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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150630567-6999-01]

RIN 0648-BF26

Fisheries of the Northeastern United States; Amendment 18 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: We are proposing regulations to implement Amendment 18 to the Northeast Multispecies Fishery Management Plan. Amendment 18 was developed by the New England Fishery Management Council to promote fleet diversity in the groundfish fishery and enhance sector management. This action proposes to limit the number of permits and annual groundfish allocation that an entity could hold. This action also removes several effort restrictions to increase operational flexibility for limited access handgear vessels.

DATES: Comments must be received on or before [*insert date 45 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0143, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0143)

0143, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Northeast Multispecies Amendment 18.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

Copies of Amendment 18, including its environmental impact statement, preliminary Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA), are available from the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EIS/RIR/IRFA is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst,
978-281-9182.

SUPPLEMENTARY INFORMATION:

Background

Since the approval of Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP) and the expanded use of catch shares in the groundfish fishery, many industry members and stakeholders have become increasingly concerned about excessive fleet consolidation and lack of diversity with regards to the composition of the fishing fleet.

Amendment 18 was developed to address these concerns, primarily by limiting both the number of permits and allocation an individual or entity could hold (referred to as an entity from here on).

Development of Amendment 18 began in 2011, with initial public scoping taking place between December 2011 and March 2012. Subsequently, the stock status for many groundfish stocks declined and the associated annual catch limits were significantly reduced. As a result, some groundfish fishermen were concerned that implementing an accumulation limit could be problematic if it reduced flexibility and prevented them from obtaining additional quota necessary to maintain viable fishing operations.

However, many industry members and stakeholders remained concerned that excessive consolidation is a risk to the fishery. Several groundfish stocks, particularly Georges Bank haddock, redfish, and pollock, continue to grow and remain consistently underharvested. As other stocks rebuild and quotas increase, there may be further consolidation and decreased diversity if vessels are able to earn above market rates of return and have an opportunity to acquire more permits.

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits us to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comment on the Council's proposed measures in Amendment 18 and whether they are consistent with the Northeast Multispecies FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

The primary purpose of this action is to limit the level of allocation that an entity may control to prevent excessive consolidation and retain fleet diversity.

The Council identified four goals for Amendment 18:

1. Promote a diverse groundfish fishery, including different gear types, vessel sizes, ownership patterns, geographic locations, and levels of participation through sectors and permit banks;
2. Enhance sector management to effectively engage industry to achieve management goals and improve data quality;
3. Promote resilience and stability of fishing businesses by encouraging diversification, quota utilization, and capital investment; and
4. Prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.

Proposed Measures

The goals and objectives of Amendment 18 are addressed through two mechanisms. First, this action proposes to establish accumulation limits on the number of groundfish permits and the amount of Potential Sector Contribution (PSC) that an entity may hold. PSC is the proportion of total landings of a particular stock associated with the landing history of a limited access permit. PSC also represents the share of allocation that an individual permit contributes to a sector. Second, this action proposes to remove several restrictions on limited access handgear vessels (Handgear A permitted vessels) to promote that small-boat fishery.

1. Accumulation Limits

Background

The New England Fishery Management Council contracted Compass Lexecon, an economic consulting firm, to provide independent advice regarding the establishment of northeast multispecies permit accumulation limits. The Council tasked Compass Lexecon to determine whether any entity already holds an excessive share of permits, and if not, what an excessive share would be in the groundfish fishery. Compass Lexecon defined an excessive share as a share of quota that would allow a permit owner or sector to influence the prices of the fishery's output or the prices paid for leased quota to its advantage, which is called market power. Compass Lexecon's analyses did not find that market power is currently being exercised through the withholding of quota in any part of the groundfish fishery, or in the sales of fish or transfers of permits.

Compass Lexecon recommended setting an excessive-share cap on the PSC conferred to a permit holder at 15.5 percent of the available PSC for any groundfish stock. Analyses suggested that this cap would prevent the accumulation of excessive shares, and that a lower limit was likely not necessary. The final report was completed in December 2013, and was peer

reviewed in June 2014 by three reviewers from the Center for Independent Experts and one independent reviewer. A variation of Compass Lexecon's recommendation is proposed in this action.

Accumulation Limit Guidelines

Amendment 18 includes several general measures detailing how permit accumulation limits would be applied.

- Accumulation limits apply to individuals, permit banks, and other entities, including groundfish sectors, at the individual permit and PSC level.
- Accumulation limits do not apply to the amount of annual groundfish allocated to a sector, technically referred to as a sector's annual catch entitlement, or ACE.
- Accumulation limits may be modified in a future framework due to a Federal permit buyback or buyout.
- If an entity held permits or PSC on the control date (April 7, 2011) that exceeded the accumulation limits, it would be exempt from the accumulation limit, but would be restricted to holding no more permits or PSC than it held as of the control date. The grandfathered holdings may be fished or leased by the entity but are not transferrable. Current analyses suggest that no entity exceeds the control date accumulation limits.
- There is no calculation of partial ownership when considering accumulation limits. Any entity that is a partial owner is assumed to have full-ownership when calculating permit and PSC accumulation limits.

Limiting the Number of Permits

This action proposes to limit an entity to holding no more than 5 percent of all limited access groundfish permits. An entity would be prohibited from acquiring a permit that would result in it exceeding the 5-percent permit cap. There are approximately 1,373 limited access permits currently in the fishery; a 5-percent cap would limit an entity to approximately 69 permits. As of May 1, 2014, the most permits held by any entity is 55. Therefore, if approved, this alternative is unlikely to immediately restrict any entity.

Using this permit cap alone could still allow for accumulation of PSC sufficient to exert market power in limited and unlikely circumstances. For example, if only a 5-percent permit cap was adopted, an entity could potentially hold 85 PSC of the Georges Bank winter flounder stock. To address this potential, the Council proposed an additional PSC limit proposed in this action.

Limiting the Potential Sector Contribution

This action also proposes to limit the aggregated average of all allocated groundfish stocks PSC that may be held by an entity to no more than 15.5. With 15 groundfish stocks currently allocated to the fishery, the total PSC across all stocks used by an individual or an entity must be ≤ 232.5 (an average of 15.5 per stock multiplied by 15 stocks). This would allow an entity to hold PSC for a single stock in excess of 15.5, so long as the total holdings used do not exceed 232.5. If additional groundfish stocks are allocation (or unallocated) to sectors in the future, then this number would change by 15.5 per stock.

This PSC limit was developed based on Compass Lexecon's recommendation to establish a stock-specific PSC limit of 15.5 (as explained above). However, to allow fishermen additional operational flexibility in light of current groundfish stock conditions, the Council elected to use an aggregate average as defined above. Compared to other PSC limit alternatives that the Council considered, this option is the least restrictive because there is no stock-specific limit.

Further, an entity would be permitted to purchase a vessel permit during a fishing year that would result in exceeding the aggregate 232.5 PSC limit. In this case, the entity would have to render at least one permit unusable (or “shelve” the permit) so that the entity is not operating above the PSC limit the following fishing year. A shelved permit would be unusable for an entire fishing year; a shelved permit could not be enrolled in a sector, fished, or leased, but could be sold. An entity would be prohibited from purchasing any additional permit once it exceeds the PSC limit. This is intended to allow a permit holder to acquire a new permit and improve their operational flexibility, while still restricting them to the overall accumulation limit. A shelved permit that is rendered unusable can be sold.

The aggregate limit provides flexibility for accumulating shares in single stocks. By itself, an aggregate PSC limit could result in an entity accumulating sufficient PSC in a single stock to exert market power, though exerting market power over multiple stocks appears highly unlikely. Recent analyses indicate that no one entity currently holds more than 140.4 PSC. Consequently, if approved, the 232.5 PSC limit is unlikely to immediately constrain any entity. Analyses within sections 7.6 and 9.11 of the Amendment suggest that purchasing vessel permits with enough PSC to exceed the PSC limit of 232.5 would require substantial capital and logistically would likely be complex and time consuming. As a result, the increased flexibility for accumulating PSC in individual stocks is curbed by the combination of the PSC limit and the permit caps.

Effect of Combined Accumulation Limits

The combination of PSC limits and the permit cap make it highly unlikely that market power could be exerted. Analyses show that the maximum allocation that an entity could acquire would be around 20 PSC for the majority of stocks, though PSC for certain stocks such as

Georges Bank winter flounder could be acquired at higher levels than others. These analyses suggest that the proposed combination of an aggregate PSC limit of 232.5 and a 5-percent permit cap should be sufficient to prevent market power from being exerted. These analyses are discussed in more detail in sections 7.7.4.5 and 9.11 of the Amendment 18 EIS (**see ADDRESSES**).

Transfer of Permits by an Individual Entity That Has Exceeded the PSC Limit

We have some concern that Amendment 18 does not include any permit transfer restrictions on an individual entity that has exceeded the permit accumulation limit. As proposed, an individual who has exceeded the permit accumulation limit could maintain an interest in the PSC by transferring a permit to a spouse, family member, or business partner at little to no cost. We see this as a potential loophole to the PSC limit restriction. Including a requirement that any permit transfer from an entity that has exceeded the permit accumulation limit be an “arms-length” transaction would address this potential loophole. In this case, an arms-length transaction would be a permit transfer in the ordinary course of business between independent and unrelated entities, which would result in the owner who exceeded the limit maintaining no interest in the transferred permit and its PSC. We welcome comment on this topic.

Future Changes to Accumulation Limits

Amendment 18 proposes to allow modifications to the accumulation limits through a future framework adjustment if a vessel/permit buyback or buyout were enacted in the groundfish fishery. However, any other changes to the accumulation limits would require an amendment to the FMP. Should certain factors change dramatically, such as a substantial reduction in the number of northeast multispecies limited access permits (due to permit holders

relinquishing their permits), then NMFS would encourage the Council to revisit the accumulation limits proposed in this Amendment.

Ownership Interest

In order for an accumulation limit to be developed and applied it is necessary to first define an ownership interest. A unique definition of ownership interest as applied to the groundfish fishery is proposed for section 50 CFR 648.2 of the regulations. To better identify ownership interest and account for accumulation limits in the groundfish fishery, a permit holder would be required to identify all persons who hold an ownership interest with a particular permit when submitting a groundfish permit application or renewal form.

2. *Handgear A Measures*

To reduce effort controls and increase flexibility for small boat fishermen, this action proposes to remove or modify several management measures affecting limited access permitted vessels fishing with handgear (Handgear A vessels).

First, this action would remove the March 1-20 spawning-block closure for all Handgear A vessels. Fishing effort by Handgear A vessels is restricted by a very small annual catch limit, and vessels are subject to other spawning closures. This measure would make the regulations for Handgear A vessels more consistent with vessels fishing in sectors, which are already exempted from the 20-day spawning block and is not anticipated to have any substantial biological consequences.

Handgear A vessels would also no longer be required to carry a standard fish tote on board. This measure was initially implemented to aid in the sorting and weighing of fish by both fishermen and enforcement personnel. However, enforcement no longer uses totes for at-sea weight and volume estimates, so the requirement for vessels to carry a tote

is no longer necessary.

Lastly, this action would allow a sector to request an exemption from the requirement for Handgear A vessels to use a Vessel Monitoring System (VMS). Handgear A fishermen enrolled in a sector are currently required to utilize a VMS. Handgear A fishermen have commented that installing and utilizing a VMS system makes enrolling in a sector cost prohibitive. Any sector interested in utilizing this exemption would be required to submit an exemption request to us for approval. If a sector exemption is approved, a Handgear A vessel fishing within a sector utilizing the exemption would declare its trips through the interactive voice response (IVR) call-in system instead of through a VMS. This measure is intended to encourage Handgear A vessels to enroll in a sector by reducing operating expenses. Sectors receive regulatory exemptions and larger allocations that could provide additional flexibility and fishing opportunities to Handgear A vessels.

Measures That Could Be Addressed in a Future Framework

This action proposes to allow two measures analyzed in Amendment 18 to be implemented through a future framework action. The Council explored establishing a separate allocation for the Handgear A fishery. Additionally, there was some interest in considering separate management measures for an inshore/offshore Gulf of Maine (GOM) boundary, including separate allocations for inshore and offshore GOM cod. However, because current catch limits for key groundfish stocks, including GOM cod, are so low, further sub-dividing allocations for the Handgear A, as well as inshore and offshore GOM cod, were controversial and would be difficult to develop and implement at this time. As a result, the Council elected to potentially consider these measures in a future framework.

In addition, several regulatory clarifications are proposed at § 648.90 to better delineate the responsibilities of the groundfish plan development team as well as which Council management measures could be modified in a future framework.

Public comments on the NOA for the FMP/amendment are being solicited through February 6, 2017 (81 FR 87862; December 6, 2016). Public comments on the proposed rule must be received by the end of the comment period on the Amendment, as published in the NOA, to be considered in the approval/disapproval decision on the Amendment. All comments received by the end of the comment period on the Amendment, whether specifically directed to the Amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 18. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed the proposed regulations to be necessary and appropriate for the purpose of implementing Amendment 18.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with Amendment 18, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an environmental impact statement (EIS) for Amendment 18 that analyzes the impacts on the environment as a result of this action. A copy of the Amendment 18 EIS is available upon request from the Council and from our website (see **ADDRESSES**). A copy is also available from the Federal e-Rulemaking portal at www.regulations.gov. Type “NOAA-NMFS-2015-0143” in the Enter Keyword or ID field and click search.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section, in the preamble, and in the **SUMMARY** section of the preamble. A summary of the IRFA follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

The purpose of the Regulatory Flexibility Act (RFA) analysis is to establish a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure such proposals are given serious consideration. The RFA does not contain any decision criteria. Instead, the purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of various alternatives contained in the FMP or Amendment (including framework management measures and other regulatory actions) and to ensure the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the FMP and applicable statutes.

With certain exceptions, the RFA requires agencies to conduct an Initial Regulatory IRFA for each proposed rule. The IRFA is designed to assess the impacts various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those impacts. An IRFA is primarily conducted to determine whether the proposed action would have a “significant economic impact on a substantial number of small entities.” In addition to analyses conducted for the RIR, the IRFA provides:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for, the proposed rule;
3. A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. A description of the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record; and,
5. Identification, to the extent practicable, of all relevant federal rules, which may duplicate, overlap, or conflict with the proposed rule.

Description of the Reasons Why Action by the Agency is Being Considered

The purpose and need of Amendment 18 are set forth in Section 3.2 of the EIS (see page 30).

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

The goals and objectives of Amendment 18 are set forth in Section 3.3 of the EIS (see page 31-32). These were also summarized in the Background section of the preamble.

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

Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide. For commercial shellfish harvesters, the other qualifiers apply and the receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire businesses, and marinas, the other qualifiers apply and the receipts threshold is \$7.5 million.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing

(NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. Under the SBA's size standards, all of the commercial finfish and other marine fishing businesses were considered small, while 12 of the 237 shellfish businesses were determined not to be small (Tables 1 and 2). The new standard could result in a few more commercial shellfish businesses being considered small. Analyses in Tables 2 and 3 below reveal that no groundfish-dependent entities exceeded \$5.5 million in gross sales, with the mean gross sale per entity being less than \$2 million. As a result, it is unlikely that any finfish, or more specifically, groundfish-dependent vessels, would be considered a large business under the new NMFS size standard.

Amendment 18 regulates commercial fish harvesting entities engaged in the Northeast multispecies limited access fishery. A description of the specific entities that are likely to be impacted is included below for informational purposes, followed by a discussion of those regulated entities likely to be impacted by the proposed regulations. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered the regulated entities.

Ownership Entities in Regulated Commercial Harvesting Businesses

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those impacted by Amendment 18. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or

economic dependency. For this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Regulated Commercial Harvesting Entities

Ownership entities are identified on June 1 of each year based on the list of all permit numbers for the most recent complete calendar year that have applied for any type of Northeast Federal fishing permit. The current ownership data set is based on calendar year 2014 permits and contains gross sales associated with those permits for calendar years 2012 through 2014. As of June 1, 2015, there were 661 commercial business entities potentially regulated by this action. Entities permitted to operate in the Northeast multispecies limited access fishery are described in Tables 1 and 2. As of June 1, 2015, there were 1,147 individual limited access permits. The 34 for-hire businesses included here are entities affiliated with limited access commercial groundfish permits, but derive greater than 50% of their gross sales from party/charter operations. All are small businesses (average gross revenues from 2012-14 are less than \$7.5 million). The remaining 75 entities had no revenue and are classified as small.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and are not dependent on any one. However, not all are equally diversified. Those that

depend most heavily on sales from harvesting species impacted directly by Amendment 18 are most likely to be affected. By defining dependence as deriving greater than 50% of gross sales from sales of regulated species associated with a specific fishery, those ownership groups most likely to be impacted by the proposed regulations can be identified. Using this threshold, 61 entities are groundfish-dependent; all of which are small under both the SBA and NMFS size standards (Table 3).

Table 1. Entities regulated by the Proposed Action.

Type	Number	Number small
Primarily finfish	315	315
Primarily shellfish	237	225
Primarily for-hire	34	34
No Revenue	75	75
Total	661	649

Table 2. Description of Regulated Entities by Gross Sales.

Sales category	Number	Number small	Mean gross sales	Median gross sales	Mean permits per entity	Max permits per entity
<\$50K	186	186	\$10,597	\$1,954	1.3	30
\$50-100K	71	71	\$76,466	\$78,736	1.3	3
\$100-500K	225	225	\$244,672	\$219,731	1.3	4
\$500K-1mil	91	91	\$734,423	\$720,668	1.7	7
\$1-5.5mil	74	73	\$1,899,461	\$1,498,138	2.4	11
\$5.5mil+	14	3	\$11,900,790	\$7,383,522	12.4	28

Table 3. Impacted Groundfish-Dependent Regulated Commercial Groundfish Entities by Gross Sales.

Sales	Entities (#)	Large businesses (#)	Average fishing permits owned per entity (#)	Maximum fishing permits per entity (#)	Median gross sales per entity	Mean gross sales per entity	Median groundfish sales per entity	Mean groundfish sales per entity
<\$50K	6	0	1.0	1	\$10,116	\$20,316	\$8,831	\$16,476
\$50-100K	7	0	1.1	2	\$72,052	\$67,390	\$56,221	\$49,341
\$100-500K	22	0	1.6	4	\$226,938	\$240,833	\$116,018	\$172,331
\$500K-1mil	13	0	1.2	2	\$698,226	\$718,231	\$398,548	\$491,838
\$1-5.5mil	13	0	2.2	4	\$1,553,597	\$1,854,052	\$1,292,445	\$1,403,896
Total ownership entities	61	0						

Description of Projected Reporting, Record Keeping, and Other Compliance Requirements of this Proposed Rule

This action contains a change to an information collection requirement, which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0202. This revision would require any entity that has exceeded the potential sector contribution (PSC) allocation limit to render one or more permits “unusable” so that the entity would be operating within the allocation limit. If an entity exceeds the PSC limit, the entity would be required to complete a “Permit Shelving Form” and render one or more permits unusable. If two entities had to complete a “Permit Shelving Form”, the burden estimate would be 1 hr and cost \$1.

Currently, no entity exceeds the PSC allocation limit; the most PSC any entity holds is approximately 140 PSC, and the proposed limit would be 232.5. As a result, it is unlikely that any entity would reach this threshold, and that the proposed action would not affect fishing operations.

Public comment is sought regarding whether this collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information

subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

No relevant Federal rules have been identified that would duplicate or overlap with Amendment 18.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This IRFA summary is intended to analyze how small entities would be impacted by the proposed management measures. These measures are expected to have minimal, if any, impact on small entities regulated by this action. The vast majority (649 out of 661) of potentially regulated entities are classified as small businesses by SBA and NMFS business size standards.

In general, the small entities regulated by this action would be unaffected. The majority of limited access groundfish permit holders possess permits and PSC in far smaller quantities than the proposed accumulation limits. However, as proposed, individuals who comprise a part of, or the entirety of, these small entities could be restricted in the number of permits or the amount of PSC shares they wish to accumulate in the future, which could impact revenue. Based on the Compass Lexecon report, scalability would not be affected by the reduced accumulation potential, although a definitive statement cannot be made at this time. Further, the PSC limit alternative would allow substantial flexibility so that vessel permit holders could continue to accumulate permits in a manner that allows them to maximize fishing opportunities within their portfolio.

There were several other PSC limit alternatives considered in the Amendment that were not selected because the Council determined the alternatives would have been too restrictive. For example, limiting an ownership entity to an accumulation limit equivalent to the PSC held as of the control date could have forced divestiture in the fishery and would have prevented ownership entities from growing. Similarly, establishing a specific accumulation limit for a specific groundfish stock would have reduced opportunities for entities to expand and restricted operational flexibility. Additional information on these alternatives is available in section 4.1 of the Amendment.

Handgear A permit holders would be largely unaffected by the limited access handgear measures. Minimal fishing activity by these vessels occurs during the winter and early spring, and the removal of the March 1-20 closure would not change this behavior. The removal of the standard fish tote requirement would be inconsequential, as this rule is not currently enforced and it is a minor operational change. The sector exemption for VMS requirement would likely also not affect Handgear A permit holders. Joining a sector would remain a challenge for these permit holders, given the small PSC associated with Handgear A permits. However, if they were to join a sector, this provision would reduce the cost burden for those vessels.

Several management measures and alternatives were considered but not selected by the Council. Other alternatives may be considered in a future framework, as explained in the preamble above. Additional information on these alternatives and justifications for the Council's decision are explained in section 4 of the Amendment.

Impacts to Groundfish-Dependent Small Entities

The impacts of the proposed accumulation limits on groundfish-dependent small entities would be minimal. No entity would be immediately impacted by the proposed accumulation

limits, and few would be potentially impacted in the long term. For those that are potentially impacted, it is not possible to state whether scalability would be lessened. The proposed PSC and permit caps would limit the ability of any individual from monopolizing the fishery.

It is not clear how many Handgear A permit holders are groundfish-dependent, but the number is likely very small. There were 28 Handgear A permit holders that took at least one groundfish trip during fishing year 2013; any of these 28 would be minimally impacted by Amendment 18. There may be a few trips taken during the removed March 1-20 closure block. However, groundfish trips taken by Handgear A permit holders have generally been more profitable during the warmer months in recent years. The management measures proposed in this rule would provide greater operational flexibility to Handgear A vessels, therefore benefiting small businesses.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 13, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, add a definition for “*Ownership interest*” in *alphabetical order* to read as follows:

* * * * *

Ownership interest, in the NE multispecies fishery, includes, but is not limited to holding share(s) or stock in any corporation, any partnership interest, or membership in a limited liability company, or personal ownership, in whole or in part, of a vessel issued a limited access NE multispecies permit or confirmation of permit history (CPH), including any ownership interest in any entity or its subsidiaries or partners, no matter how far removed.

* * * * *

3. In § 648.4, add paragraph (a)(1)(i)(N) and revise paragraph (c)(2)(i) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(N) *Accumulation Limits. (1) 5-percent Permit/CPH Restriction.* Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel after April 7, 2011, if the issuance results in the person

having an ownership interest in excess of 5 percent of all limited access NE multispecies permits and CPH that are issued as of the date the permit/CPH application is received by the NMFS.

(2) *PSC Limit.* Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel after April 7, 2011, that results in that person's average potential sector contribution (PSC) exceeding a share of 15.5 for all the allocated stocks in aggregate, except as provided in paragraph (a)(1)(i)(N)(4) of this section.

(3) *Grandfather Provision.* Any person initially issued a limited access NE multispecies permit or CPH prior to April 7, 2011, is eligible to renew such permits(s) and/or CPH, regardless of whether the renewal of the permits or CPH results in the person exceeding the 5-percent ownership restriction or an average PSC share of 15.5 for all the allocated stocks in aggregate. Any additional permitted vessels that a person acquires after April 7, 2011, are subject to the accumulation limits specified within this section.

(4) Any person can be issued one limited access NE multispecies permit or CPH that results in that person's total PSC exceeding the PSC limit as described in this section. That person must identify to NMFS on or before March 31 of each year, vessel permits or CPH that will be rendered unusable the upcoming fishing year so that the person's total PSC for the upcoming fishing year is an amount equal to or below the PSC limit. Beginning on May 1, the permits or CPH rendered unusable may not be fished, leased, or enrolled in a sector by that person for the remainder of the fishing year. A permit rendered unusable may be transferred.

* * * * *

(c) * * *

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all persons holding any ownership interest in a NE multispecies permit or CPH or shareholders owning 25 percent or more of the corporation's shares for other fishery permits; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

* * * * *

4. In § 648.14,
 - a. Add paragraphs (k)(2)(v) and (vi);
 - b. Revise paragraph (k)(9)(i); and
 - c. Add paragraph (k)(9)(ii)(N) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(2) * * *

(v) Fish for, possess, land fish, enroll in a sector, or lease a permit or confirmation of permit history (CPH) as a lessor or lessee, with a permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

(vi) Acquire a limited access NE multispecies permit that would result in a permit holder exceeding any of the ownership accumulation limits specified in § 648.4(a)(1)(i)(N), unless authorized under § 648.4(a)(1)(i)(N).

* * * * *

(9) * * *

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iii).

* * * * *

(ii) * * *

(N) Act as a lessor or lessee of NE multispecies DAS to or from a limited access permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

* * * * *

5. In § 648.82, revise paragraphs (b)(6) and (g) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(b) * * *

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies;

(ii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks; and

(iii) *Declaration*. For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating an intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of 7 consecutive days from the effective date of the letter of authorization. For any such vessel that is required, or

elects, to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare an intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel category permit specified in paragraph (b)(5) of this section, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a sector must declare that the vessel will not fish with gear capable of catching NE multispecies (i.e., gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period from May 12 through May 31.

* * * * *

6. In § 648.87, revise paragraph (c)(2)(i) introductory text to read as follows:

§ 648.87 Sector allocation.

* * * * *

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific times and areas within the NE multispecies year-round closure areas; permitting restrictions (*e.g.*, vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (*e.g.*, roller gear restrictions, etc.); reporting requirements; and AMs specified in § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified in § 648.82, the SAP-specific reporting requirements specified in § 648.85, VMS requirements for Handgear A category permitted vessels as specified in § 648.10, and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined in § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined in § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with GOM Cod Protection Closures I through

III, as defined in § 648.81(f)(4). This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

7. In § 648.90, revise paragraphs (a)(2)(i) through (iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) *Biennial review.* (i) At a minimum, the NE multispecies PDT shall meet on or before September 30 every other year to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information. The PDT may also review the performance of different user groups or fleet sectors.

(ii) Based on this review, the PDT shall recommend ACLs for the upcoming fishing year(s), as described in paragraph (a)(4) of this section, and develop options for consideration by the Council, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, which may include a preferred option. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs,

which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; designating habitat areas of particular concern within EFH; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs. The PDT must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives.

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; accumulation limits due to a permit buyout or buyback; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (e.g., Gulf of Maine cod)), area management boundaries, and adoption of area-specific management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation,

an optional sub-ACL specific to Handgear A permitted vessels, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other measures currently included in the FMP.

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