



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 201222-0352]

RIN 0648-BK16

Fisheries of the Northeastern United States; Increase in Sector Carryover of 2019 Annual Catch Entitlements and Carryover of Unused Leased-in Days-at-Sea by Common Pool Vessels

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

ACTION: Temporary rule; emergency action.

SUMMARY: This temporary rule implements emergency measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to revise portions of the fishing year 2019 carryover provisions in the Northeast Multispecies Fishery Management Plan into fishing year 2020. This action is necessary to address an emergency presenting conservation and management plans to the fishery. This action is intended to mitigate economic harm to the Northeast multispecies fishery participants by providing the opportunity to use sector Annual Catch Entitlement and unused leased-in Days-at-Sea that would have otherwise may have gone unused.

DATES: This action is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*], through June 29, 2021. Comments must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: For this action, NMFS developed a Supplemental Impact Report (SIR) for the Environmental Assessment (EA) for Framework Adjustment 59 to the Northeast

Multispecies Fishery Management Plan (FMP) that describes the measures in this temporary rule. Copies of the SIR and the Regulatory Impact Review of this rulemaking are available on the internet at <https://www.fisheries.noaa.gov/region/new-england-mid-atlantic>.

You may submit comments on this document, identified by NOAA-NMFS-2020-0162, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.
 1. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0162
 2. Click the “Comment Now!” icon, complete the required fields, and
 3. Enter or attach your comments.

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 sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: 978-281-9232; e-mail: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

At the end of fishing year 2019, the Northeast Multispecies fishery experienced significant unexpected economic harm from the effects of state health and travel

restrictions due to COVID-19, in combination with disruptions to fishery markets, which resulted in reduced prices for groundfish and a limitation of fishing opportunity. Because these impacts occurred at the end of the fishing year, this loss of fishing opportunity prevented or limited industry participants from capitalizing on investments in quota and Days-at-Sea (DAS) prior to the start of the new fishing year on May 1, 2020.

On July 2, 2020, the New England Fishery Management Council sent NMFS a letter requesting an emergency action to mitigate these significant adverse economic impacts to the groundfish fishery. The Council recommended that through an emergency action, NMFS should:

- Allow sectors to carry over more than 10 percent of their unused fishing year 2019 Annual Catch Entitlement (ACE) into fishing year 2020 for Gulf of Maine (GOM) haddock, Georges Bank (GB) haddock, American plaice, and witch flounder;
- Allow common pool vessels to carryover unused leased-in DAS from fishing year 2019 to fishing year 2020;
- Allow *de minimis* carryover of fishing year 2019 ACE to be more than one percent of the fishing year 2020 sector sub-ACL for all stocks with carryover; and
- Reopen the post-year sector ACE trading window for fishing year 2019.

After considering the Council's request, NMFS is implementing some, but not all, of the requested emergency action provisions. For the reasons outlined below as justification for an emergency action, this action increases maximum carryover of fishing year 2019 sector ACE for GOM haddock, GB haddock, and American plaice and allows for unused leased-in DAS to be carried over from fishing year 2019 into fishing year 2020 by common pool vessels. This action does not increase maximum carryover of fishing year 2019 sector ACE for witch flounder, increase *de minimis* carryover of fishing

year 2019 ACE, or reopen the post-year sector ACE trading window for fishing year 2019.

ACE Carryover

Carryover regulations at 50 CFR 648.87(b)(1)(i)(C) allow each groundfish sector to carry over an amount of unused ACE equal to 10 percent of the sector's original ACE for each stock (except for GB yellowtail flounder) that is unused at the end of the fishing year into the following fishing year. However, the total unused sector ACE being carried over, plus the overall ACL, cannot exceed the ABC for the following year. If this were to occur, sector carryover provisions require us to adjust the maximum ACE carryover down from 10 percent to an amount that prevents total potential catch from exceeding the ABC. The final adjustment to the maximum carryover possible for each sector is based on final fishing year catch for the sectors and each sector's total unused allocation; and is proportional to the cumulative Percent Sector Contributions of permits participating in the sector.

This action revises the ACE carryover regulations to increase the maximum amount of ACE for GOM haddock, GB haddock, and American plaice that may be carried over by groundfish sectors from fishing year 2019 into fishing year 2020. The maximum amount of unused 2019 sector ACE for these stocks carried over into fishing year 2020 will not allow catch to exceed the 2020 ABC for each stock (*i.e.* the 2020 ABC will be equal to the overall ACL plus the maximum carryover number). The revised carryover cap is a percentage of each sector's original ACE for each stock (Table 1).

Table 1. Maximum Sector ACE Carryover from 2019 to 2020

Stock	Total Carryover Available (Percent of Initial 2019 ACE)
GB haddock	12.6
GOM haddock	13.7
American Plaice	11.3

This action does not make any changes to the sector ACE carryover provisions for witch flounder. Witch flounder is overfished, in a rebuilding plan, and has an unknown overfishing status and Overfishing Limit (OFL). The July 2020 National Standard 1 Technical Guidance for Designing, Evaluating, and Implementing Carry-over and Phase-in Provisions does not recommend applying carryover or phase-in provisions for stocks that have an unspecified OFL. Though carryover of ACE for witch flounder is already permitted by the sector implementing regulations, increasing the maximum amount of carryover for the stock above 10 percent would increase risk of overfishing.

Carryover of Unused Leased-in DAS by Common Pool Vessels

DAS carryover regulations at § 648.82(a)(1) allow limited access vessels that have unused, unleased DAS available at the end of a fishing year to carry over a maximum of 10 DAS into the following fishing year. These measures are intended to promote safety by reducing risk and increasing flexibility while not compromising the conservation impact of the DAS program. The regulations at § 648.82(a)(1) and (k)(4)(iii) do not allow us to adjust the maximum DAS carryover, nor do they authorize us to allow the carryover of unused leased-in DAS.

This action revises the DAS carryover regulations to allow common pool vessels with unused leased-in DAS at the end of fishing year 2019 to carry those DAS into fishing year 2020, even if doing so would result in a vessel carrying over more than 10 DAS into the fishing year. This action does not revise the regulations to allow any additional carryover of unused allocated DAS.

De minimis Carryover

Regulations at § 648.87(b)(1)(i)(C)(2) set *de minimis* carryover at one percent of the overall sector sub-ACL in the fishing year in which carryover would be harvested. If the overall ACL for a particular stock is exceeded, the allowed carryover, minus the *de*

minimis amount, would be counted against the sector's ACE for the purposes of determining an overage subject to a sector accountability measure that requires payback.

This action does not increase *de minimis* carryover for sectors above one percent as requested by the Council because it would not address a recent, unforeseen event or recently discovered circumstance as required by the criteria for an emergency action published in the **Federal Register** on August 21, 1997, 62 FR 44421, as well as subsequent guidance. *De minimis* carryover is only triggered by an overage of the overall ACL for a stock. No such overage has occurred in fishing year 2020 to trigger *de minimis* carryover, and we do not currently anticipate any overages. This action is putting in place measures to address the opposite problem arising from travel and health restrictions, the fishing industry's inability to fully utilize available ACE. Further, there are no immediate benefits from changing the *de minimis* carryover provision at this time that would outweigh the value of advance notice, public comment, and deliberative consideration of the impacts.

Post-year Sector ACE Trading Window

In the beginning of each fishing year, there is a 2-week period for sectors to address any overages from the prior fishing year by transferring ACE to or from other sectors. This 2-week period generally takes place in early July, once final catch information is available to each sector. Sectors are only allowed to transfer ACE to balance an overage, or transfer out quota to assist another sector in balancing its overage. The Council requested that we consider reopening the post-year sector ACE trading window in order to allow sectors to optimize individual sector carryover amounts for fishing year 2020.

This action does not reopen the post-year sector ACE trading window for fishing year 2019. Reopening the post-year trading window would complicate and delay implementation of this emergency action, without significant benefit to sectors as a

whole. It would not result in an increase in the overall amount of carryover that could occur, and any ACE carried over from fishing year 2019 to fishing year 2020 can already be traded without limitation in fishing year 2020, without requiring a reopening of the fishing year 2019 trading window.

Reopening the 2019 post-fishing year trading window could potentially result in increases in individual sector carryover amounts, but this is not guaranteed given that sectors are not obligated to trade. It would not increase the overall amount of carryover available to the sectors because we have already calculated the maximum amount of overall carryover by stock that could be allowed for fishing year 2020 without exceeding a stock's ABC. Further, we have already calculated an increased percentage per sector that may be carried over from fishing year 2019 to fishing year 2020.

Justification for Emergency Action

NMFS' policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria for emergency actions: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that extending portions of the carryover provisions in the Northeast Multispecies Fishery Management Plan meets the criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstances. Towards the end of the 2019 fishing year (March 2020), state health mandates and travel restrictions were implemented in response to the COVID-19 pandemic. These restrictions and mandates contributed to market and supply chain disruptions while also making it difficult for vessels to make fishing trips. This reduced or prevented fishing opportunities. Further, market prices dropped substantially. These impacts were unforeseen during the development of Framework Adjustment 59 that included measures for the 2020 fishing year that began on May 1, 2020.

The emergency presents serious conservation or management problems in the fishery. As described above, unforeseen health mandates and travel restrictions during the last months of fishing year 2019 disrupted vessel business plans, fishing practices and markets. This caused revenues for the groundfish fishery to decline due to abnormally low ex-vessel prices that fell below production costs and lost investment in quota that could not be landed by the end of the 2019 fishing year. Health mandates and travel restrictions additionally prevented or limited common pool vessels from using leased-in DAS, which resulted in lost revenue when the vessels were unable to carry them over into fishing year 2020. Increasing ACE carryover of certain stocks into fishing year 2020 and allowing common pool vessels to carryover unused leased-in DAS will help mitigate negative impacts to the industry, prevent additional economic loss to industry participants, shoreside businesses, and fishing communities, and help offset lost fishing opportunities at the end of fishing year 2019.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. The Council has the authority to develop a management action to increase the maximum of 2019 carryover and allow carryover of

unused leased-in DAS. However, an emergency action can be developed and implemented by NMFS more swiftly than a Council action through the public meeting and rulemaking procedures. If the normal Council Framework Adjustment and regulatory process is used to revise the carryover provisions, it would take not be possible for the revised provisions to be implemented prior to the end of the fishing year.

Implementing these measures well in advance of the end of this fishing year will allow vessels more operational flexibility. Timely availability of additional ACE carryover or DAS should provide fishermen with operational flexibility to increase fishing effort within seasonal demands and variations, or to lease out available ACE or DAS to others who may effectively use it. Fully capitalizing on this carryover requires time to plan and adapt to current market and seasonal conditions. Any delay of this action reduces the length of time during which industry could choose to use additional ACE or DAS that have been carried over from fishing year 2019 into fishing year 2020. If the action is not implemented in a timely way well before the end of fishing year 2020, industry participants would be likely unable or less able to effectively use the increased carryover.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator Fisheries, NOAA, finds that it would be impracticable and contrary to the public interest to provide for prior notice and an opportunity for public comment. This action is intended to mitigate the impact of lost investment in quota and DAS due to health mandates and major disruptions to markets at

the end of fishing year 2019. The action increases maximum ACE carryover for some stocks and allows carryover of unused leased-in DAS by the common pool, allowing industry to use the carried over quota and DAS in fishing year 2020 at a time of their choosing. Any delay of this action reduces the length of time during which industry could benefit from increased ACE or DAS that have been carried over. If the action is not implemented in a timely way well before the end of fishing year 2020, industry participants would be unable to use the increased carryover. Given this, a delay in the implementation of this action could result in additional negative impacts to industry participants and fishing communities. As a result, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be impracticable and contrary to the public interest. Data supporting the additional ACE carryover were available only recently in October. This action could not be implemented prior to the availability of that data, even though the Council request for an emergency action was received in July.

Similarly, the need to implement these measures in a timely manner for the above reasons constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to make the rule effective immediately upon publication in the **Federal Register**.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

This rule is an Executive Order 13771 deregulatory action.

This temporary rule for an emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This temporary rule for an emergency action contains no information collection requirements under the Paperwork Reduction Act of 1995.

In the interest of receiving public input on this action, the SIR analyzing this action will be made available to the public and this temporary final rule solicits public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 22, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.82, suspend paragraphs (a)(1) and (2) and (k)(4)(iii) and add paragraphs (a)(3) and (4) and (k)(4)(xii) to read as follows:

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

* * * * *

(a) * * *

(3) *End-of-year carryover.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over, except as specified in paragraph (a)(3)(i) of this section. Vessels that have been sanctioned through enforcement proceedings will be

credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (*e.g.*, for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(i) Leased DAS that remain unused at the end of fishing year 2019 may be carried over to fishing year 2020 by the Lessee vessel, provided that the vessel fished in the common pool in fishing year 2019 and continues to do so in fishing year 2020. Carried over leased DAS from fishing year 2019 do not count towards the maximum number of DAS that can be carried over to fishing year 2020, as described in paragraph (a)(3) of this section.

(ii) [Reserved]

(4) *Vessels carrying passengers for hire.* Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program and fish under a DAS, fish on a sector trip, or fish under the provisions of a limited access Small Vessel Category or Handgear A permits pursuant to paragraphs (b)(5) and (6) of this section, respectively, if such vessel carries passengers for hire for any portion of a fishing trip.

* * * * *

(k) * * *

(4) * * *

(xii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel, except as specified in paragraph (a)(3)(i) of this section.

* * * * *

3. In § 648.87, add paragraph (b)(1)(i)(C)(I)(iii) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) * * *

(I) * * *

(iii) *Fishing year 2019 carryover.* A sector that has over 10 percent of its original ACE for GB haddock, GOM haddock, or American plaice unused at the end of fishing year 2019 may carry over more than 10 percent of that ACE to fishing year 2020. The total unused fishing year 2019 ACE for a particular stock that is carried over to fishing year 2020, plus the overall ACL for fishing year 2020, may not exceed the ABC for that stock for fishing year 2020. The total maximum carryover of fishing year 2019 ACE for GB haddock, GOM haddock, and American plaice for each sector is specified in Table 1 to this paragraph (b)(1)(i)(C)(I)(iii).

Table 1 to Paragraph (b)(1)(i)(C)(I)(iii)—Maximum Sector ACE Carryover from 2019 to 2020

Stock	Total Maximum Carryover (percent of initial 2019 ACE)
GB haddock	12.6
GOM haddock	13.7
American Plaice	11.3

* * * * *

[FR Doc. 2020-28898 Filed: 12/30/2020 8:45 am; Publication Date: 12/31/2020]