

will allow all interested parties an additional opportunity to comment on our proposal. The initial public comment period for the proposed rule ended on January 20, 2009. If you submitted comments previously, or in the interim, then you do not need to resubmit them because we have already incorporated them into the public record and we will fully consider them in preparation of our final determination.

DATES: We will accept comments received or postmarked on or before March 12, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AW29, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, published a proposed rule in the **Federal Register** on December 18, 2008 (73 FR 76994), to propose migratory bird subsistence harvest regulations in Alaska for the 2009 season. The proposed regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2009, and expire on August 31, 2009.

We are reopening the public comment period on our proposed rule for an additional 30 days (see **DATES** section) in response to written requests for additional time to comment that we received during the initial public comment period.

Public Comments Solicited

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of the Alaska Migratory Bird Co-management Council, 1011 E. Tudor Rd., Anchorage, AK 99503 (877) 229-2344.

Author(s)

The primary authors of this package are the staff members of the Office of the Alaska Migratory Bird Co-Management Council.

Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

Dated: January 30, 2009.

Jane Lyder,

Assistant Deputy Secretary.

[FR Doc. E9-2793 Filed 2-9-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090122047-9050-01]

RIN 0648-XM11

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2009 Georges Bank Cod Hook Sector Operations Plan and Agreement, and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule provides interested parties an opportunity to comment on the proposed sector operations plan and supplemental environmental assessment (EA) prior to final approval or disapproval of the sector operations plan and allocation of a Georges Bank (GB) cod total allowable catch (TAC) to the GB Cod Hook Sector (Hook Sector) for fishing year (FY) 2009.

Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) implemented the Hook Sector and authorized annual allocation of up to 20 percent of the GB cod TAC to the Hook Sector. Pursuant to that authorization, a representative of the Hook Sector has submitted an operations plan and sector agreement (contract), and requested an allocation of GB cod to the Hook Sector for FY 2009.

DATES: Written comments must be received on or before February 25, 2009.

ADDRESSES: You may submit comments, identified by 0648-XM11, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>,
- *Fax:* (978) 281-9135, Attn: Mark Grant,
- *Mail:* 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: All comments received are part of the public record and will

generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Sector Agreement and the EA are available from the NE Regional Office at the mailing address specified above.

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: NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that the 2009 Hook Sector Operations Plan and Agreement, which contains the sector contract and operations plan, is consistent with the goals of the FMP, as currently implemented, and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under § 648.87. The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for specific groundfish species (or days-at-sea (DAS)), implemented restrictions that apply to all sectors, implemented the Hook Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Hook Sector.

The principal regulations applying to the Hook Sector specify that: (1) All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the Hook Sector; (2) membership in the Hook Sector is voluntary, but each member is required to remain in the Hook Sector for the entire fishing year and cannot fish in the NE multispecies DAS program outside the sector during the fishing year, unless certain conditions are met; (3) vessels fishing in the Hook Sector are confined to fishing in the Sector Area, which is that portion of the GB cod stock area north of 39° 00' N. lat. and east of 71° 40' W. long; and (4) participating vessels are required to comply with all pertinent Federal fishing regulations,

unless specifically exempted by a Letter of Authorization issued by the Regional Administrator, and the provisions of an approved operations plan.

While Amendment 13 implemented the Hook Sector, in order for GB cod to be allocated to the Hook Sector and for the Hook Sector to be authorized to fish, the Hook Sector must submit an operations plan and sector contract to the Regional Administrator annually for approval. The operations plan and sector contract must contain certain elements, including a contract signed by all Hook Sector participants and a plan containing the management rules that the Hook Sector participants agree to abide by in order to avoid exceeding the allocated TAC. An additional analysis of the impacts of the Hook Sector's proposed operations may also be required in order to comply with the National Environmental Policy Act. Further, the public must be provided an opportunity to comment on the proposed operations plan and sector contract. The regulations require that, upon completion of the public comment period, the Regional Administrator will make a determination regarding approval of the sector contract and operations plan. If approved by the Regional Administrator, participating vessels would be authorized to fish under the terms of the operations plan and sector contract.

The Hook Sector was authorized to fish in FYs 2004, 2005, 2006, 2007, and 2008; and, based upon the GB cod landings history of its members, was allocated 12.60, 11.70, 10.03, 8.02, and 6.44 percent, respectively, of the annual GB cod TAC.

On September 30, 2008, the Hook Sector submitted its FY 2009 operations plan and sector agreement to NMFS. A draft environmental assessment (EA) was submitted on November 14, 2008. The proposed 2009 Hook Sector agreement and operations Plan contains the same elements and proposed exemptions as the 2008 Hook Sector agreement and operations plan. The Hook Sector would be overseen by a Board of Directors and a Sector Manager. The Hook Sector Agreement specifies, in accordance with Amendment 13, that the Hook Sector's GB cod TAC would be based upon the number of Hook Sector members and their historic landings of GB cod. The GB cod TAC is a "hard" TAC, meaning that, once the TAC is reached, Hook Sector vessels could not fish under a DAS, possess or land GB cod or other regulated species managed under the FMP (regulated species), or use gear capable of catching groundfish (unless fishing under charter/party or

recreational regulations). Should the hard TAC be exceeded, the Hook Sector's allocation would be reduced by the amount of the overharvest in the following year.

The 2009 operations plan proposes exemptions from the following restrictions of the FMP: The GB cod trip limit; the GB Seasonal Closure Area; the 3,600-hook limit for longline gear in the GB Regulated Mesh Area (RMA); the 2,000-hook limit for longline gear in the Gulf of Maine (GOM) and Southern New England (SNE) RMAs; the Western U.S./Canada Area 72-hr observer notification requirement; the DAS Leasing Program vessel size restrictions; and differential DAS counting implemented by Framework Adjustment (FW) 42 and any temporary rules. Justification for the proposed exemptions and analysis of the potential impacts of the operations plan are contained in the EA. A Regulatory Impact Review/Initial Regulatory Flexibility Analysis (IRFA) is summarized in the Classification section of this proposed rule.

Twenty-four prospective Hook Sector members signed the 2009 Hook Sector Contract. The GB cod TAC calculation is based upon the historic GB cod landings of the participating vessels, using all gear. The allocation percentage is calculated by dividing the sum of total landings of GB cod by Hook Sector members for FY 1996 through 2001 by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period. Based upon the 24 prospective members (and their associated GB cod landings history), the Hook Sector's share of the overall U.S. portion of the GB cod TAC would be 8.09 percent, or 625,570 lb (284 mt) (8.09 percent times the fishery-wide GB cod target TAC of 7,729,408 lb (3,506 mt)). If prospective members of the Hook Sector are deemed ineligible to, or decide not to, participate in the Hook Sector after the publication of this proposed rule and prior to a final decision by the Regional Administrator, it is possible that the total number of participants in the Hook Sector and the TAC for the Hook Sector may be reduced from the numbers above, but no additional members may join the Hook Sector for FY 2009.

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

hr of offloading. Dealers purchasing fish from participating vessels would be required to provide the Hook Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Hook Sector Manager would transmit to NMFS aggregate catch data from dealer slips and aggregate discard data from the VTRs. After 90 percent of the Hook Sector's allocation has been harvested, the Hook Sector Manager would be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Hook Sector's GB cod TAC would be allocated to each month of the fishing year. GB cod quota that is not landed during a given month would be rolled over into the following month. If landings exceed the monthly quota, the excess would be deducted from subsequent monthly quotas to ensure the Hook Sector does not exceed its GB cod TAC. The harvest rules would 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.

Participating vessels would not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, or handgear. Participating Hook Sector vessels could use an unlimited number of hooks in the Sector Area and would be exempt from the GB Seasonal Closure Area.

Participating vessels would be required to call the Sector Manager prior to leaving port on a fishing trip. All legal-sized cod caught would be retained, landed and counted against the Hook Sector's GB cod TAC. For each fishing trip, participating vessels would be 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 would have a 1,000-lb (454-kg) trip limit for white hake (consistent with current regulations); a 2,000-lb (907-kg) trip limit for GB winter flounder (more restrictive than current regulations); and a 100-lb (45-kg) trip limit for all yellowtail flounder (more restrictive than current regulations). All of these exemptions were approved for FY 2006 and FY 2007.

In FY 2006 and FY 2007 the exemption from differential DAS counting was approved because the combination of a hard TAC for GB cod and specific trip limits for GB winter flounder, yellowtail flounder, and white hake was determined to be conservation equivalent to differential DAS counting in the existing GOM and SNE

Differential DAS Areas for meeting the mortality reduction and stock rebuilding goals of both the 2006 Secretarial Action and FW 42. NMFS is concerned about granting this exemption in FY 2009 because of the new differential DAS counting area proposed in the Secretarial Interim Action (74 FR 2959). The proposed Hook Sector operations plan and agreement, and supporting EA, were drafted and submitted prior to the publication of the proposed Secretarial Interim Action and therefore do not contain a justification for, or analysis of the impacts of, exempting the Hook Sector from the proposed differential DAS area. Therefore, NMFS may partially approve the Hook Sector operations plan and agreement, disapproving the differential DAS exemption requested, unless further information demonstrates that the operations plan would be the conservation equivalent of the differential DAS counting. Accordingly, NMFS is particularly interested in receiving public comment on the Hook Sector's request for an exemption from differential DAS counting as proposed in the Secretarial Interim Action.

The EA prepared for the Hook Sector's operations concludes that the biological impacts of the Hook Sector will be positive because the hard TAC and the use of DAS would provide two means of restricting both the landings and effort of the Hook Sector. Implementation may have a positive impact on essential fish habitat and bycatch, if the Hook Sector's quota is caught prior to the end of the fishing year, by reducing the amount of time that gear would be in the water. The analysis of economic impacts of the Hook Sector concludes that the members would realize higher economic returns if the Hook Sector is implemented. The EA asserts that fishing in accordance with the Sector Contract rules enables more efficient harvesting of GB cod with hook gear than would be possible if the participating vessels were fishing in accordance with the common pool (non-sector) rules. The social benefits of the Hook Sector would accrue to sector members, as well as the Chatham, MA, and Harwichport, MA, communities, which are more dependent upon groundfish revenues as a percentage of fishery-derived landings than many other communities. The EA concludes that the self-governing nature of the Hook Sector and the member's opportunity to develop rules governing the way in which they harvest their GB cod TAC enables stewardship of the cod resource by the Hook Sector. The

cumulative impacts of the Hook Sector are expected to be positive due to a positive biological impact, potential positive impact on habitat, and a positive social and economic impact. In contrast, the cumulative impact of the no action alternative is estimated to be neutral, with negative social and economic impacts.

Should the Regional Administrator approve the Sector Contract as proposed, a Letter of Authorization would be issued to each member of the Hook Sector exempting them, conditional upon their compliance with the Sector Contract, from the GB cod possession restrictions, the 3,600-hook limit in the GB RMA, the 2,000-hook limit in the GOM and SNE RMAs, the GB Seasonal Closure Area, the Western U.S./Canada Area 72-hr observer notification requirement, the DAS Leasing Program vessel size restrictions, and differential DAS counting, as specified in §§ 658.86(b)(2), 648.80(a)(4)(v), 648.80(a)(3)(v), 648.80(b)(2)(v), 648.81(g), 648.85(a)(3)(ii)(C), 648.82(k)(4)(ix), 648.82 (e)(2), respectively.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP as currently implemented, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment, particularly in light of whether the Secretarial Interim Action is implemented.

This action is exempt from review under Executive Order (E.O.) 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA consists of this section, the preamble, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in sections 1.0, 2.0, and 3.0 of the EA prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Small Business Administration size standard for small commercial fishing entities is \$4 million in average annual receipts, and the size standard for small charter/party operators is \$6.5 million in average annual receipts. All permitted and participating vessels in the groundfish fishery, including

prospective Hook 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. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. All permitted and participating vessels in the groundfish fishery, including prospective Hook Sector members, are considered to be small entities because gross sales by any one entity (vessel) do not exceed this threshold. The number of prospective participants in the Hook Sector is 24, substantially less than the total number of active vessels in the groundfish fishery. Only these 24 vessels would be subject to the regulatory exemptions and operational restrictions proposed for the Hook Sector for FY 2009.

Economic Impacts of the Proposed Action

The proposed alternative would allocate a GB cod TAC of 284 mt to the Hook 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 NE multispecies FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Vessels intending to fish in the Hook Sector during FY 2009 may only fish with hook gear. Under the proposed operations plan, members would be exempt from several restrictions of the FMP described in the preamble to this proposed rule and in the EA.

The Hook Sector fishermen and the Chatham, MA, and Harwichport, MA, communities are dependent upon GB cod and other groundfish. The Amendment 13 restrictions that reduced the GB cod trip limit had a disproportionate affect on these fishermen. According to Amendment 13, Chatham's overall community dependence on NE multispecies as a percentage of total fisheries revenues from federally permitted vessels averaged about 71 percent, and it was likely that at least some of the active groundfish vessels in Chatham and Harwichport were even more than 71-percent dependent on the NE multispecies fishery.

Haddock and cod comprised the largest proportion of Hook Sector landings (62.47 percent and 32.46

percent, respectively, in FY 2007). During FY 2007, members of the Hook Sector made 239 trips, landed 155,453 lb (70,512 kg) of cod and 299,126 lb (135,681 kg) of haddock, and generated approximately \$ 290,697, and \$ 523,471 in revenue from those species, respectively (assuming a dockside price of \$ 1.87 and \$ 1.75 per lb [\$4.11 and \$ 3.85 per kg], respectively). The FY 2007 data indicated a 34-percent decline in the number of trips, a 13-percent decline in cod landings, and a 16-percent increase in haddock landings compared to FY 2006. The net effect was a 3.2-percent increase in revenue from cod and haddock and a 55-percent increase in revenue per trip from these species compared to FY 2006. Hook Sector members also landed various other species, which increased their revenue. In general, the operation of the Hook 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 Hook 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, Hook 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 trip limits and limits on the number of hooks fished. Forty-one of the Hook Sector's 239 trips (17 percent) in FY 2007 landed more than the daily GB cod trip limit (1,000 lb/day; 454 kg/day) in place for the common pool vessels (non-sector vessels). This resulted in an additional 77,429 lb (35,121 kg) (49.8 percent of the Hook Sector's FY 2007 cod landings) being landed, rather than discarded. For some vessel owners in the Hook Sector, participation in the Hook Sector enables their businesses to remain economically viable.

No other alternatives in addition to the No Action and the proposed action were considered. 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 objective of sector management, as originally developed and implemented under Amendment 13 to the FMP, is to

provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. The Hook Sector developed the proposed operations plan after consultation with prospective members. Prospective members then signed a binding sector contract to abide by the measures specified in the proposed operations plan. As described above, the proposed operations plan minimizes economic impacts to participating vessels by allowing them to operate more efficiently. Accordingly, the proposed operations plan reflects the management measures preferred by vessels participating in the Hook Sector during FY 2009 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 as part of this proposed action.

Economic Impacts of Alternative to the Proposed Action

Under the No Action alternative, the Hook Sector operations plan is disapproved and no modified operations plan is submitted. While the Hook Sector would remain implemented under the NE Multispecies FMP under the No Action Alternative, the Hook Sector would not be authorized to fish, would not be allocated a GB cod TAC, and all vessels would remain in the Common Pool and fish under the regulations implemented in Amendment 13 and subsequent FW to the NE Multispecies FMP.

Because cod usually represents a high proportion of total fishing income for Cape Cod-based hook gear vessels, revenues for such vessel owners are very sensitive to regulations that impact how and when they can fish for cod, such as trip limits and restrictions on the number of hooks fished. Under the common pool rules implemented by FW 42 (e.g., differential DAS counting) and Amendment 13 (restrictive daily trip limits for cod), it is likely that Hook Sector vessels would experience revenue losses in comparison to proposed action. It is more likely under the No Action alternative that disruption to the Chatham/Harwichport communities would occur.

If the proposed Hook Sector operations plan is approved without the exemption from differential DAS counting it will have a lesser benefit to the members, but will not result in the same level of revenue losses as the No Action alternative.

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

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

Regulations under the Magnuson-Stevens Fishery Conservation and

Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

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

Dated: February 4, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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