern. The NE Regional Administrator, NMFS, may approve additional gears for use in these programs if research demonstrates that the gear meets specific standards for the reduction of catch of stocks of concern. The intent of this action is to reduce catch of stocks of concern in the NE multispecies fishery and to provide for the conservation and management of stocks managed by the NE Multispecies Fishery Management Plan (FMP).

DATES: This rule is effective August 13, 2008.

ADDRESSES: Copies of the Technical Report "Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery" and a diagram of the haddock rope trawl may be obtained from NMFS at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281-9315. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in

the Classification section of this final rule.

FOR FURTHER INFORMATION CONTACT:

Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION:

A proposed rule for this action was published on May 20, 2008 (73 FR 29098), with public comment accepted through June 4, 2008. In that proposed rule and other documents relied on for this rule, the haddock rope trawl was referred to as the "eliminator trawl." Based on concerns about possible infringement of a trademark for the term "eliminator trawl," as more fully explained in Comment 1 and the response thereto, below, the newly approved gear is called the haddock rope trawl. A detailed description of the need for, and use of, additional types of trawl gear, and a description of the review process used to evaluate the haddock rope trawl performance, was contained in the preamble of the proposed rule and is not repeated here.

Specific gear standard requirements that must be used to evaluate additional gear proposed for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP were implemented through proposed and final rulemaking in 2007 (72 FR 72965). The 2007 gear standards regulation specified that, to be approved, new gear must first be compared to an appropriately selected control gear. Based on this comparison, new gear can be approved if it meets one of the following two standards: (1) Use of the gear must result in a statistically significant reduction, compared to the control gear, of at least 50 percent (by weight, on a trip-by-trip basis) in catch of each regulated NE multispecies stock of concern, or other non-groundfish stocks that are overfished or subject to overfishing identified by the New England Fishery Management Council (Council); or (2) the use of the gear must result in a catch of each regulated NE multispecies stock of concern, or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, that is less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). Neither of these requirements apply to regulated species identified by the Council as not being subject to gear performance standards. Because many species in the fishery are caught together, and the dynamic nature of the status of stocks, the performance standard must have a reasonable amount of flexibility in order to be practical. The Council identified that

the gear performance standards do not apply to haddock, pollock, and redfish. Haddock, pollock, and redfish are target stocks for which no reductions in fishing mortality are required.

One of these standards must be met in a completed experiment, where comparisons of new gear are made to an appropriately selected control gear that has been reviewed according to the standards established by the Council's research policy, before the gear can be considered and approved by the Regional Administrator. In addition, a request for approval of the use of additional gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP must be made by either the Council or the Council's Executive Committee.

On February 19, 2008, the Council sent the Regional Administrator a letter requesting approval of this gear. Based upon the final report, "Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery," and the Council's letter, NMFS is approving the haddock rope trawl. The pertinent information indicates that the catch of each NE multispecies species stock of concern, as well as other species, declined by more than 50 percent with use of the haddock rope trawl, which complies with the first standard for approval of additional gear. The haddock rope trawl net specifications were derived from input from the individuals involved in the haddock rope trawl research and NMFS gear experts, as well as comments received from individuals during the comment period on the proposed rule. Approval of the haddock rope trawl will allow trawl vessels fishing in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP a choice of whether to use the haddock separator trawl or the haddock rope trawl. The size of the haddock rope trawl specified in this final rule is appropriate for fishing vessels with engines of at least 600 horsepower. The results of the experiment could not be used to extrapolate to smaller scale haddock rope trawl gear used by smaller horsepower vessels.

Comments and Responses

Eight comments were received on the proposed rule from the Council, an anonymous citizen, members of a research/educational institution, the State of Maine Division of Marine Resources, an environmental organization, a fishing industry association, and a fishing gear manufacturer.

Comment 1: One commenter claimed that the trawl manufacturer that made

the prototype net used in the research, Superior Trawl, has a trademark on the name "eliminator trawl," and was concerned that referring to the net as the eliminator trawl in this final rule would preclude other net manufacturers from making and/or selling the trawl and, therefore, create a situation where only one company could legally manufacture or sell the specified net.

Response: NMFS acknowledges this comment and replaces all references to the "eliminator trawl" made in the proposed rule with "haddock rope trawl" in this final rule. The haddock rope trawl prototype was built by Superior Trawl of Rhode Island, based on collaborative research. At the time the proposed rule was published, NMFS was unaware that Superior Trawl had claimed a right to the name "eliminator trawl." A representative of Superior Trawl indicated to NMFS that they intend to file a trademark application with the U.S. Patent and Trademark Office and have begun using the letters "TM" in association with the eliminator trawl on their website. To avoid any possible violations of trademark laws and any confusion in the fishing industry by the use of the term "eliminator trawl," NMFS renamed the gear "haddock rope trawl."

Comment 2: Six comments strongly supported approval of the haddock rope trawl for various reasons, including the potential of the gear to enhance economic benefits by allowing access to haddock, the reduction of cod bycatch, and encouragement of the use of innovative gear technology. One commenter noted that this net was the grand prize winner in the 2007 International Smart Gear Competition, and has been successfully tested in the United Kingdom.

Response: NMFS agrees that approval of the haddock rope trawl will have positive impacts on the fishery, including access to haddock, resulting in increased economic benefits, additional flexibility for vessels participating in the special management programs, and further incentive to develop and use new gear technology.

Comment 3: One commenter was concerned that various required elements of the haddock rope trawl would preclude modification of the net so that it could be used by small vessels. Specifically, the commenter believed that the key specification required for proper functioning of the net is the large-mesh (7.9-ft (240-cm)) elements of the net, and that the fishing circle requirement, kite panel requirement, small mesh requirements, and rockhopper specifications would not

improve effectiveness, and were not adaptable to smaller vessels.

Response: NMFS disagrees that the haddock rope trawl should be specified in a manner that removes important elements of the trawl design in order to be adaptable to smaller vessels. The haddock rope trawl as specified in the proposed rule is essentially a description of the net used in the research summarized in the paper "Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery." The research investigated the catch by a specific size and configuration of trawl gear, and the conclusions of that research pertain only to trawl nets of similar configuration. The modifications suggested by the commenter would be substantial, and the conclusions regarding the effectiveness of the net cannot be extrapolated to a trawl configuration that is so different from that documented by the researchers. The research paper stated that the two vessels involved in the research both had engines of 675 HP, and indicated that the results of the experiment cannot be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels. The proposed rule noted that the size of the haddock rope trawl specified would be appropriate for fishing vessels with engines of at least 600 HP. Although NMFS supports the objective of approving a net of similar design as the haddock rope trawl for use by smaller vessels, such a net is outside the scope of this final rule. Research is currently underway testing a smaller, modified version of the haddock rope trawl, and at-sea observations indicate that this smaller net may also be effective at reducing bycatch.

Comment 4: One commenter requested clarification of whether the rockhopper sizes specified in the regulations were maximum or minimum sizes, and what "graduated" rockhoppers meant.

Response: The 12- to 16-inch (30- to 40-cm) rockhopper size specifications are minimums, and the small discs (3.5-inch (8.8-cm)) are maximum size specifications. The large spaces between the rockhoppers and the small discs located between the rockhoppers are intended to allow flatfish and skates to escape more easily. The different sized rockhoppers must be arranged along the sweep in size order (graduated), with the largest rockhopper disc in the center of the sweep and the smaller rockhopper at the wing ends. This final rule incorporates these clarifications to the rockhopper specifications.

Comment 5: One commenter claimed that some elements of the haddock rope

trawl requirements are difficult or impossible to enforce.

Response: NMFS agrees that it may be difficult for law enforcement personnel to verify that a particular trawl net is consistent with the haddock rope trawl specifications due to their complexity, and the challenge of manipulating and measuring large nets while at sea. However, enforcement officers could verify the specifications of a net on shore, or under certain conditions at sea and determine whether the net is in compliance with the regulations. Because the haddock rope trawl is limited to two special management programs, and because vessels must declare into these programs via the Vessel Monitoring System prior to leaving the dock, enforcement personnel will be able to determine which vessels are subject to the haddock rope trawl regulations.

Comment 6: One commenter suggested that the minimum mesh size requirements be expressed as averages over multiple meshes, instead of being specified on an individual mesh basis, and suggested that the number of meshes included in the requirement should depend on the size of the mesh. Further, the commenter suggested that the mesh size requirements include a 5-percent tolerance. The suggestions are based on the concern that, with time and usage, mesh may shrink, stretch, or distort, increasing the likelihood that, when measured, the size of an individual mesh will be inconsistent with the required mesh size and, therefore, making compliance with the mesh size regulations difficult for fishermen.

Response: NMFS agrees that the commenter has a valid concern, but disagrees that a substantive change to the regulations as proposed are necessary. The specification of trawl mesh sizes should not be confused with the method of measuring and verifying such specifications. These are two different issues. The current regulations under § 648.80(f)(2) specify methods to measure mesh over multiple meshes, which should address the commenter's concerns. These regulations state that mesh sizes are the average of 20 consecutive meshes, measured along the long axis of the net. In order to address this issue, the regulations for the haddock rope trawl specified in this final rule will reference the regulations that specify the methods to measure mesh (§ 648.80(f)(2)), in order to make it clear that, when possible, the mesh should be measured over 20 meshes. A single standard of 20 measures is more simple than enumerating different number of meshes to count depending

upon mesh size. NMFS disagrees that the regulation should specify a 5-percent tolerance provision to address the potential variability of mesh sizes for the reason stated above. Procedures utilized by NMFS and the U.S. Coast Guard allow discretion to enforce fishery regulations in a fair, reasonable, and practical manner.

Comment 7: One commenter noted that there is no justification for the size specification of 1.0 square m for each of the three kite panels included in the haddock rope trawl specification, because the size kite panel utilized in the experiment was more precisely 0.9 square m. The commenter further suggested alternative language to require that the total kite panel surface area must be 2.7 square m (i.e., remove the requirement for three kite panels and state a total surface area requirement instead).

Response: Although the research that tested the haddock rope trawl utilized three kite panels, and noted a surface area of 1 square m for each (and the proposed rule reflected this specification), because the commenter is one of the principal investigators of the research and the proposed modification is relatively minor, NMFS agrees to the commenter's suggestion. Implementing a 2.7 square m standard for total kite panel surface area instead of requiring three kite panels will allow additional flexibility for vessel owners to utilize one or multiple kite panels to maximize headrope height, and will more precisely reflect the kite panel surface area of 2.7 square m utilized in the research, without compromising the benefits of the gear. Accordingly, this change was made in this final rule.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment. These changes are listed below in the order that they appear in the regulations.

In § 648.2, the definition of "stretched mesh" has been revised to change the name of the trawl from "eliminator trawl" to "haddock rope trawl."

In § 648.14, paragraph (c)(89) has been added to prohibit fishing with or possession of a haddock rope trawl that does not comply with the net specifications (if electing to fish with a haddock rope trawl).

In § 648.85, paragraph (b)(6)(iv)(J)(1) has been revised to change the name of the trawl from eliminator trawl to haddock rope trawl.

In § 648.85, paragraph (b)(6)(iv)(J)(3), the introductory text has been revised to change the name of the trawl from eliminator trawl to haddock rope trawl,

and to cross reference the regulations under § 648.80(f)(2) that specify how trawl mesh is measured.

In § 648.85, paragraph (b)(6)(iv)(j)(3)(ii) is revised to further describe that large mesh is measured knot to knot.

In § 648.85, paragraph (b)(6)(iv)(j)(3)(v) is revised to state that the total surface area of the kite panel(s) must be 2.7 square m, rather than requiring three 1.0 square m kites.

In § 648.85, paragraph (b)(6)(iv)(j)(3)(vi) is revised to clarify the meaning of "graduated" and state that the large rockhopper sizes are minimum specifications.

Classification

NMFS has determined that this final rule is consistent with the FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. Four comments on the economic impacts of the haddock rope trawl approval were received.

Allowing the use of the haddock rope trawl in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP would provide the fishing industry more flexibility in the use of trawl gear that minimizes catch of stocks of concern by providing them with a choice of whether to use the haddock separator trawl or the haddock rope trawl. Vessels fishing under a Regular B DAS in these programs must comply with restrictive landing limits of various species. The choice of two nets would enable a vessel owner to decide which net is the most cost effective means of targeting haddock and complying with the landing restrictions. A description of the objectives and legal basis for the proposed haddock rope trawl is contained in the **SUMMARY** of this final rule.

Under the Small Business Administration (SBA) size standards for small fishing entities (\$ 4.0 million in annual gross sales), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no disproportionate impacts between large and small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the approval of the haddock rope trawl

are approximately 1,200 vessels; i.e., those issued limited access NE multispecies DAS permits that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in either of these programs, and that would be subject to the associated restrictions, including the use of either the haddock separator trawl or the haddock rope trawl, would be substantially smaller. For example, in fishing year (FY) 2005, 132 vessels fished in either the Regular B DAS Program or the Eastern U.S./Canada Haddock SAP. In FY 2006, there were only 45 vessels that fished in either program. Although it is possible that, under future circumstances, more vessels may elect to participate in these programs, a large increase in the numbers of participants is unlikely. Furthermore, some participants in the Regular B DAS Program and in the SAP may not have sufficient engine horsepower to use the haddock rope trawl, and, therefore, may not be able to use the trawl.

Based on information from a commercial net manufacturer, the cost of purchasing a new haddock rope trawl net is approximately \$ 13,000. A squid trawl net could be modified into a haddock rope trawl for approximately \$ 1,000, by replacing the last belly portion of the net and putting in a rockhopper sweep. If 130 vessels fished in either of the special management programs that require the use of a specialized trawl, and the vessel operators decided to purchase the haddock rope trawl net, the total cost to the industry would be approximately \$ 1,690,000. It is likely that many vessels that have fished in these programs in the past using a separator trawl may choose not to purchase a haddock rope trawl. Vessels choosing to use the haddock rope trawl would incur the purchase cost and other adjustment costs. The decision to do so, and to thereby fish in a special management program offering additional revenue opportunities is a voluntary decision based on the individual vessel's assessment of profitability. Individual businesses (vessel owners) can make the decision to incur the costs of using a haddock rope trawl based upon the costs and benefits to their business.

Because the haddock rope trawl is the only gear that has been vetted through the review process and recommended by the Council, there were only two alternatives under consideration, and NMFS was left with only two options: to approve the haddock rope trawl or continue with the status quo (the no action alternative). NMFS selected approval of the haddock rope trawl

because it determined that approval of the haddock rope trawl provides more flexibility to the fishing industry when compared to the no action alternative, and provides increased opportunity for vessels to minimize catch of stocks of concern while generating revenue from special management programs.

Three commenters commented specifically on the economic impacts of approval of the haddock rope trawl. One commenter commented not directly on the economic impacts, but on the fact that the haddock rope trawl, as specified, would not be appropriate for smaller vessels. One commenter supported approval of the haddock rope trawl gear due to its potential to facilitate access to the haddock resource, and estimated increased revenues of \$30 million. A second commenter stated that approval of the net would help with vessels' economic survival. A third commenter was concerned about the economic impact on trawl gear manufacturers because he claimed that the name "eliminator trawl" is a registered trademark of a particular trawl manufacturer. The commenter was worried that the name eliminator trawl would be legally reserved for the exclusive use of the one manufacturer that had registered eliminator trawl as its trademark, and therefore other companies that did not have a right to use the name eliminator trawl may be precluded from marketing and selling the net, or would have to avoid the use of the name eliminator trawl. Either of these situations could negatively impact other sellers of the eliminator trawl. Because of the potential for confusion in the fishing industry or infringement on the trademark by sellers, NMFS renamed the trawl specified in the regulations in order to preclude potential impacts on these businesses (which includes small entities).

A fourth commenter noted that the haddock rope trawl, as specified, would not be appropriate for smaller vessels, with the unstated implication that the net approval would not provide any benefits to small vessels. This rule does not intentionally preclude the use of the gear based on vessel size or horsepower, but NMFS realizes that an unavoidable consequence of this rule may be that smaller vessels or vessels with less than 600 HP may not be able to use this gear. However, given the nature of this rule, there is no other alternative. The process of conducting gear research and reviewing such research is time-consuming and costly, and the standards for approval must be met. The research paper that documented the effectiveness of the haddock rope trawl

indicated that the results of the experiment could not be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels. The haddock rope trawl is the only gear that has been vetted through the review process and recommended by the Council. Although NMFS supports the objective of approving a net of similar design as the haddock rope trawl for use by smaller vessels, such a net is outside the scope of this final rule. Additional research is being proposed by two of the co-authors of "Bycatch Reduction in the Directed Haddock Bottom Trawl Fishery" that will investigate the use of a haddock rope trawl net designed for smaller vessels with 250 to 550 HP engines. Performance standards, rather than design standards, are utilized for the evaluation of new trawl gear, in order to provide conservation engineers flexibility in design and a meaningful standard for the achievement of the goal of bycatch reduction. The performance standards under § 648.85(b)(6)(iv)(J)(2) were developed for the specific purpose of evaluating additional fishing gear for these special management programs. The net effect of this gear not being available to smaller size or horsepower vessels is the same as the status quo.

Any economic impact of this rule will be based upon a vessel owner's decision to purchase and use the haddock rope trawl, based upon their assessment of profitability. This action does not modify any collection of information, reporting, or recordkeeping requirements. The haddock rope trawl net does not duplicate, overlap, or conflict with any other Federal rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office Web site at <http://www.nero.noaa.gov> and will also be available upon request.

Dated: July 8, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator For
Regulatory Programs, National Marine
Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

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, new definitions for "fishing circle," "stretched mesh," and "sweep" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

Fishing circle, with respect to the NE multispecies limited access fishery, means the calculated circumference of a bottom trawl based on the number of meshes and stretched mesh length at the narrow, aft end of the square of the net.

Stretched mesh, with respect to the NE multispecies haddock rope trawl, means mesh that is pulled so that slack in the mesh is eliminated and the mesh opening is closed.

Sweep, with respect to the NE multispecies limited access fishery, means the part of a bottom trawl that, during normal use, is in contact with the sea floor along the outer edges of the lower webbing of the net.

■ 3. In § 648.14, paragraphs (a)(132) and (c)(81) are revised and paragraph (c)(89) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *
(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

(c) * * *
(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A), or other approved gear as described under § 648.85(b)(6)(iv)(J).

(89) If possessing a haddock rope trawl, either at sea or elsewhere, as

allowed under § 648.85(b)(6)(iv)(J)(1) or (b)(8)(v)(E)(1), fail to comply with the net specifications under § 648.85(b)(6)(iv)(J)(3).

■ 4. In § 648.85, paragraphs (b)(6)(iv)(J)(1) and (b)(8)(v)(E) introductory heading and (b)(8)(v)(E)(1) are revised, and paragraph (b)(6)(iv)(J)(3) is added to read as follows:

§ 648.85 Special management programs.

(b) * * *
(6) * * *
(iv) * * *
(J) * * *
(1) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or haddock rope trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(3) of this section, respectively, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(3) *Haddock Rope Trawl*. The haddock rope trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A haddock rope trawl must be constructed in accordance with the standards described and referenced in this paragraph § 648.85(b)(6)(iv)(J)(3). The mesh size of a particular section of the haddock rope trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(i) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part ANomenclature for 4-seam haddock rope trawl@ (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (x 2), top wing, bottom wing, wing side panels (x 2), square, bunt, square side panels (x 2), first top belly, first bottom belly, first belly side panels (x 2), second top belly, second bottom belly, second belly side panels (x 2), and third bottom belly.

(ii) The first bottom belly, bunt, the top and bottom wings, and the top and bottom jibs, jib side panels, and wing side panels (the first bottom belly and all portions of the net in front of the first

bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(iii) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first and second top belly, the first belly side panels, and the third bottom belly must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the second top belly and third bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(iv) The trawl must have a fishing circle of at least 398 ft (121.4 m). This number is calculated by separately counting the number of meshes for each section of the net at the wide, fore end of the first bottom belly, and then calculating a stretched length as follows: For each section of the net (first bottom belly, two belly side panels and first top belly) multiply the number of meshes times the length of each stretched mesh

to get the stretched mesh length for that section, and then add the sections together. For example, if the wide, fore end of the bottom belly of the haddock rope trawl is 22 meshes (and the mesh is at least 7.9 ft (240 cm)), the stretched mesh length for that section of the net is derived by multiplying 22 times 7.9 ft (240 cm) and equals 173.2 ft (52.8 m). The top and sides (x 2) of the net at this point in the trawl are 343 meshes (221 + 61 + 61, respectively) (each 7.9 inches (20 cm)), which equals 225.1 ft (68.6 m) stretched length. The stretched lengths for the different sections of mesh are added together (173.2 ft + 225.1 ft (52.8 + 68.6 m)) and result in the length of the fishing circle, in this case 398.3 ft (121.4 m).

(v) The trawl must have a single or multiple kite panels with a total surface area of at least 29.1 sq. ft. (2.7 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(vi) The sweep must include rockhoppers of various sizes, which are arranged along the sweep in size order, graduated from 16-inch (40-cm) diameter in the sweep center down to 12-inch (30-cm) diameter at the wing

ends. There must be six or fewer 12- to 16-inch (30- to 40-cm) rockhopper discs over any 10-ft (3.0-m) length of the sweep. The 12- to 16-inch (30- to 40-cm) discs (minimum size) must be spaced evenly, with one disc placed approximately every 2 ft (60 cm) along the sweep. The 12- to 16-inch (30- to 40-cm) discs must be separated by smaller discs, no larger than 3.5 inches (8.8 cm) in diameter.

* * * * *

(8) * * *

(v) * * *

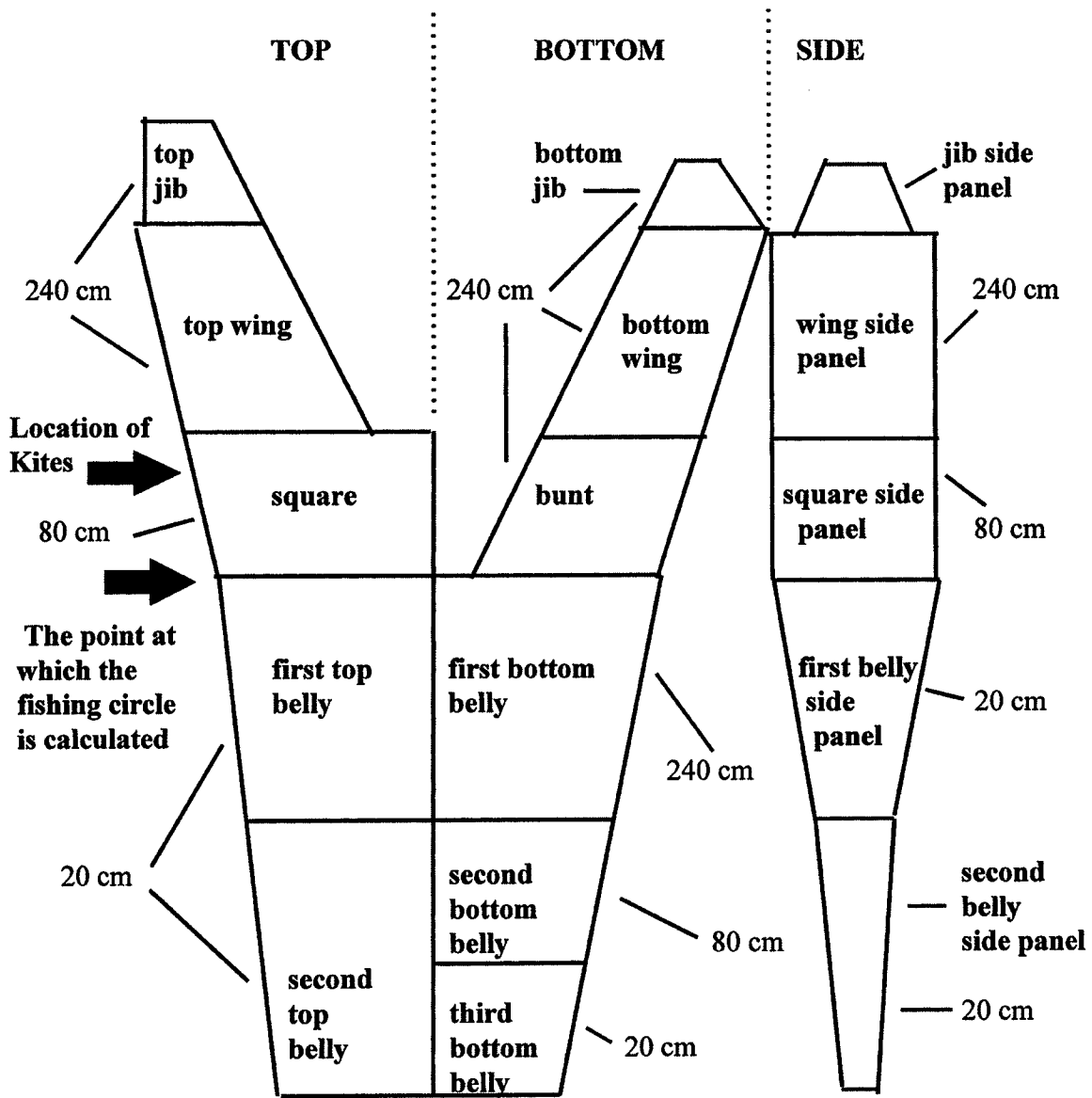
(E) *Gear requirement*—(1) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or haddock rope trawl net, as described under paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(j)(3) of this section, respectively, or other type of gear, if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23(b).

* * * * *

■ 5. In part 648, add Figure 1 to read as follows:

BILLING CODE 3510-22-S

Figure 1 to Part 648



Nomenclature for 4 Seam, Haddock Rope Trawl and Minimum Mesh Size by Section

20 cm = 7.9 inches;
 80 cm = 31.5 inches;
 240 cm = 7.9 ft

