

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

[Docket No. 071017601–8510–02]

RIN 0648–AW17

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2008 Georges Bank Cod Fixed Gear 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 Fixed Gear Sector (Fixed Gear Sector) Fishing Year (FY) 2008 Operations Plan and Agreement, approved by the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), and allocates a hard total allowable catch (TAC) of GB cod to the Fixed Gear Sector. Framework 42 (FW 42) to the NE Multispecies Fishery Management Plan (FMP) authorized allocation of up to 20 percent of the annual GB cod TAC to the Fixed Gear Sector. Pursuant to that authorization, the Fixed Gear Sector submitted an Operations Plan and Sector Contract entitled, “Georges Bank Cod Fixed Gear Sector Fishing Year 2008–2009 Operations Plan and Agreement” (together referred to as the Sector Agreement) and an Environmental Assessment (EA), and requested an allocation of GB cod, consistent with the FMP. This action results in authorization of the Sector Operations Plan for FY 2008 and allocation of 1,430 mt of GB cod to the Sector.

DATES: Effective May 1, 2008, through April 30, 2009.

ADDRESSES: Copies of the Sector Agreement, EA, and the Final Regulatory Flexibility Analysis (FRFA) are available from the Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Sector Policy Analyst, phone (978) 281–9145, fax (978) 281–9135, e-mail Mark.Grant@NOAA.gov.

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on the Sector Agreement for the Fixed Gear Sector was published in the **Federal Register** on March 11, 2008 (73 FR 12942), with public comment accepted through March 26, 2008. The Regional Administrator approved the FY 2008 Sector Operations Plan, based on public comment, 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 Fixed Gear Sector, the process of review and approval of sectors, and facts regarding the Fixed Gear Sector’s submission of the FY 2008 Sector Agreement are contained in the proposed rule. An EA entitled “Approval of the Georges Bank Cod Fixed Gear Sector Operations Plan Fishing Year 2008,” which analyzes the impacts of the proposed Fixed Gear Sector operations, was also prepared.

The Fixed Gear Sector was authorized to fish in FY 2006 and FY 2007, and, based upon the GB cod landings history of its members, was allocated <1.0 and 10.7 percent, respectively, of the annual GB cod TAC.

The 2008 Fixed Gear Sector Agreement contains the same elements and exemptions as the 2007 Fixed Gear Sector Agreement and Operations Plan. The Fixed Gear Sector Agreement will be overseen by a Board of Directors and a Sector Manager. The Fixed Gear Sector’s GB cod TAC is based upon the number of Fixed Gear Sector members and their qualifying historic landings of GB cod. The GB cod TAC is a “hard” TAC, meaning that, once the TAC is caught, Fixed Gear Sector vessels may not fish under a NE multispecies Day-at-Sea (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). In addition, the Operations Plan allows Fixed Gear 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 Fixed Gear Sector members fish during FY 2008 under “common pool” rules, prior to fishing in the approved Sector, all cod caught will count towards the Fixed Gear Sector’s GB cod TAC. Should the hard TAC be exceeded, the Sector’s allocation in the following year will be reduced by an amount equivalent to the overharvest.

The FY 2008 Sector Agreement contains exemptions from the following restrictions of the FMP: The GB and Gulf of Maine (GOM) cod trip limit; the GOM, GB, and Southern New England (SNE) limit on the number of hooks fished; and the GB Seasonal Closure Area when using hook gear. Justification for the proposed exemptions and analysis of the potential impacts of the Operations Plan are contained in the EA.

A total of 29 Fixed Gear Sector members signed the FY 2008 Fixed Gear Sector Contract. The GB cod TAC calculation is based upon the historic cod landings of the participating Fixed Gear Sector vessels, regardless of gear used. The allocation percentage is calculated by dividing the sum of total landings of GB cod landed by Fixed Gear 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. Based upon the qualifying landings histories of the Fixed Gear Sector members, the Fixed Gear Sector’s share of the overall U.S. portion of the GB cod TAC is 13.99 percent, or 3,152,802 lb (1,430 mt) (13.99 percent times the fishery-wide U.S. portion of the GB cod target TAC of 22,535,656 lb (10,222 mt)).

The Sector Contract contains procedures for the enforcement of the Operations Plan, a schedule of penalties, and provides the authority to the Fixed Gear Sector Manager to issue stop fishing orders to members of the Fixed Gear Sector. Participating vessels are required to land fish only in designated landing ports and are required to provide the Fixed Gear 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 Fixed Gear Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Fixed Gear Sector Manager must transmit to NMFS aggregate catch data from dealer slips and aggregate discard data from the VTRs. After 90 percent of the Fixed Gear Sector’s allocation has been harvested, the Fixed Gear Sector Manager is required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Fixed Gear Sector’s GB cod TAC, minus a reserve, is 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. The harvest rules do not preclude a vessel 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 regulations 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, landed and counted against the Fixed Gear Sector's aggregate allocation. Participating vessels may not fish with or have on board gear other than jigs, non-automated demersal longline, handgear, or sink gillnets. Participating Fixed Gear Sector vessels fishing with hook gear may use an unlimited number of hooks in the Sector Area and are exempt from the GB Seasonal Closure Area during May.

Comments and Responses

Three comments were received on this action. One from the Cape Cod Hook Commercial Fishermen's Association (CCCHFA), one from representatives of both the Fixed Gear Sector and the GB Cod Hook Gear Sector, and the third from a member of the general public.

Comment 1: The comment is not directly relevant to this action because the commenter suggested that all allocations of fish be reduced 50 percent this year and 10 percent each subsequent year, asserting that the Sector Area is overfished.

Response: This comment is not relevant to this action.

Comments 2 and 3: The comments from CCCHFA and representatives of the two sectors both supported the approval of the Fixed Gear Sector's FY 2008 Operations Plan and Agreement. Both comments noted that the operations of the Fixed Gear Sector have reduced discards of GB cod, provided flexibility to members to make market-based decisions, and increased profitability for members.

Response: NMFS agrees and has approved the FY 2008 Operations Plan and Agreement.

A Letter of Authorization will be issued to each member of the Fixed Gear Sector exempting them, conditional upon their compliance with the Sector Contract, from the GOM and GB cod possession restrictions, the 3,600-hook limit in the GB RMA, the 2,000-hook limit in the GOM and SNE RMAs and

the GB Seasonal Closure Area when using hook gear, as specified in §§ 648.86(b)(1) and (2), 648.80(a)(4)(v), 648.80(a)(3)(v), 648.80(b)(2)(v) and 648.81(g), respectively.

Classification

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

Pursuant to 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act because it provides the basis for NMFS to grant, effective with the start of the fishing year on May 1, 2008, Fixed Gear Sector members exemptions from the following regulations implementing the FMP:

1. GOM and GB cod trip limits;
2. GB Seasonal Closure Area when using hook gear; and
3. GOM, GB, and SNE limit on number of hooks fished.

These regulations will remain applicable to "common pool" vessels. Because the Fixed Gear Sector will be fishing under a hard TAC for GB cod, effort controls (i.e., exemptions 1–3 above) are not necessary to constrain the impact of the Fixed Gear Sector on the GB cod stock. Should the Fixed Gear 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). Fixed Gear 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 or sink gillnets only.

In order for GB cod to be allocated to the Fixed Gear Sector and the Fixed Gear Sector authorized to fish in FY 2008, the Fixed Gear Sector must submit an Operations Plan and Sector Contract to the Regional Administrator for approval. The regulations at § 648.87(c) authorize the Regional Administrator to approve or disapprove sector operations after the receipt of the required documents, including a complete roster of all parties, vessels, and vessel owners who will participate in the sector. The Fixed Gear Sector did not submit its final FY 2008 roster until January 28, 2008, which delayed publication of the proposed rule until March 11, 2008,

with a comment period that ended on March 26, 2008. Because the final FY 2008 roster included vessels that did not meet the GB cod landings requirement previously codified at § 648.87(d)(2)(i), NMFS could not approve their participation until after the rule removing that eligibility requirement from the sector regulations published on April 3, 2008. Establishing an effective date 30 days after the publication of this final rule would prevent the Fixed Gear Sector from commencing sector operations with the start of the fishing year on May 1, 2008.

Implementation of the Sector Operations Plan is meant to mitigate adverse economic impacts that resulted from Amendment 13 and FW 42 to the FMP. Delaying the implementation beyond May 1, 2008, would result in an unnecessary economic loss to the members of the Fixed Gear Sector because vessels would be prevented from fishing in a month when 15 percent of the annual GB cod landings historically occur, and when the price for GB cod is highest. During the month of May landings of cod by hook gear are at their highest, and the Fixed Gear Sector is exempt from both hook limits and a seasonal closure of a large portion of its historic fishing area while using hook gear. Further, vessels participating in the Fixed Gear Sector in FY 2007 are currently operating under the exemptions above. Delaying implementation beyond May 1, 2008, would create a gap in the annual exemptions for this sector, forcing these vessels to remove gear currently in the water at a high expense.

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This final rule does not contain policies with federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. There are no Federal rules that duplicate, overlap, or conflict with this final rule.

An EA has been prepared for this final rule in compliance with the National Environmental Policy Act. A copy of this EA may be obtained (see **ADDRESSES**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2008 GB Cod Fixed Gear Sector Operations Plan and allocation of GB cod TAC. The FRFA incorporates the economic impacts identified in the Initial RFA (IRFA), which was summarized in the preamble of the proposed rule and the corresponding analysis in the EA prepared for this action. A description of why this action was considered, along with the

objectives of, and the legal basis for, this rule are contained in the preamble to the proposed rule and are 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.

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

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$4 million in annual gross sales. All permitted and participating vessels in the groundfish fishery, including Fixed Gear Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold, and, therefore there is no disproportionate impact between large and small entities. The number of participants in the Fixed Gear Sector is 29, substantially less than the total number of active vessels in the groundfish fishery. These 29 vessels will be subject to the regulatory exemptions and operational restrictions approved for the Fixed Gear Sector for FY 2008.

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 2008 Sector Agreement results in an allocation of 1,430 mt of GB cod to the Fixed Gear Sector and exemptions from several restrictions of the FMP and minimization of economic impacts on the Fixed Gear Sector. Once the GB cod TAC is harvested, participating vessels would 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). Fixed Gear Sector vessels may only fish with jigs, non-automated demersal longline, handgear, or sink gillnets.

This action will positively impact the 29 vessels that have voluntarily joined the Fixed Gear Sector, who are relatively more dependant upon groundfish revenue compared to other participants in the groundfish fishery.

The approval of the Fixed Gear Sector and allocation of GB cod TAC will indirectly benefit the communities of Chatham and Harwichport, MA, and to a lesser extent other Cape Cod communities involved in the groundfish fishery. Preliminary FY 2007 data show that the Sector has made 564 trips and landed 735,355 lb (333,551 kg) of GB cod; however, had the Fixed Gear Sector members been subject to the daily trip limit (1,000 lb/day; 454 kg/day) in place for the common pool vessels (non-sector vessels), they would have been prevented from landing 171,355 lb (77,725 kg) of that total. Based on the limited FY 2007 data, assuming a dock-side price of \$1.50 per lb (\$3.30 per kg) for cod, members of the Fixed Gear Sector would already have lost \$257,032.50 (171,355 lb (77,725 kg) X \$1.50 per lb (\$3.30 per kg)) in revenue if they were not exempt from the cod possession limit. Fixed Gear Sector members also landed various other species, which added to their total revenue. In general, the operation of the Fixed Gear Sector would continue to mitigate the negative economic impacts that result from the current suite of regulations that apply to the groundfish fishery (most recently FW 42; October 23, 2006; 71 FR 62156). The Fixed Gear 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 result in economic gains. For example, Fixed Gear 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 able to maximize their efficiency (revenue per trip) due to the exemption from cod possession limits and hook numbers. For some vessel owners in the Fixed Gear Sector, participation in the Fixed Gear Sector enables their businesses to remain economically viable. For the above reasons, approval of the FY 2008 Sector Agreement minimizes the impact on small entities.

In contrast, under the No Action alternative, all Fixed Gear 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 alternative implemented by this rule, Fixed Gear Sector members would likely have faced increased economic uncertainty, loss of efficiency, and loss of revenue, as noted

above. Because cod usually represents a high proportion of total fishing income for fixed gear vessels, revenues for Fixed Gear Sector members are sensitive to regulations that impact how and when they can fish for cod, such as possession limits and restrictions on the number of hooks that can be fished.

No other alternatives beyond the No Action were considered during the development of this action. The RFA requires each IRFA to include a description of significant alternatives that accomplish the objectives of applicable statutes (in this case, sector provisions) and minimize any significant economic impact to small entities. The objectives of sector management, as originally developed and implemented under Amendment 13, are to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. The Fixed Gear Sector developed the Sector Agreement after consultation with prospective members. Prospective members then signed a binding sector contract to abide by the measures specified in the Sector Agreement. As described above, the approved Sector Agreement minimizes economic impacts to participating vessels by allowing them to operate more efficiently. Accordingly, the approved Sector Agreement reflects the management measures preferred by vessels participating in the GB Cod Fixed Gear Sector during FY 2008 and represents all of the significant alternatives that accomplish the objectives of sector provisions and minimize economic impacts to small entities, as required by the RFA. Therefore, in conjunction with the NEPA requirement to consider a reasonable range of alternatives, no other alternatives were considered prior to approval of this action.

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

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

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

Dated: April 4, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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