

(quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The Service also considers available scientific evidence of a discrete population segment's significance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We request any additional information, comments, and suggestions from the public, State and Federal agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of the island night lizard, and whether the island night lizard populations constitute distinct population segments.

If you wish to provide information or comments relevant to the 12-month finding or 5-year review, you may submit your information, comments, and materials to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their identity, as allowable by law. If you wish to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

A complete list of all references cited in this finding is available, upon

request, from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

#### Author

The primary author of this document is Sandy Vissman (see **ADDRESSES**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 11, 2006.

**Benito A. Perez,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060808213-6213-01; I.D. 073106C]

RIN 0648-AU56

#### **Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2006 Georges Bank Fixed Gear Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP propose creation of the Georges Bank (GB) Cod Fixed Gear Sector (Fixed Gear Sector). If approved in FW 42/FW 3, the Fixed Gear Sector would be eligible for an annual allocation of up to 20 percent of the annual GB cod total allowable catch (TAC). Therefore, in accordance with the FMP, and pursuant to the anticipated approval of FW 42/FW 3, a representative of the Fixed Gear Sector submitted an Operations Plan, Sector Agreement (Contract), and Environmental Assessment (EA), and requested an allocation of GB cod to the Fixed Gear Sector for fishing year 2006 (FY 2006).

The Administrator, Northeast Region, NMFS (Regional Administrator), has determined that documents submitted by the Fixed Gear Sector comply with the procedural regulations regarding an

annual Operations Plan and Sector Contract. This noticedocument provides interested parties an opportunity to comment on the proposed Sector Operations Plan and EA (prior to approval or disapproval of FW 42, which would authorize the formation of the Fixed Gear Sector), and prior to final approval or disapproval of the Sector Operations Plan and allocation of GB cod TAC to the Fixed Gear Sector for FY 2006. Comments regarding the formation of the Fixed Gear Sector (as opposed to the FY 2006 Operations Plan and Sector Contract, which are the subject of this proposed rule) should be submitted as described in the proposed rule for FW 42.

**DATES:** Written comments must be received on or before September 21, 2006.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GB Fixed Gear Sector Operations Plan." Comments may also be sent via fax to (978) 281-9135, or submitted via e-mail to: [fixedgearsector@NOAA.gov](mailto:fixedgearsector@NOAA.gov), or the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

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:** Thomas Warren, Fishery Policy Analyst, phone (978) 281-9347, fax (978) 281-9135, e-mail [Thomas.Warren@NOAA.gov](mailto:Thomas.Warren@NOAA.gov).

**SUPPLEMENTARY INFORMATION:** The Regional Administrator has made a preliminary determination that the Fixed Gear Sector Contract and Operations Plan is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 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, and authorized the first sector of the FMP (GB Cod Hook Sector).

If FW 42/FW 3 are approved as proposed, the Fixed Gear Sector would be an approved sector, and the regulations that would apply to the Fixed Gear Sector specify that: (1) Aall

vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the Sector, provided they have documented landings of GB cod through valid dealer reports submitted to NMFS of GB cod during FY 1996 through 2001 (regardless of gear fished); (2) membership in the Sector is voluntary, and each member would be required to remain in the Sector for the entire fishing year and could not fish outside the NE multispecies DAS program during the fishing year, unless certain conditions are met; (3) vessels fishing in the Sector (participating vessels) would be confined to fishing in the GB Cod Hook 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 would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a Letter of Authorization, and the provisions of an approved Operations Plan. This current regulations that apply to all sectors would also apply to the Fixed Gear Sector.

Although FW 42/FW 3 would establish the Fixed Gear Sector, in order for GB cod to be allocated to the Fixed Gear Sector and the Fixed Gear Sector authorized to fish, the Fixed Gear 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 Sector participants and a plan containing the management rules that the Sector participants agree to abide by in order to avoid exceeding the allocated TAC. An additional analysis of the impacts of the Sector's proposed operations may 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.

In anticipation of approval of the Fixed Gear Sector in FW 42/FW 3, the Fixed Gear Sector submitted an initial version of the Operations Plan, Sector Contract, and EA to NMFS on February 1, 2006. On June 13, 2006, the Fixed Gear Sector submitted a revised version, after making modifications to the

Operations Plan and EA, and submitted a final version on June 28, 2006.

The Sector Agreement would be overseen by a Board of Directors and a Sector Manager. The Sector Agreement specifies, in accordance with Amendment 13, that the Sector's GB cod TAC would be based upon the number of Sector members and their historic landings of GB cod. The GB cod TAC is a "hard" TAC, meaning that, once the TAC is reached, 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).

As of June 28, 2006, two prospective Fixed Gear Sector members had signed the 2006 Sector Contract. The GB cod TAC calculation is based upon the historic cod landings of the participating Fixed Gear Sector vessels, using all gear. The allocation percentage is calculated by dividing the sum of total landings of GB cod by 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 (2,240,110 lb (1,016.1 mt)/113,278,842 lb (51,382.4 mt)). The resulting number is 1.98 percent. Based upon these two prospective Sector members, the Sector TAC of GB cod would be 121 mt (1.98 percent of the fishery-wide GB cod target TAC of 6,132 mt). The fishery-wide GB cod target TAC of 6,132 mt is less than the GB cod target TAC specified for 2006 (7,458 mt) because the 7,458 mt includes Canadian catch. That is, the fishery-wide GB cod target TAC of 6,132 mt was calculated by subtracting the GB cod TAC specified for Canada under the U.S./Canada Resource Sharing Understanding for FY 2006 (1,326 mt), from the overall GB cod target TAC of 7,458 mt specified by the New England Fishery Management Council (Council) for FY 2006 (71 FR 25095, April 28, 2006). If prospective members of the Sector change their minds about participating in the Fixed Gear Sector after the publication of this notice and prior to a final decision by the Regional Administrator, it is possible that the total number of participants in the Sector and the TAC for the Sector may be reduced from the numbers above.

The Fixed Gear Sector Agreement contains procedures for the enforcement of the Sector rules, a schedule of penalties, and provides the authority to the Fixed Gear Sector Manager to issue stop fishing orders to members of the Fixed Gear Sector. Participating vessels would be required to land fish only in

designated landing ports and would be required to provide the Sector Manager with a copy of the Vessel Trip Report (VTR) within 48 hours of offloading. Dealers purchasing fish from participating vessels would be required to provide the Fixed Gear Sector Manager with a copy of the dealer report on a weekly basis. On a monthly basis, the Fixed Gear Sector Manager would transmit to NMFS a copy of the VTRs and the aggregate catch information from these reports. After 90 percent of the Fixed Gear Sector's allocation has been harvested, the Fixed Gear Sector Manager would be required to provide NMFS with aggregate reports on a weekly basis. A total of 1/12 of the Fixed Gear Sector's GB cod TAC, minus a reserve, 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. Once the aggregate monthly quota of GB cod is reached, for the remainder of the month, participating vessels could not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies. Once the annual TAC of GB cod is reached, Fixed Gear Sector members could not fish under a NE multispecies DAS, possess or land GB cod or other regulated species, or use gear capable of catching regulated NE multispecies for the rest of the fishing year. The harvest rules would not preclude vessels from fishing under the charter/party or recreational regulations, provided the vessel fishes under the applicable charter/party and recreational rules on separate trips. For each fishing trip, participating vessels would be required to fish under the NE multispecies DAS program to account for any incidental groundfish species that they may catch while fishing for GB cod. In addition, participating vessels would be required to call the Sector Manager prior to leaving port. There would be no trip limit for GB cod for participating vessels. All legal-sized cod caught would be retained and landed and counted against the Fixed Gear Sector's aggregate allocation. Participating vessels would not be allowed to fish with or have on board gear other than jigs, non-automated demersal longline, handgear, or sink gillnets, and participating Fixed Gear Sector vessels fishing with hook gear would be exempt from the GB Seasonal Closure Area during May.

The Operations Plan submitted by the Fixed Gear Sector proposes that Sector members be allowed to fish in a geographic area that extends farther

south (south to 35° 00' N. Lat.) and west (to the coast) than does the area specified in the FW 42 proposed rule, which states that the Fixed Gear Sector would fish only in the GB Cod Hook Sector Area, which is substantially smaller, and does not include the areas to the south or west of GB. In FW 42, the Council proposed that the Fixed Gear Sector be required to fish in the GB Cod Hook Sector Area, and included such a requirement in the proposed regulations, because the GB Cod Hook Sector, which has very similar goals is subject to this requirement (i.e., targeting GB cod). FW 42, which proposes to create the GB Cod Fixed Gear Sector, did not describe or define a geographic area associated with the Fixed Gear Sector. For both Amendment 13 and FW 42 (proposed), the justification for defining the geographic area in the regulations, in contrast to defining the area only in the Operations Plan, is that the area where a sector fishes is one of the fundamental attributes that defines a sector. Because the Fixed Gear Sector Operations Plan proposes a geographic area that is different from that proposed in FW 42, NMFS is particularly interested in receiving public comments on this subject.

The EA prepared for the Fixed Gear Sector operations concludes that the biological impacts of the Fixed Gear Sector will be positive because the hard TAC for GB cod will ensure that the Fixed Gear Sector members will not be contributing to overfishing of GB cod, and the use of fixed gear will preclude the use of other gear that may have greater negative bycatch and habitat impacts. Implementation of the Fixed Gear Sector would have a positive impact on essential fish habitat (EFH) and bycatch by allowing a maximum number of hook or gillnet vessels to remain active in the fishery, rather than converting to (or leasing DAS to) other gear types that have greater impacts on EFH. DAS will provide two means of restricting both the landings and effort of the Fixed Gear Sector. Monthly quota targets would spread out the catch throughout the fishing year and prevent the harvest of the cod TAC in an intensive manner. The prohibition on discarding would reduce regulatory discarding, and the elimination of the daily trip limit would allow vessels to operate more efficiently. The analysis of economic impacts of the Fixed Gear Sector concludes that Fixed Gear Sector members would enable member businesses to remain economically viable by realizing higher economic returns, if the Fixed Gear Sector were

implemented. The EA Environmental Assessment (EA) asserts that fishing in accordance with the Sector Agreement rules enables more adaptable and efficient harvesting of GB cod with fixed gear than would be possible if the vessels were fishing in accordance with the common pool (non-Sector) rules. The social benefits of the Fixed Gear Sector would accrue to Fixed Gear Sector members, as well as the Chatham/Harwichport, MA, community, which is highly dependent upon groundfish revenues. The EA concludes that the self-governing nature of the Fixed Gear Sector and the development of rules by the Fixed Gear Sector enables stewardship of the cod resource by Fixed Gear Sector members. The cumulative impacts of the Fixed Gear Sector are expected to be positive due to a positive biological impact, neutral 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 on the fixed gear fishery.

Should the Regional Administrator approve the Sector Agreement as proposed, a Letter of Authorization would be issued to each member of the Fixed Gear Sector exempting them, conditional upon their compliance with the Sector Agreement, from the GB cod possession restrictions and the requirements of the GOM trip limit exemption program, as specified in § 648.86(b).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on proposed TAC allocations and plans of operation of sectors.

#### Classification

At this time, NMFS has not made a final determination that the measures this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, which

has been modified by NMFS for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). Below is a summary of the IRFA, which describes the economic impact 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 in the preamble to this proposed rule and in the Executive Summary and section 3.0 of the EA prepared for this action. The Proposed Alternative would approve the Operations Plan for the 2006 fishing year and allocate a GB cod TAC of 121 mt to the Fixed Gear Sector. Once the GB cod TAC is reached, participating vessel would not be allowed to fish under a DAS, possess or land GB cod, or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations). Vessels intending to fish in the Fixed Gear Sector this fishing year may not fish for NE multispecies under a groundfish DAS this fishing year until the Sector Operations Plan is approved, and Fixed Gear Sector vessels may use either hook gear or gillnet gear only. Under the proposed Operations Plan, members using hook gear would be exempt from the May GB Seasonal Closure.

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$4 million in gross sales, and the size standard for small party/charter operators is \$6.5 million. Available data for fishing year 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was \$1.8 million, and the maximum gross sales for any affected party/charter vessel was \$1.0 million. 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. This means that all commercial and party/charter fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

#### Economic Impacts of the Proposed Action

The fixed gear fishermen and the Chatham/Harwichport communities are dependant upon GB cod and other groundfish. The Amendment 13 restrictions that reduced the GB cod trip limit had a disproportionate affect on the Chatham fixed gear fishermen.

According to Amendment 13, Chatham's overall community dependence on multispecies as a percentage of total fisheries revenues from federally permitted vessels averaged about 71 percent. Allocation of cod TAC to a sector and the development of alternative fishing restrictions would mitigate the impacts of Amendment 13. Specifically, the proposed Operations Plan enables Fixed Gear Sector members to fish under a set of rules crafted by Sector members in order to adapt to current economic and fishing conditions. This rule would enable Fixed Gear Sector members to remain economically viable by maximizing revenues and minimizing expenses in the short term, and help to maintain associated shoreside job opportunities.

Because of the time elapsed between the beginning of the fishing year on May 1, 2006, and the anticipated effective date of FW 42, as well as the fact that Sector members are not allowed to fish during the fishing year prior to the approval of the Sector Operations Plan, many prospective members were forced

to choose between fishing during the summer and foregoing participation in the Fixed Gear Sector for FY 2006, or to abstain from fishing in order to preserve eligibility to participate in the Fixed Gear Sector. Because June, July, and August are traditionally the most profitable months of the fishing year, many fishermen could not afford to not fish, despite the economic benefits the Sector has to offer. Many fishermen make 50 percent or more of their annual income in those 3 months alone. Therefore, the number of vessels participating in the Fixed Gear Sector in FY 2006 is significantly lower than anticipated.

#### **Economic Impacts of Alternative to the Proposed Action**

Under the No Action alternative, all Sector members would remain in the common pool of vessels and fish under all the rules implemented by Amendment 13 and subsequent Framework Adjustments, and there would be no allocation of GB cod to the Fixed Gear Sector. Because cod usually represents a high proportion of total fishing income for gillnet and hookgear

vessels, revenues for such vessel owners are very sensitive to changes in cod trip limits. Under the scenario of reduced DAS anticipated under FW 42 and a restrictive daily trip limit that would be in place under the no action alternative, it is likely that Fixed Gear Sector vessels would experience revenue losses. It is more likely under the No Action alternative that disruption to the Chatham/Harwichport communities would occur.

#### **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 (PRA).

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

Dated: August 16, 2006.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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