UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
PROGRAM PLANNING AND INTEGRATION
Silver Spring, Maryland 20910

APR 13 2011

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: Fishing Year 2011 Georges Bank (GB) Yellowtail Flounder Annual Catch Limits (ACL) for the Northeast (NE) Multispecies Fishery Management Plan (FMP), RIN: 0648-BA27

LOCATION: Exclusive economic zone off the East Coast of the United States

SUMMARY: This action revises the fishing year 2011 GB yellowtail flounder ACL originally adopted by the New England Fishery Management Council as part of Framework Adjustment 45 (FW 45) to the NE Multispecies FMP based upon the flexibility afforded by the International Fisheries Agreement Clarification Act. That Act allows higher ACLs to be specified for stocks managed by the U.S./Canada Resource Sharing Understanding (GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock), provided overfishing is ended and the stock continues to rebuild according to that understanding. In addition, this action updates analysis of the impacts of measures included in FW 45 on Atlantic sturgeon and loggerhead sea turtles. Thus, the analysis for these issues supplements the environmental assessment prepared for other measures included in FW 45.

RESPONSIBLE OFFICIAL: Patricia A. Kurkul
Regional Administrator
National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA)
55 Great Republic Drive
Gloucester, MA 01930
(978) 281-9200

The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact (FONSI), including the environmental assessment, is enclosed for your information.

Although NOAA is not soliciting comments on this completed EA/FONSI, we will consider any comments submitted that would assist us in preparing future NEPA documents. Please submit any written comments to the Responsible Official named above.

Sincerely,

Paul N. Doremus, Ph. D.
NOAA NEPA Coordinator

Enclosure

Supplemental Environmental Assessment
Revised Georges Bank Yellowtail Flounder Catch Limits for Fishing Year 2011

Supplements the Environmental Assessment for Framework Adjustment 45 to the Northeast Multispecies Fishery Management Plan

Prepared By:

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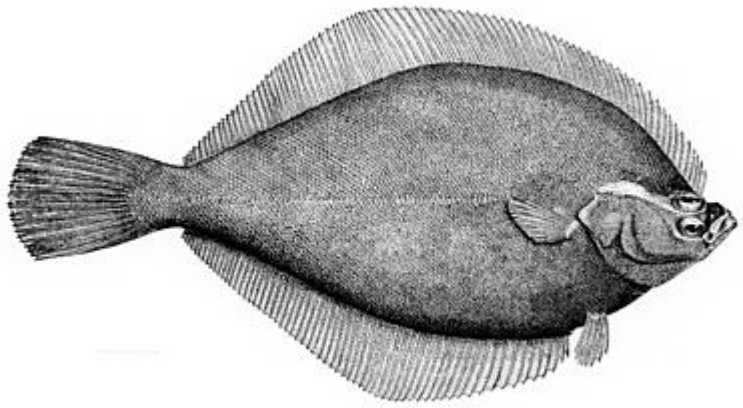

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April 13, 2011

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1.0 INTRODUCTION

The National Marine Fisheries Service (NMFS) has prepared this supplemental analysis to evaluate potential impacts that would result from the proposed action to approve revised catch limits for Georges Bank (GB) yellowtail flounder for fishing year (FY) 2011 (May 1, 2011 – April 30, 2012). In accordance with the National Environmental Policy Act (NEPA), NMFS previously evaluated the potential impacts of GB yellowtail flounder catch limits for FY 2011 in Framework Adjustment (FW) 45 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) in an Environmental Assessment (EA) submitted to NMFS by the New England Fishery Management Council (Council), on January 21, 2011. Framework 45 analyzed the impacts of a suite of management measures approved by the Council, including the Total Allowable Catch (TAC) and annual catch limits (ACLs) for GB yellowtail flounder. The conclusion reached in the EA completed for FW45 was that the action of approving the preferred measures would not significantly impact the quality of the human environment. All beneficial and adverse impacts of the action were evaluated in the FW 45 EA, resulting in the conclusion of no significant impacts. This supplemental EA presents impact information on the physical, biological, habitat, and socio-economic ecosystem components that would result from approving revised catch limits for GB yellowtail flounder as described herein. This document is not a stand alone document, but rather a supplemental EA, intended to be utilized in conjunction with the attached FW 45 EA.

2.0 BACKGROUND

2.1 IN BRIEF: CHANGES TO CIRCUMSTANCES RESULT IN REVISION OF FW 45 MEASURES

Framework 45 analyzed two closely related measures (TAC and ACLs for Georges Bank yellowtail flounder) that became obsolete due to a change in Federal legislation. The new legislation is referred to as the International Fisheries Agreement Clarification Act. Pursuant to this Act, As described in further detail below, the TAC recommended by the Transboundary Management Guidance Committeeor GB yellowtail flounder was revised after the completion of the FW 45 EA, and therefore this action proposes to revise the TAC and ACLs. As described in detail in the FW 45 EA, the Council recommended FY 2011 TACs for transboundary groundfish stocks (shared with Canada), including a TAC for GB yellowtail flounder. Secondly the Council recommended specific FY 2011 catch limits for GB yellowtail flounder pursuant to Amendment 16 to the FMP, which requires the division of the overall catch limit into components (referred to in this document as ACLs) in order to enable accountability for all sources of catch (i.e., US Acceptable Biological Catch (ABC); Other sub-component; Groundfish sub-Annual Catch Limit (ACL); Sector sub-ACL; Common Pool sub-ACL; and Total ACL). The ACLs for GB yellowtail flounder proposed in the FW 45 EA were based upon the original FY 2011 U.S./Canada shared TAC. The reason the catch limits for GB yellowtail flounder were revised pertains to legal constraints of the FMP and the annual joint U.S./Canada process of recommending shared TACs. The paragraphs below contain a brief summary of this process, associated challenges that developed over time and the circumstances leading to the subsequent proposed revision of the GB yellowtail flounder catch limits for FY 2011.

2.2 HISTORY OF U.S./CANADA COOPERATIVE MANAGEMENT

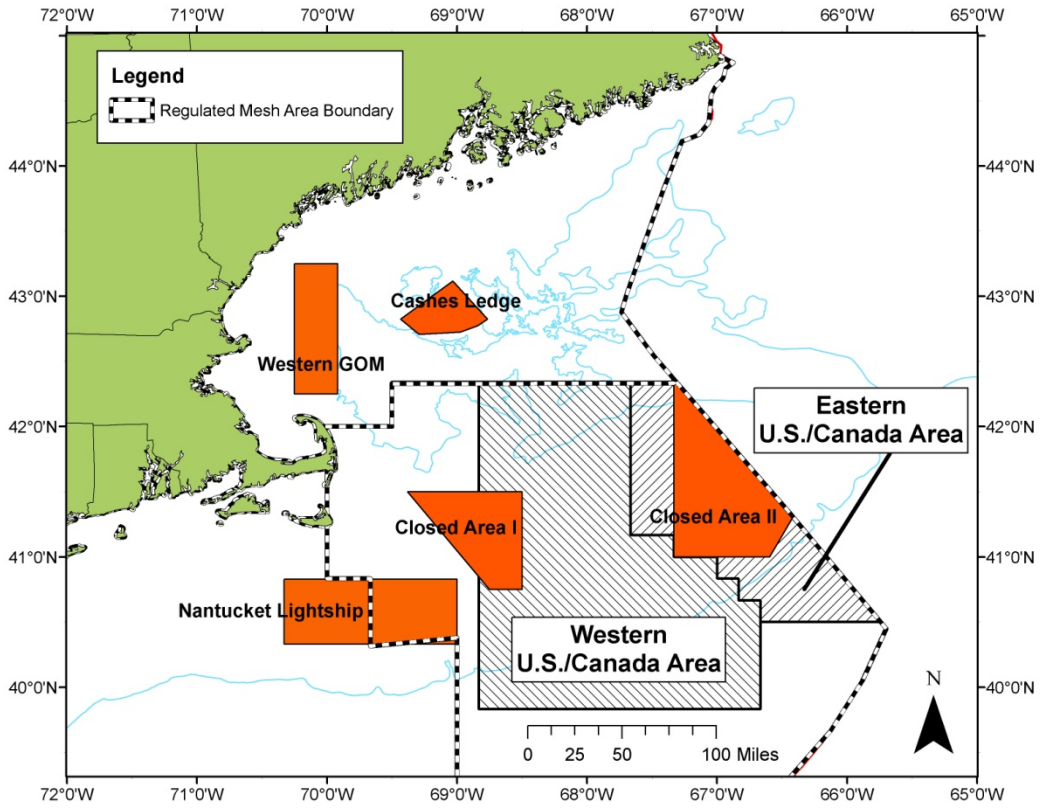
A transboundary stock is one whose distribution spans the boundary between Canada and the U.S., and for which there can be migration across the boundary. It was recognized that coordinated efforts to manage transboundary stocks would result in enhanced management and utilization of resources by both countries. In 1998, the Transboundary Resource Assessment Committee (TRAC) was formed with representatives from both the U.S. and Canada to conduct joint stock assessments between the two countries in order to ensure that management was based upon the best available, combined information. More information on the TRAC may be found on the internet at the following address: http://www.mar.dfo-mpo.gc.ca/science/TRAC/trac.html. Subsequently, a management advisory process was developed, and a second committee was formed, with members from the U.S. and Canada, to provide non-binding guidance to each country (Transboundary Management Guidance Committee); (TMGC). More information on the TMGC may be found on the internet at the following address: http://www.mar.dfo-mpo.gc.ca/science/tmgc/TMGC-e.html.

It was recognized by both Canadian and U.S. managers that the independent conservation actions taken by each country could be compromised by other management actions that were not coordinated, and could result in reduced benefits to both countries. Therefore, an informal agreement was developed to achieve consistency of management efforts (Development of a Sharing Allocation Proposal for Transboundary Resources of Cod, Haddock, and Yellowtail Flounder on Georges Bank. Transboundary Management Guidance Committee, January 2002). The Understanding outlines a process for the management of the shared GB groundfish resources and specifies an allocation of TACs for these three stocks for each country based on a formula that considers historical catch percentages and current resource distribution.

In May 2004, Amendment 13 to the FMP implemented a large number of new management measures, including measures designed to implement the Understanding (50 CFR 648.85(a)). The specific intent of such management measures was to constrain catches of the three shared stocks by U.S. vessels to ensure that the catch does not exceed the U.S. allocations (i.e., the Amendment 13 regulations in support of the Understanding included the definition of the Western U.S./Canada Area and the Eastern U.S./Canada Area, hard TACs, monitoring requirements, reporting requirements, trip limits, and administrative measures). In U.S. waters, the shared stock of GB yellowtail flounder is located in both the Western U.S./Canada Area and the Eastern U.S./Canada Area, while the shared resources of cod and haddock are found in the Eastern U.S./Canada Area (Figure 1).

Annual TACs are determined through a process involving the Council, the TMGC, and the U.S./Canada Transboundary Resources Steering Committee (50 CFR 648.85(a)(2)(I)). The agreed upon strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, 0.25, for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates should be further reduced to promote rebuilding. The implementation of Amendment 13 and utilization of the process outlined in the Understanding resulted in the specification of hard TACs for eastern GB cod, eastern GB haddock, and GB yellowtail flounder for the 2004 through 2010 fishing years.

Figure 1. U.S./Canada Management Areas and Year-Round NE Multispecies FMP Closed Areas (Habitat Closure Areas not depicted)



2.3 CHALLENGES WITH THE U.S./CANADA UNDERSTANDING

Although the Understanding has resulted in the achievement of its goals and successful specification of catch levels in almost all instances, cooperative management with the Maritimes region of Canada through the has become increasingly difficult. Furthermore, with only a few minor exceptions, each country has kept their catches below the agreed upon TACs. The underlying cause of the difficulty is that the Magnuson-Stevens Conservation and Management Act (MSA) requirement to rebuild stocks within a defined time period limits the flexibility of the U.S. in the range of harvest levels it may agree to with Canada. In contrast, Canadian law and the U.S./Canada Understanding provide flexibility with respect to how conservative a TAC may be set in order to promote stock rebuilding.

The problem escalated since 2007 as follows: In 2007, the initial GB yellowtail flounder TAC for 2008 that was agreed upon by U.S. and Canadian representatives was subsequently rejected by NMFS because it was inconsistent with the rebuilding plan for the stock. A second meeting with the Canadians was required to negotiate a lower catch level that was consistent with U.S.

law. In 2008, U.S. and Canadian representatives agreed with difficulty upon a 2009 catch level for GB yellowtail flounder, but stated: "There is a substantial risk that the process may become ineffective and the benefits of cooperation will be lost." In September 2009, the TMGC met and arrived at the consensus on the shared catch levels for GB cod and GB haddock for fishing year 2010, but did not reach a consensus on a shared catch level for GB yellowtail flounder. Subsequently, the New England Fishery Management Council recommended that NOAA Fisheries Service unilaterally set a GB yellowtail flounder TAC based on the fishing level required to rebuild the stock and an assumed amount of Canadian catch.

The constraints had resulted in a substantial risk that the TMGC process would become ineffective and the benefits of cooperation lost. Without agreed upon harvest levels, the conservation and economic benefits of cooperative management would be lost and there would be increased uncertainty in the fishery. With each country independently setting catch levels for their regions, there is a greater probability that combined U.S. and Canadian catch will exceed the appropriate science based catch level for yellowtail flounder and jeopardize rebuilding progress. In recognition of this problem, the U.S. Congress developed legislation designed to enable the potential consideration of the Understanding by the Secretary of Commerce and provide limited, conditional flexibility to catch levels of GB yellowtail flounder that may be considered.

As described in detail in the January 21, 2011, EA for FW 45, based upon the annual TMGC meeting in August 2010, the TMGC recommended a FY 2011 shared TAC for GB yellowtail flounder of 1,900 mt. That recommendation was based upon a June 2010 stock assessment conducted by the Transboundary Resources Assessment Committee (TRAC) and was consistent with the harvest strategy of the Understanding, and consistent with the catch level for FY 2011 that was associated with the proposed rebuilding plan for GB yellowtail flounder in FW 45 (rebuild by 2016, with a 50% probability).

2.4 INTERNATIONAL FISHERIES AGREEMENT CLARIFICATION ACT AND REVISED TMGC GUIDANCE

The circumstances relevant to the FY 2011 shared TAC for GB yellowtail flounder changed however, when President Obama signed the International Fisheries Agreement Clarification Act (the Act) on January 5, 2011. The Act recognizes the US/CA Transboundary Resource Sharing Understanding and allows decisions made under the Understanding to be taken into account for the rebuilding requirements of Magnuson. Specifically, the Act allows the rebuilding period to exceed 10 years in duration, and allows the shared catch to be inconsistent with the catch level required by the fishery management plan, provided the fishing mortality level ensures rebuilding, and overfishing is not occurring. The net result of the Act is that it provides additional flexibility regarding the range of shared catch levels of GB yellowtail flounder that the US may consider. The effective dates associated with components of the Act result in greater flexibility for FY 2011, in recognition of the current and proposed requirements of the FMP, and the constraints of the regulatory process in responding to the Act.

Pursuant to the Act, and the fact that the U.S. statutory and management plan requirements have constrained the ability of the TMGC to negotiate a shared catch level for GB yellowtail flounder, in January, 2011, NOAA Fisheries Service requested the U.S./Canada Transboundary Resources

Steering Committee (Steering Committee) and the TMGC to reconsider their guidance (i.e., catch recommendation) for a 2011 GB yellowtail flounder TAC. The TMGC convened a teleconference on February 9, 2011, and developed a recommendation for a revised shared TAC of 2,650 mt. The Guidance Document Addendum states the following regarding the revised guidance:

"The TMGC concluded that the most appropriate combined Canada/USA TAC for Georges Bank yellowtail for the 2011 fishing year is 2,650 mt. A 2011 TAC of 2,650 mt corresponds to a low probability of exceeding F_{ref} (< 25 %) and an expected 5% increase in median biomass from 2011 to 2012 (Figure 1). Despite the recent re-emergence of a retrospective pattern, which is cause for uncertainty, the fishing mortality in 2008 and 2009 was 0.15, below the F_{ref} value of 0.25, and the age 3+ biomass is increasing and is at its highest level since 1974. The annual allocation shares between countries for 2011 are based on a combination of historical catches (10% weighting) and resource distribution based on trawl surveys (90% weighting). Combining these factors entitles the USA to 55% and Canada to 45% of the TAC, resulting in a national quota of 1,458 mt for the USA and 1,192 mt for Canada. During discussions, it was noted that an assumed catch of 1,956 mt of yellowtail flounder for the 2010 calendar year was used for the risk projections for exceeding F_{ref}. Preliminary information indicates that Canada recorded a catch of approximately 220 mt against their quota of 756 mt for the fishing year ending December 31, 2010. The TMGC concluded that this level of Canadian catch is likely to result in both a lower fishing mortality in 2010 and a higher biomass at the beginning of 2011 than the original risk analysis forecast."

More information on the standard procedures for calculation of the percentage shares may be accessed through the TMGC web site at the following address:

http://www.mar.dfo-mpo.gc.ca/science/tmgc/background/share.pdf

Subsequent to the TMGC discussion of February 9, 2011, the U.S. and Canadian Co-Chairs of the Steering Committee, Patricia Kurkul (Administrator, National Marine Fisheries Service, Northeast Region) and Faith Scattolon (Director, Department of Fisheries and Oceans, Maritimes Region), respectively, approved the recommendation of the TMGC on February 11, 2011. The revised GB yellowtail flounder TAC and the related annual catch limits are the subject of this supplemental EA. If these catch specifications are approved in FW 45 by the Secretary of Commerce, revised annual catch limits for GB yellowtail flounder, based upon the revised shared U.S./Canada TAC would be implemented for the U.S.

It should be noted that in contrast to the original shared TAC for GB yellowtail flounder (1,900 mt), which reflected consideration of the modified rebuilding strategy proposed in FW 45, the revised shared TAC was not recommended to reflect or be consistent with the proposed modified rebuilding strategy. The Act provides such flexibility for FY 2011. The revised GB yellowtail flounder TAC and catch limits are being proposed based on the authority of the Secretary of Commerce to implement emergency measures, and Council action on this measure is not required. A more complete discussion of the use of emergency authority for implementation of these measures is contained in the FW 45 proposed rule (76 FR 11858; March 3, 2011). Given the timing of the revised TMGC recommendation, there is not adequate time for consideration of

the revised measures by the full Council or the Council's Scientific and Statistical Committee. Council participation in the process of developing the shared TACs was achieved through participation of Council members on the TMGC. Four members of the Council are members of the U.S. delegation of the TMGC, with the Chair of the Council's Groundfish Committee serving as the U.S. Co-Chair of the TMGC.

3.0 PURPOSE AND NEED

The purpose for this action is to implement a revised TAC and catch limits for Georges Bank yellowtail flounder for FY 2011, in order to achieve a better balance of the conservation and economic objectives of the MSA and respond to congressional intent regarding the International Fisheries Agreement Clarification Act. This action is needed due to the passage of the Act and reconsideration of the FY 2011 TAC by the TMGC after the development of FW 45 and the EA.

4.0 PROPOSED ACTION AND ALTERNATIVE

The proposed action and other alternatives considered in this assessment are described in the following sections and summarized in the subsequent tables. Only one alternative is proposed due to the narrow purpose and need for this action, and because the TMGC process results in a single recommendation. A range of TACs were considered by the TMGC. The TMGC justification for its selection is described below.

4.1 NO ACTION ALTERNATIVE

The No Action Alternative would allow the FY 2011 U.S./Canada GB yellowtail flounder TACs and the annual catch limits derived from the U.S. TAC, as implemented and analyzed in the FW 45 EA to remain in place. The GB yellowtail flounder TACs would be those recommended by the TMGC at its August 2010 meeting (Total Shared TAC: 1,900 mt; U.S. share: 1,045 mt; Canadian share: 855 mt). The annual catch limits would be those described in FW 45 EA (U.S. ABC: 1,099 mt; Other sub-component: 53.5 mt; Groundfish sub-ACL: 790.7; Sector sub-ACL: 767 mt; Common pool sub-ACL: 23.7 mt; and Total ACL: 1,045 mt). Comparisons of the No Action Alternative to the other alternatives are contained in Tables 1. And 2. The division of the U.S. share of the TAC into components was based upon the methods implemented by Amendment 16 to the FMP, with minor differences described in FW 45. The combined U.S./Canada TAC was considered the U.S. ABC in order to maintain consistency with the FMP rebuilding plan and result in a Total ACL equivalent to the U.S. portion of the shared TAC (1,045 mt).

4.2 PREFERRED ALTERNATIVE – REVISED FY 2011 GB YELLOWTAIL FLOUNDER TAC AND ACLS

The Preferred Alternative is composed of two inextricably linked elements: Implementation of the revised FY 2011 GB yellowtail flounder TAC, and the ACLs that result from dividing the TAC into its components in accordance with the FMP.

Revised FY 2011 GB Yellowtail Flounder TAC (U.S. portion of shared TAC)

The revised FY 2011 GB yellowtail flounder TAC would be based on the revised recommendations of the TMGC at its February 9, 2011, teleconference, and approved by the U.S./Canada Transboundary Resources Steering Committee Co-Chairs on February 11, 2011: Total Shared TAC: 2,650 mt; U.S. share: 1,458 mt; Canadian share: 1,192 mt. The values of proposed revised TAC and the No Action Alternative as well as comparison on the U.S. TACs to the FY 2010 TAC are contained in Tables 1 and 2 below.

Table 1. No Action and Proposed FY 2011 U.S./Canada TACs for GB Yellowtail

	No Action (mt)	Proposed (mt)
Total Shared TAC	1,900	2,650
U.S. TAC	1,045	1,458
Canada TAC	855	1,192

Table 2. Comparison of No Action and Proposed FY 2011 U.S. TACs with FY 2010 TACs for GB Yellowtail Flounder

	FY 2010 (mt)	*FY 2011 (mt)	Percent Change
No Action	1,200	1,045	-13 %
Proposed	1,200	1,458	22 %

Revised FY 2011 GB Yellowtail Flounder Annual Catch Limits

The second aspect of the Proposed Alternative is implementation of the revised FY 2011 annual catch limits derived from the revised U.S./Canada TACs described above. The derivation of theses catch limits by sub-dividing the U.S. TAC into components is based upon the methods implemented by Amendment 16 to the FMP, with minor differences. The method used is similar, but not identical to the methodology utilized in the No Action Alternative.

Under the No Action Alternative (developed under FW 45), neither the USCA TAC nor U.S. share were considered to be the US ABC. For the No Action Alternative, the US ABC is the catch associated with the proposed FW 45 rebuilding plan. The Total ACL was set at 1,045 because the US portion of the shared TAC was 1,045 mt (see Tables 1 and 2), and the total US catch from all sources cannot exceed the U.S. shared TAC. The Groundfish sub-ACL was derived by subtracting the Other sub-component (53.5 mt) and scallop sub-ACL (200.8 mt) from the Total ACL. The Other sub-component was based upon the US ABC (5%), and the scallop sub-ACL was as specified by FW 44. Although the Groundfish sub-ACL of 1,045 is less than the ABC and therefore consistent with the MSA guidance, there was not a specific calculation of management uncertain done based upon a predetermined percentage. Essentially, the calculation of the Other sub-component and scallop sub-ACL were based upon the ABC, and then the remaining amount was reduced to equal the U.S. share. The difference between the U.S ABC and the Total ACL is 54 mt, which represents a 5% reduction for management uncertainty.

In contrast, under the Proposed Alternative, to align more closely with the Amendment 16 methods, the U.S. portion of the shared TAC was considered as the ABC (see Tables 1 and 2). The Groundfish sub-ACL was calculated by subtracting the scallop sub-ACL (prior to reducing

for management uncertainty) and the Other sub-component from the US ABC, and then deducting for groundfish management uncertainty (3%). Similar to the majority of other ACLs specified pursuant to Amendment 16, the Total ACL is the sum of the groundfish sub-ACL, the Other sub-components, and the scallop sub-ACL. Comparisons of the Proposed Alternative ACLs to the No Action Alternative are contained in Table 3.

Table 3. No Action and Proposed Alternative FY 2011 ACLs for GB Yellowtail

	US ABC	Other sub-component (mt)	Groundfish sub-ACL (mt)	Sector sub-ACL (mt)	Common Pool sub-ACL (mt)	Total ACL (mt)
No Action	1,099	53.5	790.7	767	23.7	1,045
Proposed Alternative	1,458	73	1,142	1,126	16	1,416

The Sector sub-ACL and Common Pool sub-ACL will likely be modified just prior to the start of FY 2011, when the sector rosters for FY 2011 are finalized. The size of the Groundfish sub-ACL will not be affected by the amount divided between the common pool and sectors. As explained in the FW 45 EA, the incidental catch TACs for Special Management Programs are also affected by the specification of GB yellowtail flounder catch limits. Due to several factors, these related modifications to the incidental TACs are not discussed or analyzed in detail in this supplemental EA. The relatively small size of the incidental catch TACs (0.2 mt) and minute changes make these elements of the FMP negligible in effect. Furthermore, according to NMFS information on the internet the Special Management Programs to which they are allocated have not been recently utilized (http://www.nero.noaa.gov/ro/fso/MultiMonReports.htm). Lastly, the size of the incidental catch limits will be ultimately determined by both the size of the common pool sub-ACL for GB yellowtail flounder, which will not be finalized until just prior to the start of FY 2011, when the sector rosters are finalized.

5.0 AFFECTED ENVIRONMENT

The geographic area and human component of the environment most affected by the proposed Alternatives are Georges Bank (GB) and vessels fishing on GB. The attached FW 45 EA includes detailed descriptions of the valued ecosystem components (VECs) which comprise the affected environment, including GB. Discussion of physical environment/habitat/EFH is included in Section 7.1 of the attached EA and describes the primary geographic areas affected by the alternatives (Georges Bank), habitat, EFH and gear types. Target species are addressed in Section 7.2, which includes species and stock status descriptions, assemblages of fish species, stock status trends, areas closed to fishing in the northeast region, and gear interactions. A discussion of non-allocated target species and bycatch, including spiny dogfish, skates and monkfish as well as gear interactions with these species, is included in Section 7.3. Protected resources are addressed in Section 7.4. This section discusses protected resources present in the area, protected species potentially affected, species not likely to be affected, and the interactions between gear and protected resources. Human communities within the affected environment are addressed in Section 7.5, and include an overview of the New England groundfish fishery. No

changes to the description of the affected environment, as described in the attached EA, have occurred since the approval of FW 45.

6.0 IMPACTS OF THE PREFERRED ALTERNATIVE AND NO ACTION ALTERNATIVE

6.1 DIRECT AND INDIRECT IMPACTS OF THE PREFERRED ALTERNATIVE AND NO-ACTION ALTERNATIVE

6.1.1 Physical Environment/Habitat/EFH

No Action

Under the No Action Alternative, the available GB yellowtail flounder TAC and annual catch limits would be those proposed by FW 45. The levels of catch are less than the catch levels under the preferred alternative, and therefore may result in reduced fishing effort, bottom contact time and EFH impact compared to the proposed alternative. A difference in impacts between the no-action and the preferred alternative is only anticipated if the amount of GB yellowtail flounder allocated to the fishery is a limiting factor for the total amount of fishing effort on GB by the groundfish fishery. Based on historical data, and the high percentage of the GB yellowtail flounder TAC caught, GB yellowtail flounder may indeed be a limiting factor.

Preferred Alternative

Under the Preferred Alternative, the available GB yellowtail flounder TAC and ACLs would be larger than those under the no action alternative, and therefore may result in greater fishing effort, bottom contact time and EFH impact compared to the No Action Alternative. A difference in such impacts is only anticipated if the amount of GB yellowtail flounder allocated to the fishery is a limiting factor for the total amount of fishing effort on GB by the groundfish fishery. Based on historical data, and the high percentage of the GB yellowtail flounder TAC caught, GB yellowtail flounder may indeed be an important limiting factor. Whereas the quota would increase by about 40% compared to the No Action Alternative, and the yellowtail quota may limit overall groundfish trawling activity in the area, the total amount of the proposed quota is small and any associated increase in swept area would not require any compensatory habitat management measures beyond the measures that were implemented as part of Amendment 13 to the FMP in 2004. Any adverse effects of increased trawling activity on Georges Bank should be evaluated relative to the overall decline in swept area that has taken place in the last fifteen years as a result of regulatory action to restore depleted groundfish stocks and the fact that sandy benthic environments on Georges Bank where yellowtail flounder are most abundant are subject to high levels of natural disturbance caused by storms and strong tidal currents. Bottom area swept by trawlers in the NE region has declined since 2003 by approximately 30% (Seabed Swept Area Impact model developed by Council Habitat PDT). Any adverse impacts of the Preferred Alternative on EFH would be minimal.

6.1.2 Target Species

No Action

Under the No Action Alternative, the GB yellowtail flounder TAC and annual catch limits would be those proposed in the FW 45 EA, less than the catch levels under the preferred alternative, and therefore may result in reduced fishing effort, if the amount GB yellowtail flounder allocated is a limiting factor (which likely it is, as described in section 6.1.1). When the GB yellowtail flounder TAC is caught, access to fishing grounds is curtailed for vessels on GB. The No Action Alternative is consistent with the management strategy agreed to under the Understanding, and the recommendations of the SSC. Under the Understanding, the strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (Fref = 0.25 for GB yellowtail flounder). When stock conditions are poor, fishing mortality rates should be further reduced to promote rebuilding. The initially recommended 2011 TAC for GB yellowtail flounder was based upon the most recent stock assessment (TRAC 2010). Under the No Action Alternative, the available GB yellowtail flounder TAC and annual catch limits would be less that the catch levels under the proposed alternatives, and therefore may result in reduced fishing mortality and greater biomass growth than under Alternatives 2 and 3. The TRAC Status Report for 2010 indicated that a catch of 1,900 mt (by U.S. and Canada) would result a 10 percent increase in median biomass from 2011 to 2012. A catch level of 1,900 mt is associated with a very low risk of exceeding Fref (Fmsy). The No Action Alternative TAC for the U.S. is consistent with the proposed FW 45 rebuilding plan for GB yellowtail flounder (rebuild by 2016 with 50% probability).

It is likely that the management measures of the FMP will result in FY 2011 catch that will be similar to the desired level of catch (proposed U.S. TAC). Based upon fishing years 2004 through 2009 information on catch (landings and discards) from the U.S. Canada Management Area, the management measures implemented by Amendment 13 and subsequent framework adjustments have restrained the catches of GB yellowtail flounder. During those six fishing years, the GB yellowtail flounder TAC was exceeded twice, by nine percent. Table 4 contains a summary of the catch of GB yellowtail flounder compared with the annual TACs.

Table 4. Catch of GB Yellowtail Flounder from U.S./Canada Area

Fishing Year	TAC (mt)	Catch (% of TAC)	Catch (mt)	Discards* (% of catch)
2004	6,000	98 %	5,852	8 %
2005	4,260	88 %	3,760	9 %
2006	2,070	89 %	1,851	29 %
2007	900	109 %	981	39 %
2008	1,869	82 %	1,531	28 %
2009	1,617	109 %	1,770	31 %

* Note; yellowtail discard % includes groundfish and scallop fishery discards

Based upon preliminary information, NMFS does not anticipate that there will be an overage (i.e., the catch will not exceed the TAC) for FY 2010 for Eastern GB cod or Eastern GB haddock. As of March 11, 2011, the estimate of total catch of GB yellowtail flounder was 62 % of the TAC. Although it is not possible to separate out the precise impact of the hard TAC on the overall pattern of fishing behavior and landings, the TACs and associated regulations have played an important role in determining fishing patterns on GB, as further explained in Section 6.1.5, the economic impacts of the proposed TACs. In summary, the No Action Alternative would result in continuation of low fishing mortality, and biomass growth consistent with the rebuilding plan proposed in FW 45, and the biological impacts will be positive.

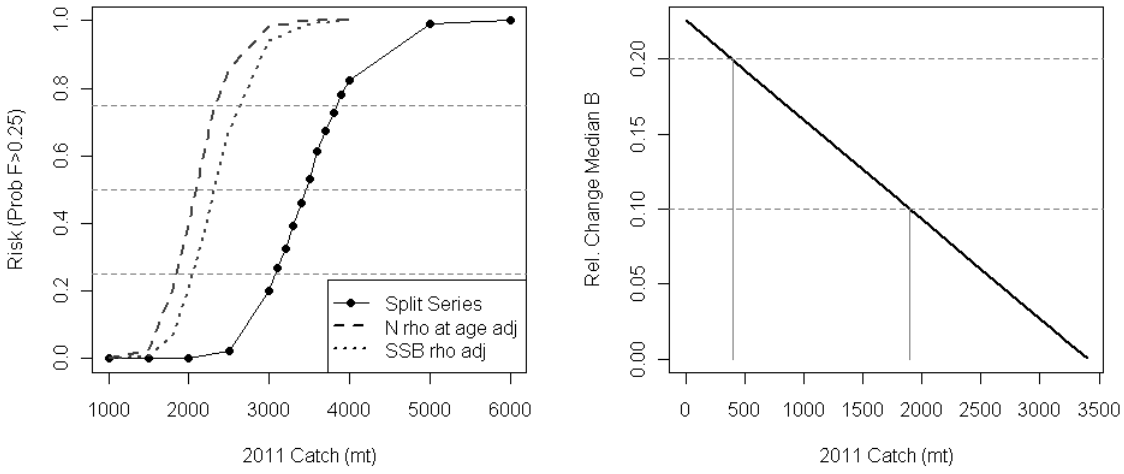
Preferred Alternative

GB Yellowtail Flounder U.S./Canada TAC:

The Preferred Alternative for the GB yellowtail flounder TAC is consistent with the management strategy agreed to under the Understanding. Under the Understanding, the strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (Fref = 0.25 for GB yellowtail flounder). When stock conditions are poor, fishing mortality rates should be further reduced to promote rebuilding. The revised recommended 2011 TAC for GB yellowtail flounder was based upon the most recent stock assessment (TRAC 2010). Based on the TRAC Status Report for 2010, a catch of 2,650 mt (by U.S. and Canada) would result a 5 percent increase in median biomass from 2011 to 2012 (Figure 2). A catch level of 2,650 mt is associated with a very low risk of exceeding Fref (Fmsy) ("Split Series"; Figure 2).

Furthermore, during the TMGC discussions, it was noted that an assumed catch of 1,956 mt of yellowtail flounder for the 2010 calendar year was used for the risk projections for exceeding F_{ref}. Preliminary information indicates that Canada recorded a catch of approximately 220 mt against their quota of 756 mt for the fishing year ending December 31, 2010. The TMGC concluded that this level of Canadian catch is likely to result in both a lower fishing mortality in 2010 and a higher biomass at the beginning of 2011 than the original risk analysis forecast.

Figure 2. Risk of exceeding Fref=0.25 and relative change in median biomass (TRAC Status Report 2010/05)



As explained in the paragraphs above regarding the impacts of the No Action Alternative, the management measures of the FMP that support the hard TAC system on GB have been effective in ensuring that catch is controlled, and the amount of catch in the fishery will be similar to the target amount of catch.

Under the Preferred Alternative, the GB yellowtail flounder TAC (and annual catch limits) would be greater than those proposed by FW 45, and therefore may result in greater fishing mortality and less biomass growth than under the No Action Alternative. Another implication of the Preferred Alternative TAC for the U.S. is that it is greater than that associated with the proposed FW 45 rebuilding plan for GB yellowtail flounder (rebuild by 2016 with 50% probability), and will likely result in less rebuilding than the under the proposed rebuilding plan analyzed in the FW 45 EA. An explanation of why the proposed U.S./Canada TAC is not consistent with the proposed FW 45 rebuilding program for GB yellowtail flounder can be found in Section 2.0 (Background) and Section 8.0 (Compliance with Executive Orders and Applicable Laws). The biological impacts of the Proposed Alternative for GB yellowtail flounder are positive.

GB Yellowtail Flounder Annual Catch Limits

Under the Preferred Alternative, the ALCs derived from the revised GB yellowtail flounder TAC will be larger than the No Action Alternative catch limits. There is no biological impact per se from larger components of the TAC because the biological impacts result principally from the total fishing mortality rate on GB yellowtail flounder, as described above.

6.1.3 Non-Target Species and Bycatch

No Action

Under the No Action Alternative, the GB yellowtail flounder TAC and annual catch limits would be those proposed in the FW 45 EA, less than the catch limits under the proposed alternatives, and therefore may result in reduced fishing effort, if the amount GB yellowtail flounder allocated

is a limiting factor (which likely it is, as described in section 6.1.2). As such, the amount of non-target species caught by the groundfish fishery under the No Action Alternative would be less than under the Proposed Alternatives. Non-target species and targeted species on 'mixed' trips include monkfish, skates, lobster, and summer flounder.

Preferred Alternative

Under the Preferred Alternative, the GB yellowtail flounder TAC and annual catch limits would be greater than the catch levels under the No Action Alternative, and therefore may result in greater fishing effort, if the amount of GB yellowtail flounder is a limiting factor (which likely it is, as described in section 6.1.2). As such, the amount of non-target species caught by the groundfish fishery under the Preferred Alternative may be more than under the No Action Alternative. Non-target species and targeted species on 'mixed' trips include monkfish, skates, lobster, spiny dogfish and summer flounder. The overall scope of the catch of non-target species will be within the scope of impacts analyzed by Amendment 16 to the FMP, considering the number of vessels that fished during FY 2010, and the anticipated level of effort during FY 2011 (similar to FY 2010). If as expected, it is verified based on FY 2010 data, that fishing under sectors results in an increased efficiency due to the lack of trip limits, the overall amount of fishing effort and catch of non-target species by trawlers, and soak time by gillnetters, may be less than in years prior to FY 2010. The amount of overall fishing effort in the fishery is related to many factors, and it is difficult to predict.

6.1.4 Protected Resources

No Action

Under the No Action Alternative, the GB yellowtail flounder TAC and annual catch limits would be those proposed in the FW 45 EA, less than the catch limits under the proposed alternatives, and therefore may result in reduced fishing effort, if the amount GB yellowtail flounder allocated is a limiting factor (which likely it is, as described in section 6.1.2). As such, the amount of fishing effort would be less than under the Proposed Alternatives. Change in the location of fishing effort as a result of this alternative is unknown. The impacts on protected species are uncertain, but are expected to be negligible under this alternative.

Preferred Alternative

Under the Preferred Alternative, the GB yellowtail flounder TAC and annual catch limits would be greater than the catch limits under the No Action Alternative, and therefore may result in greater fishing effort, if the amount of GB yellowtail flounder is a limiting factor (which likely it is, as described in section 6.1.2). As such, the amount of encounters with protected species could increase slightly compared to the No Action Alternative. The overall scope of such impacts will be within the scope of impacts analyzed by Amendment 16 to the FMP, considering the number of vessels that fished during FY 2010, and the anticipated level of effort during FY 2011 (similar to FY 2010). Furthermore the scope of effort will be within the considered for the October 2010 Biological Opinion for the NE multispecies fishery. The October 2010 Biological Opinion did not consider effects to Atlantic sturgeon. However, the Stein et al. (2004a) did review sturgeon bycatch in the NE multispecies fishery for 1989-2000, a time period when effort in the NE multispecies fishery was much greater than what was considered for the October 10, 2010,

Biological Opinion, or what would occur if effort on pollock, Georges Bank yellowtail flounder, Georges Bank cod, Georges Bank haddock, and white hake were to increase as a result of increased fishing effort. Stein et al. (*2004a) found the bycatch rate of Atlantic sturgeon (reported as pounds of sturgeon catch per pounds of targeted species landed) to be 0.000105 for pollock; 0.000530 for yellowtail flounder; 0.004762 for cod; and 0.000459 for haddock. There was no observed bycatch for vessels targeting white hake."

If as expected, it is verified based on FY 2010 data, that fishing under sectors results in an increased efficiency due to the lack of trip limits, the overall amount of bottom time by trawlers, and soak time by gillnetters, may be less than in years prior to FY 2010. The amount of overall fishing effort in the fishery is related to many factors, and it is difficult to predict. Given these the two opposing trends described above, the impacts on protected species are uncertain, but are expected to be negligible under this alternative. Change in the location of fishing effort as a result of this alternative is unknown.

*Stein, A. B., K. D. Friedland, and M. Sutherland. 2004a. Atlantic sturgeon marine bycatch and mortality on the continental shelf of the Northeast United States. North American Journal of Fisheries Management 24: 171-183.

6.1.5 Human Communities/economic/social environment

No Action

Impact on Groundfish Fishery

Under the No Action Alternative, the GB yellowtail flounder TAC and annual catch limits would be those proposed in the FW 45 EA, less than the catch limits under the proposed alternatives. The economic and social impacts are those described in the FW 45 EA (Sections 8.4.1.3, 8.4.1.4, 8.5.1.3, and 8.5.1.4). The economic impacts that result from the GB yellowtail flounder TAC and annual catch limits can best be described in terms of 5 different effects: 1) Catch limits will limit the total amount of catch of GB yellowtail flounder (landings and discards) allowed by law; 2) Associated rules for common pool vessels such as trip limits, and gear restrictions that may be implemented in order to prevent catch from exceeding the TACs will impact when and how such access to GB yellowtail flounder occurs; 3) Closure of the Eastern U.S./Canada Area for common pool vessels or closure of the entire U.S./Canada Area for sector vessels may indirectly impact access to other stocks; 4) Discarded fish count against the TAC; and 5) The timing and rate of landings of GB yellowtail flounder may impact the market. The economic impacts of the No Action Alternative are difficult to predict because of the 5 effects noted above, the fact that Amendment 16 regulations implemented in FY 2010 will still be relatively new in FY 2011, and the fact that these effects interact in a complex manner. The amount of fish landed and sold will not be equal to the GB yellowtail flounder groundfish sub-ACL, but will be reduced as a result of discards. Reductions to the value of fish may result from fishing derby behavior and potential impacts on markets.

The FW 45 EA (Table 112) provided an estimate of revenue associated with the No Action Alternative (characterized as the Proposed Alternative in FW 45). The revenue estimate was based upon an assumed price, assumed percentage of TAC caught, and an assumed discard-to-catch-ratio. Data from previous fishing years were used to estimate two scenarios for the percentage of TAC caught. Discard to catch ratios and price per pound were from 2009 data.

Average price estimates were based on 2009 dealer reports submitted to the NMFS Fisheries Statistics Office. The estimates for FY 2011 GB yellowtail flounder revenue, were $ 1,430,679 and $ 1,907,572, assuming 75% and 100% of the TAC was caught (respectively). That revenue estimate was based upon an assumed discard rate of 31% and an assumed price per pound of $ 1.20.

When considering the revenue associated with the landings of GB yellowtail flounder from the U.S./Canada Area, and the impact of different size catch limits, it is important to note that many other species are landed from trips to the U.S./Canada Area. If the time period during which vessels have access to the area is prolonged, there would also be increased landings of other groundfish and non-groundfish species, resulting in additional revenue. Due to the implications of catching the GB yellowtail flounder TAC for either the common pool or sector vessels on access to resources in addition to yellowtail flounder (i.e. access is restricted or ended), the smaller catch limits associated with the No Action Alternative, compared with the Proposed Alternative will result in larger difference in revenue, if the total ACL is caught, and fishing is restricted.

Impact on Scallop Fishery

There is no difference in the amount of total allocation to the scallop fishery between the No Action Alternative and the Preferred Alternative, because the allocation is a fixed amount (201 mt), and not a percentage of the GB yellowtail flounder TAC (or ACL). However, because the scallop fishery is limited in the amount of GB yellowtail flounder that they may harvest from the scallop access areas based upon the amount of groundfish GB yellowtail flounder (10% of the GB yellowtail flounder ABC), the total amount of GB yellowtail flounder allocated to the groundfish fishery does impact the scallop fishery. Because the GB yellowtail flounder ABC under the No Action Alternative (1,099 mt) is less than the GB yellowtail flounder ABC under the Proposed Alternative (1,458 mt)(Table 3), the No Action Alternative could result in less scallop revenue for the scallop fishery, if GB yellowtail flounder becomes limiting to the scallop fishery in the Closed Area II Scallop Access Area. It is difficult to predict the amount of GB yellowtail flounder that will be caught in the Closed Area II Scallop Access Area in FY 2011 due to the variability of scallop fishing effort as well as scallop and yellowtail flounder catch rates.

Preferred Alternative

Impact on Groundfish Fishery

Economic Impacts

Under the Preferred Alternative, the GB yellowtail flounder TAC and annual catch limits would be greater than the catch limits under the No Action Alternative, and therefore is almost certain to result in greater revenue. Based on historic information (Table 4) the fishery is able to land close to the full amount of GB yellowtail flounder allowed. A comparison of the potential revenue from GB yellowtail flounder compared with the No Action Alternative is below in Table 5. The method used to estimate this revenue is similar, but not identical to the FW 45 EA analysis noted under the No Action Alternative above. In this analysis, the groundfish sub-ACL was used as the basis of the analysis, instead of being based on the U.S./Canada TAC. The groundfish sub-ACL better represents the amount of GB yellowtail available to the fishery.

Table 5. Estimate of FY 2011 GB Yellowtail Flounder Groundfish sub-ACL Revenue

Alternative	Groundfish Sub-ACL (mt)	Revenue
No Action	790.7	$ 1,443,366
Proposed	1,142	$ 2,084,638

When considering the revenue associated with the landings of GB yellowtail flounder from the U.S./Canada Area, and the impact of different size catch limits, it is important to note that many other species are landed from trips to the U.S./Canada Area. If the time period during which vessels have access to the area is prolonged, there would also be increased landings of other groundfish and non-groundfish species, resulting in additional revenue. Due to the implications of catching the GB yellowtail flounder TAC for either the common pool or sector vessels on access to resources in addition to yellowtail flounder (i.e. access is restricted or ended), the larger catch limits associated with the Proposed Alternative, compared with the No Action Alternative will result in additional revenue, if fishing is prolonged. Based on a conservative estimate using FY 2010 data, for every dollar of yellowtail flounder revenue, there is at least $ 10 of revenue from other species. The additional revenue associated with the Proposed Alternative due to the catch of other species could be worth approximately ten times the difference between the GB yellowtail flounder revenue under the two alternatives (10 X $ 641,272), approximately $ 6.4 million (if total GB yellowtail flounder TAC is caught, and fishing effort on GB ceases).

Social Impacts

The Preferred Alternative may contribute marginally to improved attitudes towards the Federal fishery management process. Many vessel owners, operators, and crew are currently impacted by the relatively low annual catch limits for many stocks. Therefore, when the actions of the Federal government (i.e., new legislation and negotiation of a revised catch limit for GB yellowtail flounder) result in additional economic opportunity, there may be a small amount of positive attitude and relief generated. Secondly, the ability of fishing businesses to plan is enhanced with the knowledge that the revised GB yellowtail flounder annual catch limits make it less likely that the GB fishery will be constrained by yellowtail flounder early in the fishing season.

The passage of the Act, combined with the implementation of a revised TAC for GB yellowtail flounder enhances the likelihood that the U.S./Canada Understanding will continue to function successfully in the future and provide conservation and economic benefits that may otherwise be eroded. Implemented of a revised TAC and annual catch limits would provide needed assurance to the Canadian fishing industry and government managers involved in the U.S./Canada Understanding that their past cooperation and patience with the U.S. regulatory process was warranted. The risk that the U.S./Canada Understanding will become non-functional in the future has been minimized in the short term. The long-term risk is unknown.

Impact on Scallop Fishery

There is no difference in the amount of total allocation to the scallop fishery between the No Action Alternative and the Preferred Alternative, because the allocation is a fixed amount (201 mt), and not a percentage of the GB yellowtail flounder TAC (or ACL). However, because the

scallop fishery is limited in the amount of GB yellowtail flounder that they may harvest from the scallop access areas based upon the amount of groundfish GB yellowtail flounder (10% of the GB yellowtail flounder ABC), the total amount of GB yellowtail flounder allocated to the groundfish fishery does impact the scallop fishery. Because the GB yellowtail flounder ABC under the Proposed Alternative (1,458 mt) is greater than the GB yellowtail flounder ABC under the No Action Alternative (1,099 mt)(Table 3), the Preferred Alternative could result in greater scallop revenue for the scallop fishery, if GB yellowtail flounder becomes limiting to the scallop fishery in the Closed Area II Scallop Access Area. It is difficult to predict the amount of GB yellowtail flounder that will be caught in the Closed Area II Scallop Access Area in FY 2011 due to the variability of scallop fishing effort as well as scallop and yellowtail flounder catch rates. A larger cap on the amount of GB yellowtail flounder that can be caught in the scallop access areas however enhances the ability of the scallop industry to plan, and will minimize disruption.

6.2 CUMULATIVE EFFECTS ANALYSIS

The need for a cumulative effects analysis (CEA) is referenced in the CEQ regulations implementing NEPA (40 CFR Part 1508.25). CEQ regulations define cumulative impacts as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other action." The purpose of this CEA is to consider the effects of the Proposed Action and the combined effects of many other actions on the human environment over time that would be missed if each action were evaluated separately. CEQ guidelines recognize that it is not practical to analyze the cumulative effects of an action from every conceivable perspective, but, rather, the intent is to focus on those effects that are truly meaningful. The CEA baseline in this case consists of the combined effects of Amendment 16, Framework 44, and the past, present, and reasonably foreseeable future fishing and non-fishing actions which are described below.

This CEA assesses the combined impact of the direct and indirect effects of the proposed GB yellowtail flounder trip limits with the impact from the past, present, and reasonably foreseeable future fishing actions, as well as factors external to the multispecies fishery that affect the physical, biological, and socioeconomic resource components of the groundfish environment. This analysis is focused on the VECs (see below) and because this action is supplementing FW 45, it relies heavily on the analysis contained in the attached FW 45 EA.

Valued Ecosystem Components (VECs): The CEA focuses on VECs specifically including:

- Physical environment/habitat (including EFH);
- Regulated stocks (allocated target groundfish stocks);
- Non-allocated target species and bycatch;
- Protected resources/endangered species; and
- Human communities (ports of sector operation and sector members).

Temporal and Geographic Scope of the Analysis: The temporal range that will be considered for habitat, allocated target species, non-allocated target species and bycatch, and human communities, extends from 2004, the year that Amendment 13 was implemented, through May 1, 2012 the beginning of the next fishing year. While the effects of actions prior to Amendment 13 are considered (see Amendment 16 for a full cumulative effects analysis), the cumulative effects analysis for this action is focused primarily on Amendment 13 and subsequent actions because Amendment 13 implemented the sector process and included major changes to management of the groundfish fishery, including substantial effort reductions. Much emphasis is also placed on the implementation of measures from Amendment 16, since this action approved annual catch limits and accountability measures, 19 additional sectors, revised sector management regulations, and added stricter management measures that apply to the Common Pool.

The temporal range considered for endangered and other protected species begins in the 1990's when NMFS began generating stock assessments for marine mammals and developed recovery plans for sea turtles that inhibit waters of the U.S. EEZ. In terms of future actions, the analysis examines the period of approval for this action through May 1, 2012, which is the beginning of the subsequent fishing year.

The broad geographic scope considered for cumulative effects to habitat, allocated target species, and non-allocated target species and bycatch consists of the range of species, primary ports, and geographic areas (habitat) is discussed in Section 7.0 (Affected Environment) of the FW 45 EA. Similarly, the range of each endangered and protected species as presented in Section 7.4 will be the broad geographic scope for that VEC, however, the most likely geographic scope for all cumulative effects will be GB. The geographic scope for the human communities will consist of those primary port communities from which vessels fishing on GB originate.

Summary of Direct/Indirect Impacts of the Proposed Action

The direct and indirect effects on the VECs from the revised GB yellowtail flounder TAC and ACLs analyzed in this supplemental EA (Preferred Action) compared to what the impacts would be if the GB yellowtail flounder catch levels approved are those described in the No Action Alternative (also those proposed in the FW 45 EA) are summarized in Table 6 below. The nomenclature used is the following:

Physical Environment: positive = actions that improve or reduce disturbance of habitat; negative = actions that degrade or increase disturbance of habitat;

Biological Environment: positive = actions that increase stock size; negative = actions that decrease stock size;

Human Communities: positive = actions that increase revenue and well being of fishermen and/or associated businesses; negative = actions that decrease revenue and well being of fishermen and/or associated businesses

Table 6. Summary of Direct and Indirect Effects of the Alternatives

Alternative	Valued Ecosystem Components (VECs)				
	Physical Env	Biological Environment			Human Communities
	Habitat/EFH	Allocated Target Species	Non-Allocated Target Species and Bycatch	Protected Resources	Groundfish fishery and scallop fishery participants
No-Action Alternative	negligible	negligible	negligible	negligible	negative
Proposed Alternatives	low negative	negligible	negligible	negligible	positive

Impacts to the physical and biological environment from the proposed exemptions were assessed and found to be negligible or minimal (characterized above as low negative). In general, the allocation of a larger amount of GB yellowtail could result in additional fishing effort, however, the amount of overall fishing effort in the fishery is related to many factors, and it is difficult to predict. The amount of fishing effort in the fishery in FY 2011 is likely to be similar FY 2010 effort, and will be within the scope of fishing effort analyzed in the Amendment 16 EIS.

Past, Present and Reasonably Foreseeable Future Actions

Detailed information on the past, present, and reasonably foreseeable future actions that may impact this action can be found in the EIS for Amendment 16 to the NE multispecies FMP and in the FW 45 EA. The information on relevant past, present and reasonably foreseeable future actions and their impacts are summarized in this section.

Summary of Impacts from Revised GB Yellowtail Flounder TAC and Catch Limits

Overall, the cumulative impacts associated with the revised catch limits are as follows: negligible impacts to physical environment/habitat and EFH, allocated target species, non-allocated target species and bycatch; and protected resources; and positive impacts to human communities.

Other fishing Effects: Past, Present and Reasonably Foreseeable Future Groundfish and Related Management Actions

The following is a summary of the past, present, and reasonably foreseeable future fishing actions and effects thought most likely to impact this cumulative effects assessment. For additional information on the cumulative effects and to view the complete summary of the history of the NE Multispecies FMP, please see Amendment 16 to the NE Multispecies FMP, as well as Table 123 in FW 45.

Physical Environment/Habitat/EFH

Past and Present Actions: Amendments 13 and 16 and FWs 42 and 44 to the NE Multispecies FMP are regulations that have reduced fishing effort. Reduction in fishing effort results in less gear interaction with bottom habitat, effectively resulting in low positive effects to the physical environment. FW 40B was implemented in 2005 and allowed previously non-hook vessels to join the Georges Bank Cod Hook Sector, which resulted in more cod caught with hook gear. This action had a negligible to low positive effect on habitat because hook gear has minimal impacts to bottom habitat.

The ALWTRP requires the use of sinking groundlines, which may have a negligible to low negative impact on habitat due to associated bottom sweep by the groundline. In addition, required use of weak links in gillnets may result in floating "ghost gear," which could snag on and damage bottom habitat.

While spiny dogfish are one of the primary bycatch species in the Northeast multispecies fishery, the spiny dogfish FMP has likely had a negligible effect on habitat since most of the landed catch has historically been landed with bottom gillnets rather than bottom trawls. Gillnets have a low impact on vulnerable benthic habitat.

Amendment 3 to the skate FMP went into effect in July 2010 and is expected to reduce discards and landings sufficiently to rebuild stocks of winter, thorny, and smooth skates, and to prevent other skates from becoming overfished. The reduction in fishing effort should result in fewer habitat and gear interactions, a likely positive impact to the physical environment.

FW 45 would implement a variety of measures including revision of biological reference points, update ACLs for several stocks, adjust the GB yellowtail flounder rebuilding program, increase scallop vessel access to the Great South Channel Exemption Area, approve new sectors, revise sector administrative provisions, modify dockside and at-sea monitoring requirements, establish a Gulf of Maine Cod Spawning Protection Area, and refine measures affecting the catch of limited access NE multispecies Handgear A vessels. The overall habitat impacts of FW 45 are neutral relative to the baseline habitat protections established under Amendment 13 to the FMP.

Future Actions: Reasonably foreseeable future actions that will likely affect habitat include the EFH Omnibus Amendment (under development at this time). The EFH Omnibus Amendment will provide for a review and update of EFH designations, identify HAPCs, as well as provide an update on the status of current knowledge of gear impacts. It will also include new proposals for management measures for minimizing the adverse impact of fishing on EFH that will affect all species managed by the NEFMC. The net effect of new EFH and HAPC designations and more targeted habitat management measures should be positive for EFH.

The Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico ("Strategy") is a gear-based approach to addressing sea turtle bycatch. NMFS is considering increasing the size of the escape opening for Turtle Excluder Devices (TEDs) in the summer flounder fishery, expanding the use of TEDs to other trawl fisheries, and modifying the geographic scope of the TED requirements(74 FR 88 May 8, 2009). Since TED requirements

may decrease the catch retention of some target species, vessels may tow longer to offset this loss of catch, likely resulting in negative impacts to habitat and EFH.

Summary of Impacts: Management measures in Amendment 13, FW 42, Amendment 16, Amendment 3 to the Skate FMP, and FW 44 have positive effects on habitat due to reduced fishing efforts, consequently reducing gear interaction with habitat. FW 40A and 40B resulted in negligible to low positive effects on habitat due to decreasing impacts to the bottom as more cod is caught with low impact fixed gear. The ALWTRP resulted in low negative to negligible effects on habitat due to the possibility of groundline sweep on the bottom and "ghost gear." The FMPs that reduce fishing effort generally result in fewer habitat and gear interactions, resulting in low positive effects on habitat. The proposed TED requirements would likely have negative effects on habitat due to potentially increased towing time. The effects of the proposed FW 45 on habitat were neutral or positive. Overall, the cumulative effect of past, present, and reasonably foreseeable future fishing actions have resulted in positive effects on habitat.

Allocated Target Species

Past and Present Actions: While groundfish have been managed in the EEZ in since 1977, the following discussion is limited to past actions beginning with the implementation of Amendment 13. However, it should be noted that in general, management actions taken prior to Amendment 13 reduced effort on managed groundfish stocks, decreased impacts to habitat, reduced gear interactions with protected species, and had a negative impact on human communities. However, because actions prior to Amendment 13 did not rebuild overfished stocks to sustainable levels, greater effort reductions were necessary.

Management actions that affect allocated target species have been reviewed with some detail in the FSEIS of Amendment 13, the EAs for FWs 42 and 44, and the Amendment 16 final EIS. Amendment 13, FWs 42 and 44, and Amendment 16 have implemented restrictions on fishing effort in order to rebuild groundfish stocks. In contrast, FW 40A and 40B allowed for minor increases in fishing effort on cod and haddock, which is considered a low negative impact to these species. The results of the GARM III indicate that Amendment 13 and FW 42 have had positive effects on certain groundfish stocks (haddock, Acadian redfish and American plaice).

With recent increases in quotas and trip limits, it is likely that there will be an increase in the amount of spiny dogfish caught and landed by vessels fishing for groundfish, which may result in a low positive effect on allocated target groundfish species.

Monkfish, commonly caught along with groundfish, are currently regulated by the Monkfish FMP, which was implemented in 1999. Monkfish management actions have reduced fishing effort over the last decade, which has resulted in positive impacts for groundfish. Amendment 5 to the Monkfish FMP will either maintain the current level of fishing effort or allow for additional fishing above the current level, since both stocks of monkfish (North and South) are rebuilt.

Skates are currently managed under an FMP, and Amendment 3 to the FMP went into effect in July 2010. The management measures in Amendment 3 reduce fishing effort to rebuild biomass.

Therefore, the impacts should be positive for the allocated multispecies stocks, which are simultaneously targeted with skates.

Atlantic Sea Scallops are managed under a FMP. Although the fishery has a bycatch of GB yellowtail flounder, the fishing effort in the fishery is strictly controlled, and there is a limit to the amount of GB yellowtail flounder that the fishery as a whole may catch, as well as a cap for vessels fishing in Scallop Access Areas. Amendment 15 to the Atlantic Sea Scallop FMP, currently under review by NFMS, is likely to implement Accountability Measures in that fishery that would be triggered if the catch of GB yellowtail flounder by the scallop fishery exceeds the sub-ACL specified for that fishery.

Future Actions: The provisions in the EFH Omnibus Amendment could result in greater habitat protection for areas that are highly vulnerable to the adverse effects of fishing, resulting in a likely positive effect on groundfish.

As part of the sea turtle Strategy (74 FR 88 May 8, 2009), NMFS is considering increasing the size of the escape opening for TEDs in the summer flounder fishery, expanding the use of TEDs to other trawl fisheries, and modifying the geographic scope of the TED requirements. TED requirements would likely have a negligible effect on the target species.

Summary of Impacts: Amendment 13, FW 42, Amendment 16, and FW 44 have had (or are expected to have) positive effects on allocated target species. Other FMPs that affect other species landed by groundfish sectors have also resulted in positive effects on allocated target species. Future measures that will likely restrict fishing effort (EFH Omnibus) will also have positive effects on allocated target species. Future measures such as the TED requirements would likely result in negative effects to allocated target species because lower catch retention would result in an increase in fishing effort. Actions that increase fishing effort (i.e., FW 40A and 40B) had low negative effects on allocated target species. The effects of the proposed FW 45 on allocated target species were neutral or positive. Overall, the cumulative effect of past, present, and reasonably foreseeable future fishing actions have resulted in positive effects on allocated target species.

Non-allocated Target Species and Bycatch

Past, Present Actions: Non-allocated target species and bycatch refers primarily to skates, monkfish, and dogfish. These species dominate bycatch (i.e., dogfish) or are the primary alternate species that are landed by groundfishermen (i.e., monkfish and skates). NE multispecies FMP management actions that reduce fishing effort (i.e., Amendment 13, FWs 42 and 44, and Amendment 16) have or will likely have positive effects on both landed species and on bycatch. Conversely, actions that increase fishing effort (i.e., FW 40A and FW 40B) have low negative effects on both landed species and bycatch.

Spiny dogfish primarily interacts with gillnet and hook and line gear, and represented over 90 percent of the bycatch reported by the Georges Bank Cod Fixed Gear and Hook Sectors in previous years. The spiny dogfish FMP was implemented in 2000 in response to a decline in the female spawning stock biomass, and it initiated stock rebuilding measures. The species is not overfished and overfishing is not occurring.

Monkfish are currently regulated by the Monkfish FMP, which was implemented in 1999. The Monkfish FMP and subsequent amendments and framework actions have reduced fishing effort over the last decade, which has resulted in positive impacts for groundfish and non-groundfish stocks (including bycatch).

Skates are currently managed under an FMP, and Amendment 3 to the FMP went into effect in July 2010. The management measures in Amendment 3 to the Skate FMP reduce discards and landings in an effort to sufficiently to rebuild stocks of winter, thorny, and smooth skates, and to prevent other skates from becoming overfished through effort reductions. Therefore, the impacts should be positive for skates, which in this assessment is considered to be a non-allocated target species.

Future Actions: Implementation of the EFH Omnibus Amendment may result in an indirect positive effect to bycatch species, as they would also receive protection from habitat protection measures. Amendment 5 to the Monkfish FMP will either maintain the current level of fishing effort or allow for additional fishing above the current level, since both stocks of monkfish (North and South) are rebuilt.

NMFS is considering increasing the size of the escape opening for TEDs in the summer flounder fishery, expanding the use of TEDs to other trawl fisheries, and modifying the geographic scope of the TED requirements (74 FR 88 May 8, 2009) to protect sea turtles as part of the Strategy. TED requirements would likely have a positive effect on bycatch and discards.

Summary of Impacts: Actions that reduce fishing effort have had positive effects on non-allocated target species and bycatch because in general, less fishing effort results in less impact to non-allocated target species and bycatch. Conversely, actions that increase fishing effort (i.e., FW 40A and FW 40B) are considered to have low negative effects on non-allocated target species and bycatch because more fishing generally results in more non-allocated target species and bycatch. TEDs requirements would likely have a positive effect on non-allocated target species and bycatch and discards as they would likely exclude some of these species from capture in the cod-end. Overall, the cumulative effect of past, present, and reasonably foreseeable future fishing actions have resulted in positive effects on non-allocated target species and bycatch.

Protected Resources

Past and Present Actions: Past and present management actions that reduce fishing effort also reduce gear interaction with protected resources, resulting in positive effects. FW 40A and 40B allowed minor increases in fishing with fixed gear, which has negligible impacts on protected resources. Other recent fishery management actions, including Amendments 13, 16 and FWs 42 and 44 to the NE multispecies FMP benefit protected resources. Amendment 3 to the Skate FMP reduces fishing effort, resulting in low positive effects to protected resources. The ALWTRP has and continues to positively affect large whales by reducing injuries and deaths of large whales (North Atlantic right, humpback, and fin) in waters off the U.S. East Coast due to incidental entanglement in fishing gear. Further, The Harbor Porpoise Take Reduction Plan (HPTRP) for the Gulf of Maine and Mid-Atlantic Coasts was originally implemented in 1998, and NMFS published a proposed rule in July 2009 indicating additional management restrictions

for gillnetters. Future measures of this plan may be implemented if take reduction goals are not met, which could further reduce fishing effort.

Future Actions: The likely impacts of the EFH Omnibus Amendment on protected resources cannot be determined at this time. The sea turtle Strategy is a gear-based approach to addressing sea turtle bycatch and would decrease impacts to sea turtles from fishing operations. NMFS is working to develop and implement bycatch reduction measures in all trawl fisheries in the Atlantic and Gulf of Mexico (72 FR 7382, February 15, 2007) and is considering amendments to the regulatory requirements for TEDs (72 FR 7382).

Summary of Impacts: Past groundfish actions and skate actions have had negligible or positive effects on protected resources. Management plans for marine mammals have implemented effort restrictions and had positive affects by reducing injuries and deaths. Future positive impacts are likely.

Human Communities

Past and Present Actions: Past and present actions that have had negative short-term and low positive long-term impacts to the port communities and positive impacts to sector members include Amendment 13, FWs 42 and 44, and Amendment 16 to the NE multispecies FMP. These actions both substantially cut fishing effort in order to rebuild stocks by mandated timeframes, resulting in economic losses in the short-term. Because these actions are designed to rebuild the groundfish stocks and stabilize the fishing industry, these actions are expected to have long-term positive effects on the human communities.

FW 40A implemented the Closed Area I Hook Gear Haddock SAP which allowed increased opportunities for the Georges Bank Cod Fixed Gear and Hook Sectors to fish healthy haddock stocks using hook gear only, resulting in a low positive effect for members of these sectors. FW 41 allowed non-sector vessels to participate in the Closed Area I Hook Gear Haddock SAP, which extended the positive economic effects to non-sector vessels and increased revenue for the port communities, resulting in a low positive effect. FW 40B allowed vessels with no hook history to join the Georges Bank Cod Hook Sector and contribute their historical cod landings to the Sector's allocation based on landings made with gear types other than hook gear, resulting in a low positive impact to the Sector participants.

The ALWTRP had impacts on the human community ranging from low negative to negligible; primarily because these measures required minor gear modifications for gillnet gear to reduce impacts to protected resources. Similarly, actions of the HPTRP could have negative impacts, particularly if the impacts from this plan compound reductions implemented via Amendment 16.

In the short-term, the spiny dogfish FMP has had a low negative effect on human communities because of the implementation of quotas and trip limits, therefore, reducing revenue. However, the FY 2009 specifications increased the quota and trip limits because the species is no longer considered overfished nor is overfishing occurring, with an anticipated positive impact on the human communities because there will be a sustainable fishery available for harvest. Amendment 3 to the Skate FMP is likely having negative economic impacts on the ports and

Sector members because of the restriction on fishing effort and decreased revenues from skate landings.

Future Actions: Cumulative effects of the EFH Omnibus Amendment cannot easily be determined, but if additional effort restrictions or area closures were implemented, this action too would likely have a negative impact.

As described in an NOI to prepare an EIS as part of the Sea Turtle Strategy (74 FR 88 May 8, 2009), NMFS is considering modification of TED requirements. New TED requirements would likely have a negative economic effect on Sector members that trawl because of the costs associated with adding and/or modifying TEDs to comply with the new regulation and the costs associated with a decrease in landed species if vessels would not offset a loss in catch.

Summary of Impacts: The effects of past, present, and reasonably foreseeable future fishery management actions have been positive on nearly all VECs with the exception of human communities. Mandated reductions in fishing effort have resulted in negative economic impacts to human communities. Management measures designed to benefit protected resources and restrict fishing effort have low negative effects on the human communities. However, the implementation of annual catch limits, and expansion of opportunities through numerous sectors and achievement of the larger goal of fishing groundfish stocks at sustainable rates and rebuilding groundfish stocks to sustainable levels will benefit the human communities eventually. Overall, the cumulative effect of past, present, and reasonably foreseeable future fishing actions have resulted in negative effects on human communities.

Non-Fishing Effects: Past, Present and Reasonably Foreseeable Future Actions

Non-fishing activities that occur in the marine nearshore and offshore environments and their watersheds can cause the loss or degradation of habitat and/or affect the species that reside in those areas. Table 123 in the attached FW 45 EA provides a summary of past, present, and reasonably foreseeable non-fishing activities and their expected effects on VEC's in the affected environment. The following discussions of impacts are based on past assessments of activities and assume these activities will likely continue into the future as projects are proposed. More detailed information about these and other activities and their impacts are available in the publications by Hansen (2003) and Johnson et al. (2008).

Construction/Development Activities and Projects: Construction and development activities include, but are not limited to, point source pollution, agricultural and urban runoff, land (roads, shoreline development, wetland loss) and water-based (beach nourishment, piers, jetties) coastal development, marine transportation (port maintenance, shipping, marinas), marine mining, dredging and disposal of dredged material and energy-related facilities, all of which are discussed in detail in Johnson et al. (2008). These activities can introduce pollutants (through point and non-point sources), cause changes in water quality (temperature, salinity, dissolved oxygen, suspended solids), modify the physical characteristics of a habitat or remove/replace the habitat altogether. Many of these impacts have occurred in the past and present and their effects would likely continue in the reasonably foreseeable future. It is likely that these projects would have negative impacts caused from disturbance, construction, and operational activities in the area immediately around the affected project area. However, given the wide distribution of the

affected species, minor overall negative effects to offshore habitat, protected resources, allocated target stocks, and non-allocated target species and bycatch are anticipated since the affected areas are localized to the project sites, which involve a small percentage of the fish populations and their habitat. Thus, these activities for most biological VECs would likely have an overall low negative effect due to limited exposure to the population or habitat as a whole. Any impacts to inshore water quality from these permitted projects, including impacts to planktonic, juvenile, and adult life stages, are uncertain but likely minor due to the transient and limited exposure. It should be noted that wherever these activities co-occur, they are likely to work additively or synergistically to decrease habitat quality and, as such, may indirectly constrain the sustainability of the allocated target stocks, non-allocated target species and bycatch, and protected resources.

Restoration Projects: Other regional projects that are restorative or beneficial in nature include estuarine wetland restoration; offshore artificial reef creation, which provides structure and habitat for many aquatic species; and eelgrass (*Zostera marina*) restoration, which provides habitat for, among other things, juvenile Atlantic cod. These types of projects improve habitats, including nursery habitats for several commercial groundfish species. Due to past and present adverse impacts from human activities on these types of habitat, restorative projects likely have slightly positive effects at the local level.

Protected Resources Rules: The NMFS final Rule on Ship Strike Reduction Measures (73 FR 60173, October 10, 2008) is a non-fishing action in the United States-controlled North Atlantic that is likely to affect endangered species and protected resources. The goal of this rule is to significantly reduce the threat of ship strikes on North Atlantic right whales and other whale species in the region. Ship strikes are considered the main threat to North Atlantic right whales; therefore, NMFS anticipates this regulation will result in population improvements to this critically endangered species.

Energy Projects: Cape Wind Associates (CWA) has received approval to construct a wind farm on Horseshoe Shoal, located between Cape Cod and Nantucket Island in Nantucket Sound, Massachusetts. The CWA project would have 130 wind turbines located as close as 4.1 miles off the shore of Cape Cod in an area of approximately 24 square miles with the turbines being placed at a minimum of 1/3 of a mile apart. The potential impacts associated with the CWA offshore wind energy project include the construction, operation, and removal of turbine platforms and transmission cables; thermal and vibration impacts; and changes to species assemblages within the area from the introduction of vertical structures. Other offshore projects that can affect VECs include the construction of offshore liquefied natural gas (LNG) facilities such as the project "Neptune." As it related to the impacts of the Proposed Action, the Neptune project is expected to have small, localized impacts where the pipelines and buoy anchors contact the bottom.

Summary of Impacts: Most of the impacts from these aforementioned activities are uncertain but would likely range from negative to low negative in the immediate areas of the project site. However, on a larger-scale population level, these activities are likely to have a low negative to negligible impact on a population level, considering that the large portion of the populations have a limited or negligible exposure to these local non-fishing perturbations and that existing regulatory requirements would likely mitigate the severity of many impacts.

Summary of Cumulative Effects

The following analysis summarizes the cumulative effects of past, present, and reasonably foreseeable future actions in combination with the proposed action on the VECs identified in Section 5.1.

Physical Environment/Habitat/EFH

While the impact analysis in this action is focused on direct and indirect impacts to the physical environment and EFH, there are a number of non-fishing impacts that must be considered when assessing cumulative impacts. Many of these activities are concentrated near-shore and likely work either additively or synergistically to decrease habitat quality. Other non-fishing factors such as climate change and ocean acidification are also thought to play a role in the degradation of habitat. The effects of these actions, combined with impacts resulting from years of commercial fishing activity, have negatively affected habitat. However, impacts from the proposed action were found to be negligible. Therefore, when considering the cumulative effects of this action in combination with past, present, and reasonably foreseeable future actions, no significant impacts to the physical environment, habitat or EFH from the proposed action are expected.

Allocated Target Species

As found in the cumulative effects analysis for Amendment 16 to the FMP (NEFMC 2009), the long-term trend has been positive for cumulative impacts to target species. While several groundfish species remain overfished or overfishing is occurring, substantial effort reductions since implementation of the NE Multispecies FMP have allowed several stocks to rebuild and the rebuilding process for others is underway. Further, indirect impacts from the effort reductions in other FMPs are also thought to contribute to groundfish mortality reductions. These factors, when considered in conjunction with the proposed action which would have negligible impacts to allocated target species due to the implementation of an ACE, would not have any significant cumulative impacts.

Non-allocated Target Species and Bycatch

The primary non-allocated target and bycatch species analyzed for the purposes of this EA are monkfish, spiny dogfish, and skates. Management efforts in the past have led to each of these species being managed under their own FMP, and with the exception of smooth and thorny skates which are overfished; none of these species is overfished, nor is overfishing occurring. Impacts to all of these species from the proposed action were found to be negligible, except for the exemption to the 50-net limit which was found to have a low negative impact because it could increase the catch of monkfish, dogfish and skates. However, this potential increase in effort when taken into context with past actions to manage to the mortality of these species and the Amendment 3 action to the Skate FMP which adds further skate rebuilding measures would not result in any significant cumulative impacts.

Protected Resources

Similar to impacts found in the FW 45 EA, the proposed action may slightly increase the potential for gear interactions with protected species. This potential increase in gear interaction would likely have negligible impacts on protected resources. Historically, the implementation of FMPs has resulted in reductions in fishing effort and as a result, past fishery management actions are thought to have had a slightly positive impact on strategies to protect protected species. Gear entanglement continues to be a source of injury or mortality, resulting in some adverse effects on most protected species to varying degrees. One of the goals of future management measures will be to decrease the number of marine mammal interactions with commercial fishing operations. Measures adopted by Amendment 16 to the Northeast Multispecies FMP will substantially reduce the overall commercial fishing effort and the amount of groundfish that can be caught, relative to historical amounts that have been harvested by the commercial multispecies fleet. The cumulative result of these actions to meet mortality objectives will be positive for protected resources. The effects from non-fishing actions are also expected to be low negative as the potential for localized harm to VECs exists. The combination of these past actions along with future initiatives to reduce turtle interactions through the Sea Turtle Strategy when considered with the proposed action would not result in significant cumulative impacts.

Human Communities and Social and Economic Environment

The proposed GB yellowtail flounder catch limits would have positive impacts due to revenue from the sale of GB yellowtail flounder as well as other species. However, the outcome for vessel owners and operators is mixed. Past management actions have had significant negative impacts on communities that depend on the groundfish fishery, particularly as a result of decreases in revenue. Although special programs implemented through Amendment 13 and subsequent framework actions have provided the industry additional opportunities to target healthier groundfish stocks, substantial increases in landings and revenue will likely not take place until further stock rebuilding occurs under the Amendment 16 rebuilding plan. The positive impacts from the proposed action would provide some mitigation of the negative economic impacts. Therefore, the proposed action when taken into consideration with past, present, and reasonably foreseeable future actions is not expected to have significant cumulative impacts. Table 7 below summarizes the cumulative effects resulting from implementation of the proposed action and CEA baseline.

Table 7. Cumulative Effects Resulting from Implementation of the Proposed Action and CEA Baseline

		Habitat Impacts	Biological Impacts			Human Community Impacts
		Habitat	Allocated Target Species	Non-allocated Target Species and Bycatch	Endangered/ Protected Species	
Cumulative Effect Baseline	Effects of FW 45	Neutral / Positive	Neutral / Positive	Neutral / Positive	Neutral	Neutral / Positive
	Effects of Past, Present, and Reasonably Foreseeable Future Non-Fishing Actions	low negative / negligible	low negative / negligible	low negative / negligible	low negative / negligible	Negligible / low negative
	Effects of Past, Present, and Reasonably Foreseeable Future Fishing Actions	Positive	Positive	Positive	Negligible / positive	Negative
Direct and Indirect Effects of Proposed /Supplemental Action		negligible	negligible	negligible	negligible	positive
Cumulative Effects Summary of Effects from implementation of Proposed Action and Cumulative Effect Baseline		negligible	negligible	negligible	negligible	Low positive

7.0 LIST OF PREPARERS AND PERSONS/AGENCIES CONSULTED

This document was prepared by the National Marine Fisheries Service staff in the Sustainable Fisheries Division (Tom Warren). In addition, this document was reviewed by NMFS staff in the NEPA group, Northeast Regional Office.

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8.0 COMPLIANCE WITH APPLICABLE LAWS AND EXECUTIVE ORDERS

8.2 MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Section 301 of the Magnuson-Stevens Act requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The most recent FMP changes implemented by Amendment 16 address how the proposed management actions comply with the National Standards. Under Amendment 16, the NEFMC adopted conservation and management measures that would end overfishing and rebuild NE multispecies stocks to achieve, on a continuing basis, the optimum yield for NE multispecies stocks and the U.S. fishing industry using the best scientific information available consistent with National Standards 1 and 2. The NE Multispecies FMP and implementing regulations manage all 20 groundfish stocks (13 species) throughout their entire range, as required by National Standard 3. Section 9.1.1 of Amendment 16 describes how the sector measures implemented under that action do not discriminate among residents of different states consistent with National Standard 4, do not have economic allocation as their sole purpose (National Standard 5), account for variations in these fisheries (National Standard 6), avoid unnecessary duplication (National Standard 7), take into account fishing communities (National Standard 8), addresses bycatch in fisheries (National Standard 9), and promote safety at sea (National Standard 10). By proposing to meet the National Standards requirements of the Magnuson-Stevens Act through future FMP amendments and framework actions, the NEFMC will ensure that overfishing is prevented, overfished stocks are rebuilt, and the maximum benefits possible accrue to the ports and communities that depend on these fisheries and the Nation as a whole.

The proposed action would comply with all elements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the National Standards, and the NE Multispecies FMP. This action is being taken in response to the decision by NMFS and the Council to reconsider the FY 2011 GB yellowtail flounder TAC utilizing the transboundary management process (TMGC, U.S./Canada Steering Committee). The FW 45 EA, completed prior to the development of a revised FY 2011 GB yellowtail flounder TAC, and

prior to the FW 45 proposed rule published in the Federal Register (76 FR 11858; March 3, 2011), did not contain an analysis of the revised TAC. Therefore, this EA analyzes the impacts of the revised TAC and annual catch limits for GB yellowtail flounder, in compliance with applicable laws requirement an analysis of proposed measures.

The revised GB yellowtail flounder TAC and catch limits would be implemented based upon Secretarial emergency authority specified in section 305(c) of the Magnuson-Stevens Act through the final rule that would implement approved measures under FW 45. NMFS policy guidelines for the use of emergency rules (August 21, 1997; 62 FR 44421) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) if the emergency action is being implemented without prior public comment, the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. In this case, the third prong of these criteria is not directly involved because NMFS provided opportunity for prior public comment via the FW 45 proposed rule. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. The International Fisheries Agreement Act, signed into law by President Obama on January 4, 2011, is considered to be a "recently discovered circumstance," because the Council was not aware if or when the legislation would be considered by Congress when it adopted final measures under FW 45 at its November 2010 meeting. The emergency presents serious management concerns because the low catch limits for GB yellowtail flounder dictated by Magnuson-Stevens Act requirements in force before the International Fisheries Agreement Act was enacted could result in substantially reduced fishing effort and decreased catch and revenue compared to the higher catch limits that would be available if action is taken pursuant to the International Fisheries Agreement Act. For the common pool fishery, when the projected catch of GB yellowtail flounder is equal to the common pool GB yellowtail flounder sub-ACL, such vessels may no longer fish in the Eastern U.S./Canada Area, and may not possess yellowtail flounder caught in the Western U.S./Canada Area. For vessels fishing in sectors, when an individual sector's GB yellowtail flounder ACE is caught, participating vessels may no longer fish in the U.S./Canada Management Area. As a result of the loss of access to the Eastern U.S./Canada Area (for common pool vessels) or the whole U.S./Canada Management Area (for sector vessels), not only do vessels lose revenue associated with GB yellowtail flounder, but they lose revenue associated with multiple other stocks that are caught concurrently, such as GB winter flounder. Emergency action to increase the GB yellowtail flounder ACL and U.S./Canada Management Area TAC would enable additional economic opportunity that could otherwise be forgone and, therefore, likely avoid economic impacts from an unnecessarily low ACL for this stock, based upon applicable law. Therefore, NMFS has determined that the current situation meets the criteria for emergency action.

8.3 ENDANGERED SPECIES ACT (ESA)

Section 7 of the ESA requires Federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. In a Biological Opinion dated October 29, 2010, NMFS determined that fishing activities conducted under the NE Multispecies FMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. An informal consultation under the ESA for FW 45 measures was conducted. This action is consistent with, and does not affect the analysis and conclusions of the FW 45 EA regarding compliance with the ESA.

8.4 MARINE MAMMAL PROTECTION ACT (MMPA)

NMFS has reviewed the impacts of FW 45 and the revised FY 2011 TAC and catch limits for GB yellowtail flounder on marine mammals and concluded that the specification are consistent with the provisions of the MMPA and would not alter existing measures to protect the species likely to inhabit the management unit of the NE multispecies FMP. For further information on the potential impacts of the proposed management action, see Section 6.1.4.

8.5 NATIONAL ENVIRONMENTAL POLICY ACT

8.5.1 Revised FONSI

This supplement updates the Finding of No Significant Impact (FONSI) consistent with the conclusions derived in the FW 45 EA and this document.

National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a Proposed Action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 states that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1. *Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?*

Response: The Proposed Action for the Supplemental EA would not jeopardize the sustainability of any of the target species (cod [GB and GOM stocks], haddock [GB and GOM stocks], yellowtail flounder [GB, GOM, SNE stocks], American plaice, witch flounder, winter flounder [GB and GOM stocks], redfish, white hake, and pollock) affected by the action, because the direct impacts are limited to a single stock, GB yellowtail flounder. The indirect impacts affecting other stocks is expected to be negligible. The biological impacts of the Proposed Action on the allocated target species are analyzed in Section 6.1.2.

2. *Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?*

Response: The Proposed Action for the Supplemental EA is not expected to jeopardize the sustainability of any non- target species, such as spiny dogfish, monkfish, lobsters, or skates. The effect of a larger catch limit for GB yellowtail flounder will be limited principally to the target species on GB. Although it is difficult to predict the change in fishing effort as a result of this action, the scope of a change is likely to be small, as described in Section 6.1.3.

3. *Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?*

Response: The Proposed Action for the Supplemental EA is not expected to allow substantial damage to the ocean and coastal habitats and/or Essential Fish Habitat (EFH) as defined under the Magnuson-Stevens Act and identified in the FMP. Although it is difficult to predict whether fishing effort will remain the same or increase slightly, the net effect on essential fish habitat is expected to be low (Section 6.1.1).

4. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

Response: The Proposed Action for the Supplemental EA is not expected to have a substantial adverse impact on public health and safety. The additional amount of yellowtail flounder allocated will likely prolong the fishing season and enable additional flexibility regarding when fishing trips can be planned. Safety could be enhanced if such flexibility enables vessels to further during more optimal weather conditions.

5. *Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?*

Response: Although it is difficult to predict whether fishing effort will remain the same or increase slightly, the net effect on protected species is expected to be negligible (Section 6.1.4). The Proposed Action for the Supplemental EA does not constitute a modification to the operation of the fishery under the FMP that would cause an effect to ESA-listed species or critical habitat not considered in the October 29, 2010 Opinion or the Section 7 Consultation for the FW 45 EA. There have been no new species listed or critical habitat designated that may be affected by the action.

6. *Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

Response: The Proposed Action for the Supplemental EA is not expected to have a substantial impact on biodiversity and ecosystem function within Georges Bank. Restrictions on catch on Georges Bank have proven effective at limiting fishing effort (Section 6.1.2).

7. *Are significant social or economic impacts interrelated with natural or physical environmental effects?*

Response: There are no significant social and economic impacts of the Proposed Action for the Supplemental EA that are interrelated with natural or physical environmental effects. The proposed action would provide additional GB yellowtail flounder and is likely to enable the GB fishery to remain open for a longer period of time. Within the context of the region and the fishery as a whole, these benefits would

continue to be insignificant as determined under criteria of the Regulatory Flexibility Act (see Section 8.10). While the fishing industry members fishing on GB would benefit socially and economically by the approval of specifications, this action is not related with any impacts associated with the biological or physical environment. Such impacts are negligible. Therefore, the social and economic impacts are not interrelated with significant natural or physical environmental effects.

8. *Are the effects on the quality of the human environment likely to be highly controversial?*

Response: The effects of the Proposed Action for the Supplemental EA on the quality of human environment are not expected to be highly controversial. The public is aware of the revised GB yellowtail flounder TAC and annual catch limits. The Proposed Action would not modify the majority of measures proposed by FW 45. The Proposed Action is not expected to negatively impact habitat, allocated target species, non-allocated target species and bycatch, or protected resources as described in Sections 6.1.1 through 6.1.4.

9. *Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, parkland, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?*

Response: The Proposed Action cannot be reasonably expected to result in substantial impacts to unique areas or ecological critical areas. There are no known parkland, prime farmlands, wetlands, or wild scenic rivers in the affected area. Vessel operations around the unique historical and cultural resources encompassed by the Stellwagen Bank National Marine Sanctuary would not likely be altered by this action. The GB fishery in the U.S./Canada Management Area is predominantly prosecuted by trawl gear, and this action does not propose alterations in the groundfish fishery. As a result, no substantial impacts are expected from this action.

10. *Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

Response: The effects of the Proposed Action for the Supplemental EA on the human environment are not expected to be highly uncertain or involve unique or unknown risks. Vessels fishing for GB yellowtail flounder will primarily use trawl gear, but could also use gillnet, and hook and line gear and maintain traditional fishing practices which will have no greater impact on habitat, protected species, and limit bycatch species as those conditions existing currently. Approval of the revised catch limits would provide additional revenue to the fishery at a time when other catch levels have been reduced, and the overall economic environment is difficult for small businesses, while at the same time meeting the conservation requirements of the FMP. The fishery on GB has been successfully managed under the FMP, and the trends in fishing mortality and biomass for GB yellowtail flounder encouraging. Therefore, the effects on the human environment are not uncertain or involve unique or unknown risks.

11. *Is the proposed action, related to other actions with individually insignificant, but cumulatively significant impacts?*

Response: The cumulative effects analysis presented in Section 6.2 of this supplemental document considers the impacts of the Proposed Action in combination with relevant past, present, and reasonably foreseeable future actions and concludes that no significant cumulative impacts are expected from the approval of the revised catch limits for GB yellowtail flounder. Since none of the cumulative impacts of the original Proposed Action or the Supplemental Proposed Action are considered significant, and the measures under Amendment 16 are environmentally preferred, Section 6.2 of this document concluded

there are no significant cumulative impacts among these related actions. Further, the Proposed Action would not have any significant impacts when considered individually or in conjunction with any of the other actions presented in Section 6.2 (fishing related and non-fishing related).

12. *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?*

Response: The fishing operations would take place on ocean waters and would not affect any human communities on the adjacent shorelines. There are no known districts, sites, or highways in the area of the Proposed Action. The Proposed Action is not likely to affect objects listed in the National Register of Historic Places or cause significant impact to scientific, cultural, or historical resources. The only object in the fishery area that is listed in the National Register of Historic Places are various ship wrecks. However, vessels typically avoid fishing near wrecks to avoid tangling gear on the wreck. Therefore, this action would not result in any adverse affects to the wrecks. Due to the minimal impact on the human environment, the effect of the approval of the additional exemptions would not be significant on scientific, cultural, or historical resources.

13. *Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?*

Response: No non-indigenous species would be introduced during the Proposed Action because the increase in catch affect the scope of current fishing practices, and does not introduce new methods. No non-indigenous species would be used or transported during fishing activities. Therefore, the Proposed Action would not be expected to result in the introduction or spread of a non-indigenous species.

14. *Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?*

Response: While Amendment 13 established a process in the FMP to support the U.S./Canada Understanding, and this process was altered to accommodate reconsideration of the FY 2011 TAC for GB yellowtail flounder, it is not likely that a precedent will be set, due to the difficulty of modifying the process. In any case, significant effects are unlikely.

15. *Can the proposed action reasonably be expected to threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment?*

Response: The Proposed Action is not expected to threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment. Vessels fishing on Georges Bank are required to comply with all local, regional, and national laws and permitting requirements.

16. *Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species*?

Response: The Proposed Action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species. As stated in Sections 6.1.2 and 6.1.3, impact on resources encompassing groundfish and other stocks is expected to be minimal.

DETERMINATION

In view of the information presented in the FW 45 EA and this document, the analysis contained in the supporting EA prepared for the approval of revised catch limits for GB yellowtail flounder, it is hereby determined that the approval of the revised GB yellowtail flounder TAC and catch limits will not significantly impact the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the Proposed Action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement (EIS) for this action is not necessary.

for Patricia Kurkul — 4/13/11

Patricia A. Kurkul — Date

Regional Administrator Northeast Region, NMFS

8.6 ADMINISTRATIVE PROCEDURE ACT (APA)

Section 553 of the APA establishes procedural requirements applicable to rulemaking by federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process and to give the public adequate notice and opportunity for comment. At this time, a limited abridgement of the rulemaking process for this action is being requested, in order to implement the measures in conjunction with the rest of FW 45 in a timely manner (May 1, 2011). The 30 day delay in effectiveness is likely going to be shortened. If implementation is delayed, the measures and benefits of FW 45 will be delayed and cause disruption to the fishery.

8.7 PAPERWORK REDUCTION ACT (PRA)

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by, or for, the Federal Government. PRA for data collections relating to the FMP have been considered and evaluated under Amendment 16 to the FMP and approved by the Office of Management and Budget (OMB). This action relies upon the existing collections, including those approved by the OMB under Amendment 16, and does not propose to modify any existing collections or to add any new collections. Therefore, no review under the PRA is necessary for this action.

8.8 COASTAL ZONE MANAGEMENT ACT (CZMA)

Section 307(c)(1) of the CZMA requires that all Federal activities which affect any coastal use or resource be consistent with approved state coastal zone management programs (CZMP) to the maximum extent practicable. NMFS has reviewed the relevant enforceable policies of each coastal state in the NE region for this action and has determined that this action is incremental and repetitive, without any cumulative effects, and is consistent to the maximum

extent practicable with the enforceable policies of the CZMP of the following states: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. NMFS finds this action to be consistent with the enforceable policies to manage, preserve, and protect the coastal natural resources, including fish and wildlife, and to provide recreational opportunities through public access to waters off the coastal areas. Pursuant to the general consistency determination provision codified at 15 CFR 930.36(c), NMFS sent a general consistency determination applying to the current NE Multispecies FMP, and all routine Federal actions carried out in accordance with the FMP, to the following states: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina on October 21, 2009. North Carolina, Rhode Island, Virginia, Connecticut, New Hampshire, New Jersey, Delaware, and Pennsylvania have concurred with the general consistency determination. Consistency was inferred for those states that did not respond.

8.9 INFORMATION QUALITY ACT (IQA)

Pursuant to NOAA guidelines implementing Section 515 of Public Law 106-554 (the Data Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of the information (including statistical information) disseminated by or for federal agencies. The following section addresses these requirements.

Utility

The information presented in this document is helpful to the intended users (the affected public) by presenting a clear description of the purpose and need of the proposed action, the measures proposed, and the impacts of those measures. A discussion of the reasons for selecting the proposed action is included so that intended users may have a full understanding of the proposed action and its implications.

This document is the principal means by which the information contained herein is available to the public. The information provided in this document is based on the most recent available information from the relevant data sources. The development of this document and the decisions made by NMFS to propose this action are the result of a multi-stage public process.

The *Federal Register* notice that implements the FW 45 Final Rule includes the proposed revision to the GB yellowtail flounder TAC and catch limits would be made available in printed publication and on the NMFS NE Regional Office website. Instructions for obtaining a copy of this supplemental EA are included in the *Federal Register* notice.

Integrity

Prior to dissemination, information associated with this action, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. All electronic information disseminated by NMFS adheres to the standards set out in Appendix III, "Security of Automated Information Resources," of OMB Circular A-130; the Computer

Security Act; and the Government Information Security Act. All confidential information (e.g., dealer purchase reports) is safeguarded pursuant to the Privacy Act; Titles 13, 15, and 22 of the United States Code (confidentiality of census, business, and financial information); the Confidentiality of Statistics provisions of the Magnuson Act; and NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics.

Objectivity

For the purposes of the Pre-Dissemination Review, this supplemental EA is considered to be a "Natural Resource Plan." Accordingly, the document adheres to the published standards of the Magnuson-Stevens Act; the Operational Guidelines, Fishery Management Plan Process; the EFH Guidelines; the National Standard Guidelines; and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the NEPA.

This information product uses information of known quality from sources acceptable to the relevant scientific and technical communities. Stock status (including estimates of biomass and fishing mortality) reported in this product are based on the 2010 stock assessment of Georges Bank yellowtail flounder subject to peer-review through the Transboundary Resources Assessment Committee, comprised of Canadian and American scientists. Landings and revenue information is based on information collected through Vessel Trip Report and Commercial Dealer databases. These reports are developed using an approved, scientifically valid sampling process. Original analyses in this supplemental EA build upon the analyses contained in the FW 45 EA, and were prepared using data from accepted sources, and the analyses have been reviewed by NOAA.

Despite current data limitations, the measures proposed for this action were selected based upon the best scientific information available. The principal author of this document is a fishery policy analyst for NMFS, a member of the Council's Grounfish Plan Development Team, and is familiar with the available data and information relevant to the state of the regulated fisheries under the FMP, fishing techniques on Georges Bank, and the socio-economic impacts of the fisheries on impacted communities.

The policy choices are clearly articulated in Section 4.0 of this document, as the management alternatives considered in this action. The supporting science and analyses, upon which the policy choices are based, are summarized and described, or incorporated by reference, in Sections 5 and 6 of this supplemental EA. All supporting materials, information, data, and analyses within this document have been, to the maximum extent practicable, properly referenced according to commonly accepted standards for scientific literature to ensure transparency.

The review process used in preparation of this supplemental EA involves the Northeast Fisheries Science Center, the Northeast Regional Office, and NMFS Headquarters. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, demersal resources, population biology, and the social sciences. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the action proposed in this supplemental EA and clearance of any rules prepared to

implement resulting regulations is conducted by staff at NMFS Headquarters, the Department of Commerce, and the United States Office of Management and Budget.

8.10 REGULATORY FLEXIBILITY ACT (RFA)

Introduction

The RFA requires agencies to assess the impacts of their proposed regulations on small entities. The Regulatory Flexibility Act Analysis (RFAA) determines whether the proposed action would have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). The SBA defines a small business in the commercial fishing and recreational fishing sector, as a firm with receipts (gross revenues) of up to $4 million.

This section provides an assessment and discussion of the potential economic impacts of the proposed action, as required of the RFA. The objective of the RFA is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. The Final Regulatory Flexibility Analysis (FRFA) must identify the number and types of businesses that would be regulated, indicate how many of these entities are small businesses, explain the expected economic impact of the regulation on small businesses, and describe any feasible alternatives that would minimize the economic impacts.

Description of the Reasons Why Action by Agency is Being Considered

The purpose for this action is to implement a revised TAC and catch limits for Georges Bank yellowtail flounder for FY 2011, in order to achieve a better balance of the conservation and economic objectives of the MSA and respond to congressional intent regarding the International Fisheries Agreement Clarification Act. This action is needed due to the change in circumstances caused by the passage of the Act and reconsideration of the FY 2011 TAC by the TMGC after the development of FW 45 and the EA.

The Objectives and Legal Basis for the Proposed Action

As stated above, the purpose for this action is to implement a revised TAC and catch limits for Georges Bank yellowtail flounder for FY 2011. The legal basis for the action is the Magnuson-Stevens Fishery Conservation and Management Act and the International Fisheries Agreement Clarification Act.

Summary of the Significant Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made from the Proposed Rule as a Result of Such Comments

The public did not raise significant issues or concerns regarding the revised GB yellowtail flounder catch limits, and no changes were made from the proposed rule.

Estimate of the Number of Small Entities

The proposed increase in the Georges Bank yellowtail flounder TAC and annual catch limits would impact groundfish and scallop vessels fishing on Georges Bank. According to the FW 45 Regulatory Flexibility Analysis, as of December 20, 2010, the maximum number of small fishing entities (as defined by the Small Business Administration (SBA)) that may be affected by this action is 3,935 entities. These affected entities include 1,144 limited access NE multispecies DAS permit holders; 133 limited access NE multispecies Handgear A (Handgear A) permit holders; 11 limited access NE multispecies Small Vessel Exemption (Category C) permit holders; 1,156 open access NE multispecies Hangear B (Handgear B) permit holders; 824 open access NE multispecies charter/party permits; and 667 Atlantic sea scallop LAGC permits. It is likely that the actual number of both groundfish and scallop small fishing entities affected by this action would be much smaller. For the groundfish fishery the number of small entities would be in the range of 150 to 200. From fishing years 2004 through 2009, the number of vessels that have fished in the U.S./Canada Area has ranged from 136 (in FY 2009) to 184 vessels (in FY 2005). Each of these groundfish permits would be considered a small entity, based on the definition as stated above. Although multiple groundfish vessels may be owned by a single owner, available tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this final rule.

With respect to scallop vessels, the maximum number of affected entities is approximately between 250 to 300, based upon FY 2010 participation in the Nantucket Lightship Access Area (only those fishing in one of the Scallop Access Areas on GB). The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $3 million according to the dealer's data for FYs 1994 to 2009. This analysis was completed consistent with analyses under the Regulatory Flexibility Act for recent scallop actions, and as such, considers receipts of individual scallop vessels and did not consider individual entity ownership of multiple vessels.

Reporting, Recordkeeping and Other Compliance Requirements

The proposed action does not mandate any reporting requirements beyond those already required by current Federal regulations. A full list of compliance, recording, and recordkeeping requirements can be found in the final rule implementing Amendment 16 (April 9, 2010; 75 FR 18262) and each approved sector operations plan.

Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

During the development of Framework 45, NMFS and the Council considered ways to reduce the regulatory burden on and provide flexibility to the regulated community. The approach taken is consistent with the recent Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). The measures implemented by the FW 45 final rule, including the revised FY 2011 GB yellowtail flounder catch limits, in conjunction with the final rule to approve FY 2011 sector operations plans, minimize the long-term economic impacts on small entities to the extent practicable. Overall, long-term impacts of the FW 45 final rule, as

well as the related actions of the FMP, are minimized by ensuring that management measures and catch levels result in fishing mortality rates are sustainable and contribute to rebuilding stocks and, therefore, maximizing yield, as well as providing additional flexibility for fishing operations in the short term. In particular, the revised catch limits for GB yellowtail flounder that is the subject of this EA, directly or indirectly provides small entities with some ability to offset at least some portion of the estimated economic impacts associated with FW 45 and the FMP as a whole.

Economic Impacts on Small Entities Resulting from Proposed Action

The economic impact resulting from this action on these small entities is positive since the action would provide additional fishing opportunity for vessels participating in NE multispecies fishery and the scallop fishery for FY 2011. The proposed alternative is almost certain to result in greater revenue. Based on historic information, the groundfish fishery is able to land close to the full amount of GB yellowtail flounder allowed. The estimated revenue from the sale of GB yellowtail flounder under the proposed catch limits is approximately $ 2 million, compared with $ 1.4 million if this action were not implemented. Due to the implications of catching the GB yellowtail flounder TAC for either the common pool or sector vessels on access to resources in addition to yellowtail flounder (i.e. access is restricted or ended), the larger catch limits associated with the Proposed Alternative, compared with the No Action Alternative will result in additional revenue, if fishing is prolonged. Based on a conservative estimate using FY 2010 data, for every dollar of yellowtail flounder revenue, there is at least $ 10 of revenue from other species. The additional revenue associated with the Proposed Alternative due to the catch of other species could be worth approximately ten times the difference between the GB yellowtail flounder revenue under the two alternatives (10 X $ 641,272), approximately $ 6.4 million (if total GB yellowtail flounder TAC is caught, and fishing effort on GB ceases).

With respect to the scallop fishery, the Proposed Alternative will result in a larger cap on the amount of GB yellowtail flounder than can be caught in the scallop access areas. A larger cap may indirectly enable greater scallop revenue for the scallop fishery, if the GB yellowtail flounder cap becomes limiting to the scallop fishery in the Closed Area II Scallop Access Area. It is difficult to predict the amount of GB yellowtail flounder that will be caught in the Closed Area II Scallop Access Area in FY 2011 due to the variability of scallop fishing effort as well as scallop and yellowtail flounder catch rates. A larger cap on the amount of GB yellowtail flounder that can be caught in the scallop access areas however enhances the ability of the scallop industry to plan, and will minimize disruption.

END