

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

[Docket No 070322064-7097-02.; I.D. 030607E]

RIN 0648-AV20

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2007 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Final rule.

SUMMARY: This final rule implements the Georges Bank (GB) Cod Hook Sector Fishing Year (FY) 2007 Operations Plan and Agreement, approved by the Administrator, Northeast Region, NMFS (Regional Administrator). Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (Amendment 13) authorized allocation of up to 20 percent of the annual GB cod total allowable catch (TAC) to the GB Cod Hook Sector (Sector). Pursuant to that authorization, the Sector submitted an Operations Plan and Sector Contract entitled, "Georges Bank Cod Hook Sector Fishing Year 2007-2008 Operations Plan and Agreement" (together referred to as the Sector Agreement) and requested an allocation of GB cod, consistent with regulations implementing Amendment 13. This action results in authorization of the Sector Operations Plan during the 2007 fishing year and allocation of 675 mt of GB cod to the Sector.

DATES: Effective May 3, 2007.

ADDRESSES: Copies of the Sector Agreement and the environmental assessment (EA) are available from the NE Regional Office: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. The Final Regulatory Flexibility Analysis (FRFA) consists of the Initial Regulatory Flexibility Analysis (IRFA), public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. A copy of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/FRFA is accessible via the Internet at <http://www.noaa.gov/nero/regs/com.html>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to the address above or by e-mail to David-Rostker@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A proposed rule that solicited public comment on the Sector Agreement was published in the **Federal Register** on April 16, 2007 (72 FR 18940), and public comments were accepted through May 1, 2007. The Regional Administrator approved the FY 2007 Sector Operations Plan, based on public comment and input from the New England Fishery Management Council (Council), and based on a determination that the Operations Plan and Agreement are consistent with the goals of the FMP and applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. Details pertaining to the principal regulations applying to the Sector, the process of review and approval of sectors, and facts regarding the Sector's submission of the FY 2007 Sector Agreement are contained in the proposed rule. A supplemental EA entitled "Approval of the Georges Bank Cod Hook Sector Operations Plan," which analyzes the impacts of the proposed Sector Agreement, was also prepared.

The 2007 Sector Agreement and Operations Plan contains the same elements as the FY 2006 Sector Agreement. The Sector Agreement will be overseen by a Board of Directors and a Sector Manager. The Sector's GB cod TAC is based upon the number of Sector members and their qualifying historic landings of GB cod. The GB cod TAC is a "hard" TAC, meaning that, once the TAC is reached, Sector vessels may not fish under a NE Multispecies DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or recreational regulations). Should the hard TAC be exceeded, the Sector's allocation will be reduced by the overharvest in the following year.

The 2007 Operations Plan includes exemptions from the following restrictions of the FMP: The Gulf of Maine (GOM) and GB cod trip limit; the GOM, GB, and Southern New England

(SNE) limit on the number of hooks fished; the GB Seasonal Closure Area; the DAS Leasing Program vessel size restrictions; differential DAS in the GOM Differential DAS Area and in the SNE Differential DAS Area (in those portions of the differential areas that overlap the Sector Area); and the Western U.S./Canada Area 72-hr observer program notification. In addition, the Operations Plan allows Sector members to fish in the "common pool," subject to all of the restrictions of the FMP, prior to approval of the Operations Plan. If Sector members fish during FY 2007 under "common pool" rules, prior to fishing in the approved Sector, all cod caught will count toward the Sectors GB cod TAC. This flexibility was requested so that Sector members would be able to fish immediately at the beginning of the fishing year, and not be required to wait until approval of the Operations Plan. Justification for the other exemptions and analysis of the potential impacts of the Operations Plan are contained in the EA.

A total of 25 Sector members signed the FY 2007 Sector Contract and will participate in the Sector. The proposed rule indicated that 35 Sector members and a GB cod TAC of 798 mt were expected (9.48 percent of the TAC); however, after the Operations Plan was submitted to NMFS, 10 individuals decided not to join the Sector. The GB cod TAC calculation is based upon the qualifying historic cod landings of the participating Sector vessels, regardless of gear used. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by Sector members in FY 1996 through 2001, by the sum of the total accumulated landings of GB cod landed by all NE multispecies vessels for the same time period (9,084,963 lb (4,121 mt)/113,278,842 lb (51,382.42 mt)). Based upon the qualifying landings history of the 25 Sector members, the Sector TAC of GB cod is 675 mt (8.02 percent times the fishery-wide GB cod target TAC of 8,416 mt). The fishery-wide GB cod target TAC of 8,416 mt is less than the total GB cod target TAC proposed for FY 2007 (9,822 mt) because the 9,822 mt includes Canadian catch.

The Sector Agreement contains procedures for the enforcement of the Sector rules, a schedule of penalties, and provides the authority to the Sector Manager to issue stop fishing orders to members of the Sector. Participating vessels are required to land fish only in designated landing ports and are required to provide the Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hr of offloading.

Dealers purchasing fish from participating vessels are required to provide the Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Sector Manager must transmit to NMFS a copy of the VTRs and the aggregate catch information from these reports. After 90 percent of the Sector's allocation has been harvested, the Sector Manager is required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Sector's GB cod TAC, minus a reserve, will be allocated to each month of the fishing year. GB cod quota that is not landed during a given month will be rolled over into the following month. Once the aggregate monthly quota of GB cod is reached, for the remainder of the month, participating vessels may not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies. Once the annual TAC of GB cod is reached, Sector members may not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies for the rest of the fishing year.

The harvest rules do not preclude vessels from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips. For each fishing trip, participating vessels are required to fish under the NE multispecies DAS program to account for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels are required to call the Sector Manager prior to leaving port. All legal-sized cod caught must be retained and landed and count against the Sector's aggregate allocation. Participating vessels are not allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. NE multispecies DAS used by participating vessels while conducting fishery research under an Exempted Fishing Permit during FY 2007 will be deducted from that Sector member's individual DAS allocation. Similarly, all GB cod landed by a participating vessel while conducting research will count toward the Sector's allocation of GB cod TAC. Participating vessels will be exempt from the GB Seasonal Closure Area during May.

A Letter of Authorization will be issued to each member of the Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GOM and GB cod possession restrictions; the GB Seasonal Closure

Area; the Western U.S./Canada Area 72-hr observer notification requirement; the DAS Leasing Program vessel size restrictions; differential DAS; the limits on the number of hooks requirements; and the prohibition on fishing as a Sector vessel and "common-pool" vessel during the same fishing year, as specified in §§ 648.86(b)(2), 648.81(g), 648.85(a)(3)(ii)(C), 648.82(k)(4)(ix), 648.82(e)(2), 648.80(a)(4)(v), and 648.87(b)(1)(xii), respectively.

Comments and Responses

One comment on the Operations Plan was received.

Comment: The commenter did not support the allowance of any exemptions in order to conserve the fish stocks.

Response: The EA concludes that the approval of the Operations Plan would result in positive environmental impacts. The authorized exemptions are contingent upon compliance with the Operations Plan, including the GB cod hard TAC. NMFS's approval of the exemptions is consistent with the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. This will not have a negative impact on fish stocks.

Classification

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

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries, NOAA, (AA) finds justification to waive the delay in effectiveness of this action, because it provides the basis for NMFS to immediately grant the following exemptions from the regulations implementing the FMP for sector members, while the regulations shall remain applicable to non-members:

1. GOM and GB cod trip limit;
2. GB Seasonal Closure;
3. GOM, GB, and SNE limit on number of hooks fished;
4. DAS Leasing Program vessel size restriction;
5. Differential DAS (in the GOM Differential DAS Area and the SNE Differential DAS Area); and
6. The Western U.S./Canada Management Area 72-hr observer program notification.

Because the Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., exemptions 1–5 above) are not necessary to constrain the impact of the Sector on the GB cod stock. Should the Sector's allocated GB cod TAC be

harvested, participating vessels would no longer be allowed to fish under a NE multispecies DAS, possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Sector members will be required to fish under their current NE multispecies DAS allocation to account for any other regulated NE multispecies that they may catch while fishing for GB cod and are restricted to using hook gear only. Because hook gear has nearly zero interaction with GB yellowtail flounder, Sector vessels are exempt from the requirement to call the observer program 72 hours in advance of starting a NE multispecies DAS when fishing in the Western U.S./Canada Area (number 6 above), since this requirement is primarily concerned with monitoring catch of GB yellowtail flounder.

This final rule does not contain policies with federalism or "takings" implications as those terms are defined in Executive Order (E.O.) 13132 and E.O. 12630, respectively.

A FRFA was prepared as required by section 603 of the Regulatory Flexibility Act (RFA). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to the proposed rule and in the EA prepared for this action, and is not repeated here.

Summary of the 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

No public comments pertaining to the IRFA or the economic effects of this action were received, nor any changes made to the action as described by the proposed rule.

Description of and Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Small Business Administration size standard for small commercial fishing entities is \$4 million in average annual receipts, and the size standard for small charter/party operators is \$6.5 million in average annual receipts. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. All permitted

and participating vessels in the groundfish fishery, including prospective Hook Gear Sector members, are considered to be small entities according to this standard and, therefore, there is no differential impact between large and small entities. The number of participants in the Sector is 25, substantially less than the total number of active vessels in the groundfish fishery. Only these 25 vessels would be subject to the regulatory exemptions and operational restrictions proposed for the Sector for FY 2007.

Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Approval of the FY 2007 Sector Operations Plan results in an allocation of 675 mt of GB cod to the GB Cod Hook Sector, and the minimization of economic impacts on the Sector. Once the GB cod TAC is harvested, participating vessels are not be allowed to fish under a NE Multispecies DAS, possess or land GB cod, or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or party/charter regulations). Vessels intending to fish in the Sector during FY 2007 may fish prior to approval of the Sector Operations Plan, provided they comply with all requirements of the FMP, and report any cod caught to the Sector Manager. Sector vessels may only fish with jigs, non-automated demersel longline, or handgear. Under the Operations Plan, members are exempt from several restrictions of the FMP described in the preamble of the proposed rule, this final rule, and in the EA.

The reasons for approving the 2007 Sector Operations as proposed are as follows: Operation of the Sector would positively impact the members of the Sector (25 vessels or less) that have voluntarily joined the Sector, who are relatively dependent upon groundfish revenue compared to other participants in the groundfish fishery. Sector operations will indirectly benefit the communities of Chatham and

Harwichport, MA, and to a lesser extent, other Cape Cod communities involved in the groundfish fishery. During FY 2005, members of the Sector landed 275,743 lb (125,054 kg) of cod and 1,114,401 lb (505,397 kg) of haddock, generating approximately \$402,000, and \$1,314,000 in revenue, respectively (assuming a dock-side price of \$1.46 and \$1.18 per lb, respectively). Sector members also landed various other species, which contributed slightly more to their revenue. In general, the operation of the Sector will continue to mitigate the negative economic impacts that result from the current suite of regulations that apply to the groundfish fishery (most recently, Framework Adjustment 42; 71 FR 62156; October 23, 2006). The Sector, by fishing under rules that are designed to meet their needs (as well as the conservation requirements of the FMP), is afforded a larger degree of flexibility and efficiency, which is expected to result in economic gains. For example, Sector members are able to plan their fishing activity and income in advance with more certainty due to the fact that there is a cod TAC, which is apportioned to each month of the year. They are also able to maximize their efficiency (revenue per trip) due to the Sector's exemption from trip limits and hook numbers. For some vessel owners in the Sector, participation in the Sector enables their businesses to remain economically viable. For the above reasons, approval of the 2007 Sector Operations minimizes the impact on small entities.

In contrast, under the No Action alternative, all Sector members would have remained in the common pool of vessels and fished under all the rules implemented by Amendment 13 and subsequent Framework Adjustments. Under the regulatory scenario of the No Action alternative, relative to the preferred alternative, Sector members would likely have faced increased economic uncertainty, loss of efficiency, and loss of revenue. Because cod usually represents a high proportion of total fishing income for hook gear vessels, revenues for Sector members are sensitive to regulations that impact how and when they can fish for cod,

such as trip limits and hook gear restrictions. Sector members would have been unnecessarily impacted by regulations designed to affect the catch of species of which hook gear catches very little (e.g., yellowtail flounder, because hook gear is more selective than other gear types). For example, under the No Action alternative, Sector members would have been affected by the differential DAS counting requirement, one of the objectives of which is to protect yellowtail flounder.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0202. Public reporting burden for the Submission of a Plan of Operation for an Approved Sector Allocation is estimated to average 50 hr per response, and for the Annual Reporting Requirements for Sectors is estimated to average 6 hr per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

Dated: May 3, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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