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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–XD775

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Fishing Year 2014 Sector Exemption

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

ACTION: Final grant of regulatory exemptions.

SUMMARY: The Regional Administrator, Greater Atlantic Region, NMFS, has approved a request for exemptions from two recently implemented Gulf of Maine cod interim management measures.

DATES: The effective dates of these regulatory exemptions are from March 4, 2015 through April 30, 2015. The regulatory exemptions were applicable on March 3, 2015.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fisheries Policy Analyst, 978–281–9182.

SUPPLEMENTARY INFORMATION:

On March 3, 2015, we granted several groundfish sectors their request for exemptions from two management measures implemented in a temporary rule intended to enhance protections for Gulf of Maine (GOM) cod (79 FR 67362; November 13, 2014). The GOM cod interim rule implemented several management restrictions including: (1) A GOM cod trip limit of 200 lb (90.7 kg) for groundfish sector vessels and; (2) a restriction limiting commercial limited access groundfish vessels to fishing only in the GOM broad stock area (BSA) for the duration of the declared trip. The interim rule also established a series of time and area closures to protect GOM cod but we are not relieving or granting any exemptions from those closures.

On February 9, 2015, we received an exemption request from several sectors. These sectors worked together to assemble 30 mt of GOM cod annual catch entitlement (ACE), which was traded to Northeast Fishery Sector IV, a lease-only sector with no active fishing effort. That sector proposed to withhold and render unusable that 30 mt of GOM cod ACE, including preventing its use for potential carryover to the next fishing year, if sectors are granted regulatory exemptions from the GOM cod trip limit and GOM BSA restriction.

As explained in our February 23, 2015, notice (80 FR 9438), the sectors proposed to implement a management measure we did not include in our November 13, 2014, GOM cod interim rule: A reduction to the ACE available to those sectors that have opted to fish under these regulatory exemptions for the remainder of the fishing year. Because the fishing industry will continue to fish through the end of the fishing year, and will continue to encounter GOM cod, the sector exemptions would establish a firm 30-mt reduction in the limit on total cod catch that is expected to be greater than the mortality reduction that would otherwise be achieved through the interim trip-limit measure. In addition to an actual reduction in the total potential cod catch, these sector exemptions should reduce regulatory discards, reduce management uncertainty affiliated with catch and mortality, and improve catch yield, while providing greater operational flexibility. For these reasons, we have determined that these exemptions are consistent with the goals and objectives of the interim measures and the fishery management plan.

Also in our February 23, 2015, notice, we proposed a daily catch reporting requirement in place of the BSA exemption. This requirement was intended to address our concerns about the accurate apportionment of catch between the BSAs and the incentive to misreport catch on unobserved trips to avoid potentially constraining catch limits. We noted these same concerns in our 2014 interim action for GOM cod. Additionally, this issue was discussed during the development of Framework Adjustment 53 to the Northeast Multispecies Fishery Management Plan, and is noted in various analyses prepared by the Council in support of Framework 53. We are continuing to consider the possibility of additional reporting requirements (*e.g.,* daily Vessel Monitoring System catch reports) for commercial groundfish vessels that could improve attribution of catch and help reduce the incentive to misreport. We are not specifically requiring these additional requirements in this action, however, to provide time for further deliberation. We intend to further consult with the Council on this issue to explore whether additional reporting requirements implemented through a future rule-making could help address the noted concerns.

We received a total of 24 comments in response to our February 23 notice soliciting public comment on the sector exemption request: 16 comments in support of the exemption requests; 3 partially supporting the requests; 4 opposed to the requests; and 1 comment that was not applicable to the exemptions. Comments were submitted by 17 members of the fishing industry, Maine Division of Marine Resources (ME DMR), Massachusetts Division of Marine Fisheries (MA DMF), and four environmental non-governmental organizations. Most of the commenters simply favored or opposed granting the exemption requests and did not otherwise substantively address the details of the exemptions. ME DMR supports the exemptions and the additional flexibility they would provide to fishermen, but expressed some concern about GOM cod catch reporting. In addition to supporting our granting the exemption request, MA DMF submitted lengthy comments, including several questions and requests for clarifications, which we respond to further below.

Several commenters opposed removing the GOM BSA restriction due to concern that vessels could misreport GOM cod catch as Georges Bank cod. While we understand this concern, this is a larger issue that should be addressed through a more long-term solution developed by the New England Fishery Management Council. We intend to further consult with the Council on this issue.

Some commenters claimed that the exemptions provided benefits to larger vessels that could fish offshore but did relatively little to help inshore fishing vessels. Most of the GOM cod stock is located inshore in the western Gulf of Maine. Therefore, in order to protect the most concentrated stocks of GOM cod, we need to reduce fishing efforts inshore. This is why the majority of the seasonal interim closure areas are inshore and the inshore/dayboat fleet is affected the most by the GOM cod seasonal interim closure areas. We considered these exemption requests as they were presented to us. Our analyses showed a more certain benefit to the fishery overall than the likely potential benefit from maintaining trip limits or the single GOM BSA restriction. Based on this, we have determined that these exemptions fairly and reasonably promote overall conservation consistent with the goals and objectives of the groundfish fishery management plan.

The Conservation Law Foundation (CLF) and the Center for Biological Diversity (CBD) opposed the exemption requests because they do not adequately

address the overfishing of GOM cod or efforts to rebuild the overfished stocks. We evaluated the impacts of these exemptions compared to the status quo under the current GOM cod interim measures. The analyses in our supplemental information report indicates that granting these exemptions will likely result in conservation positive biological impacts as well as positive economic impacts relative to not granting the exemptions. We understand that additional measures may need to be developed to protect and rebuild GOM cod over the long term. The comments provided by CLF and CBD that focused on general GOM cod management measures, however, are beyond the scope of these exemption requests and are impracticable to address in this document, especially given the limited time available, as well as the GOM cod interim action. We have concluded that the benefits from approving this exemption outweigh the concerns expressed by those that do not support the exemption request, particularly because these exemptions are effective only from March 4, 2015 through April 30, 2015.

MA DMF requested that we provide a more thorough explanation of why we elected to remove the 200-lb (90.7-kg) trip limit. During the GOM cod interim rule public comment period, several sectors proposed a similar offer to remove the trip limit in favor of an overall ACE reduction; however, we could not develop a means to reduce sector ACE through the interim action in a sufficiently timely manner. Re-allocating a reduced quota amongst all the sectors was too complex and potentially disruptive. For example, reducing the allocation of all permits enrolled in sectors would create complex logistical challenges for sector managers who would then need to reallocate ACE mid-way through the fishing year. We were also unsure how to enforce the sectors' voluntary proposal not to utilize the ACE through the interim action. Also, as explained below, fishing practices changed after the GOM cod interim action was put in place. Taking into account these changes, our comparison of the potential conservation benefits of the trip limits to the firm reduction in the GOM cod ACE weighed in favor of removing the trip limit. Further, the sectors submission of a regulatory exemption request to voluntarily reduce their ACE provided a more feasible and timely process than the interim action process.

MA DMF questioned how we can claim that removing trip limits (and potentially allowing vessels to target cod) reduces regulatory discarding. We expect that removing the 200 lb. trip limit should reduce regulatory discarding because vessels will no longer be required to discard legal sized fish that are caught after the 200-lb limit is attained. With trip limits under the interim rule, any undersized fish and GOM cod caught after 200 lb (90.7 kg) was on board the vessel was legally required to be discarded. Data analyzed after the trip limits were implemented (see Figure 2, pg. 8 in the GOM cod Supplemental Information Report) indicates that groundfish vessels appeared to target GOM cod even with a 200-lb (90.7-kg) trip limit in place. Because vessels are required to discard all cod over the 200-lb. limit, we were concerned with the potential for increased discards that would accompany this increased effort. Removing the trip limit allows vessels to discard only fish that are undersized. We stated in our notice that with trip limits, there was uncertainty in the amount of reduction in cod mortality, in large part due to the uncertainty in the rate of discards, but also in the total amount of catch that sectors might achieve. Removing the trip limits is expected to reduce discards because it allows discarding only of undersized fish and substantially reduce the uncertainty in the rate of discards. The 30-mt reduction in ACE also provides a firm limit on the total amount of catch.

MA DMF expressed concern over our proposal to approve minor sector exemption modifications without additional notice because they felt that we did not adequately define ''minor.'' As explained in the notice, our intent is to modify sector exemptions in this manner only if a modification is deemed essential to facilitate the exemption and has minimal impacts that would not change the scope or impact of the initially approved sector exemption request. We interpret this to mean that any small change that is necessary for the exemption to be implemented properly could be done so without additional notice. We expect such changes to be administrative in nature. For instance, there may be a monitoring or reporting detail that is inadvertently overlooked that could be enacted to improve the effectiveness of the exemption. We believe any such change would not alter the intent, affect, or impacts of the exemption.

Several commenters, including MA DMF, suggested that we should have further considered the additional 30-mt set-aside offered by the sectors in exchange for access to the March GOM cod seasonal interim closure areas. These commenters argue that the inshore fleet would greatly benefit from fishing in the March closure areas. The primary tool in the GOM cod interim rule to reduce GOM cod mortality and protect spawning GOM cod was area closures. We spent considerable time and effort determining the correct seasons and times and received many comments in support of the GOM cod interim seasonal closure areas. Also, the commenters have not proposed any comparable protection measures for spawning cod that would support modifying these area closures. For these reasons, we are unwilling to modify the March closure areas.

MA DMF asked which sectors contributed to the 30-mt set-aside and inquired whether the allocation reductions were commensurate with how much ACE was set aside (or contributed by each sector). Sector ACE trade information is available online at *http://www.greateratlantic.fisheries.noaa.gov/aps/monitoring/nemultispecies.html*. We regard the relative amount of ACE contributed by each sector to be irrelevant to the total reduction in ACE because the sectors requesting the exemptions specifically requested to offer the exemption to every sector, regardless of whether or not it contributed GOM cod ACE to the set-aside. Also, which sector provided the ACE is irrelevant to the certainty of the conservation benefit provided by the ACE reduction this fishing year.

We are not putting in place a 30-day delay in effectiveness for this action because this document grants exemptions that relieve two regulatory restrictions. By recognizing an exemption and eliminating the 200-lb GOM cod trip limit and allowing vessels to fish inside and outside of the GOM on the same trip, this action is excepted from the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). This action will allow fishing vessels enrolled in sectors greater operational flexibility, which should improve efficiency while providing a certain limit on GOM cod mortality. Furthermore, there is good cause under 5 U.S.C. 553(d)(3) to implement these exemptions immediately because a delay in implementation of these measures would reduce the positive economic impacts and potential conservation benefits that are intended by these measures. These exemptions are effective only from March 4, 2015 through April 30, 2015. Any delay in effectiveness would be contrary to the public interest because it would significantly reduce the benefits of these measures to groundfish sector

participants, associated fishing communities, and the GOM cod stock.

These exemptions apply only for the remainder of the 2014 fishing year and are available to all sectors who request them. Sector vessels that wish to fish under these exemptions must have the appropriate Letter of Authorization on board their vessel prior to harvesting more than 200 lb (90.7 kg) of GOM cod or fishing inside and outside of the GOM BSA on the same trip. The following sectors have received revised Letters of Authorization allowing them to fish under these exemptions: Maine Coastal Communities Sector; Northeast Fishery Sectors II, III, VI, VII, VIII, IX, X, XI; and Sustainable Harvest Sector 1.

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

Dated: March 4, 2015.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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