

transferred quota from the Reserve to the Angling category so that 1.7 mt (the amount established in the 2010 BFT quota specifications) would be available for the landing of trophy BFT in the northern area. NMFS has determined that the northern area trophy BFT subquota has been reached. Therefore, through December 31, 2010, fishing for, retaining, possessing, or landing large medium or giant BFT north of 39° 18' N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:59 p.m. on July 18, 2010.

The intent of this closure is to prevent overharvest of the Angling category northern area trophy BFT subquota. Anglers are reminded that all non-tournament BFT landed under the Angling category quota must be reported within 24 hours of landing either online at [www.hmspermits.gov](http://www.hmspermits.gov) or by calling (888) 872-8862. In Maryland and North Carolina, vessel owners must report their recreational tuna landings at state-operated reporting stations. For additional information on these programs, including reporting station locations, please call (410) 213-1351 (Maryland) or (800) 338-7804 (North Carolina).

Anglers may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all released BFT must be returned to the sea immediately with a minimum of injury and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access [www.hmspermits.gov](http://www.hmspermits.gov), for updates.

#### Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the northern area Angling category trophy fishery is necessary to prevent overharvest of the Angling category northern area trophy

BFT subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on [www.hmspermits.gov](http://www.hmspermits.gov).

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the Angling category. NMFS must close the northern area trophy BFT fishery before additional landings of these size BFT accumulate. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 15, 2010.

**Galen Tromble,**

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

[FR Doc. 2010-17695 Filed 7-15-10; 4:15 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100427197-0207-01]

RIN 0648-AY86

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Pollock Catch Limit Revisions

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

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

**SUMMARY:** NMFS issues this final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements new stock status determination criteria for pollock and associated increases in pollock catch limits under the Northeast (NE)

Multispecies Fishery Management Plan (FMP), based on the most recent and best available scientific information. Specifically, this emergency action increases fishing year (FY) 2010 pollock catch levels specified by Framework Adjustment (FW) 44, including Overfishing Levels (OFLs), Acceptable Biological Catches (ABCs), Annual Catch Limits (ACLs), ACL components, incidental Total Allowable Catches (TACs) for special management programs, and sector Annual Catch Entitlements (ACEs). The ACL components include sub-ACLs for the common pool and sectors. This action is intended to provide additional fishing opportunities, consistent with the FMP and the Magnuson-Stevens Act.

**DATES:** Effective July 15, 2010, through January 11, 2011. Comments must be received by August 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, to revise current pollock catch limits immediately. On May 1, 2010, NMFS implemented catch limits developed by the New England Fishery Management Council (Council) under FW 44 (75 FR 18356; April 9, 2010) for all groundfish stocks, including pollock, for FY 2010 through 2012. The catch levels specified by FW 44 included OFLs, ABCs, ACLs, ACL components, and incidental TACs for special management programs. The ACL components included sub-ACLs for the common pool and sectors. On May 26, 2010, NMFS published (75 FR 29459) adjusted ACL subcomponents and adjusted sector ACEs in order to reflect changes to the sector rosters just prior to the start of FY 2010.

The FW 44 catch levels for all stocks, including pollock, were based upon the most recent scientific information available at that time, i.e., the stock assessments conducted by the Groundfish Assessment Review Meeting (GARM III) in 2008, as well as subsequent pertinent information for pollock, as explained below. GARM III originally characterized pollock as overfished and subject to overfishing and, in accordance with required procedures, NMFS notified the Council of the status of the stock on September 2, 2008. Subsequent correspondence resulted in two modifications to the characterization of the status of the pollock biomass. A September 16, 2008,

letter from the Council to NMFS noted that these determinations regarding stock status were based upon erroneous methods. NMFS noted this error and subsequently made corrections[t3] to the methods and revised the characterization of the pollock stock status as approaching an overfished condition, but still likely subject to overfishing (October 3, 2008, NMFS letter to the Council). The stock status determination was revised a third time in order to incorporate the most recent scientific information (fall 2008 trawl survey data), which again characterized the pollock stock as overfished and subject to overfishing (February 6, 2009, NMFS letter to the Council).

Due to the high uncertainty of the determination of pollock stock status (as noted in the GARM III stock assessment conclusions), the NMFS Northeast Fisheries Science Center, in conjunction with the Northeast Region Coordinating Council, which provides advice on the scheduling and prioritization of stock assessments, agreed to schedule another pollock stock assessment in 2010. In addition, the Council's Scientific and Statistical Committee (SSC) recommended that pollock should be reassessed as soon as possible so that they may have a more reliable basis for any projections and catch advice. The 2010 pollock benchmark stock assessment was scheduled as soon as practicable, after considering the availability date of pertinent data, and other constraints.

The pollock peer reviewed benchmark stock assessment review (SAW 50) was completed during the first week of June 2010, and the final summary report was completed on July 14, 2010. The conclusions in this report indicate that overfishing is not occurring, the stock is not overfished, and the stock is rebuilt. Based on this information, the estimates for spawning stock biomass size and fishing mortality in 2009 are 196,000 mt (2.2 times  $B_{msy}$  proxy) and 0.07 (28 percent of  $F_{msy}$ ), respectively.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (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.

The new information from the pollock benchmark stock assessment considered to be a "recently discovered circumstance," which, in the context of the current FMP and low pollock catch limits specified for FY 2010, has been determined by NMFS to represent an emergency situation. This circumstance is the results of the recently conducted assessment of pollock, which significantly revises the status of this stock. Although the new assessment has been ongoing for a number of weeks, it was not possible to have predicted its final outcome; nor could the results have been expedited due to the need to convene the necessary scientists, several of whom are not affiliated with NOAA, to complete the assessment and its peer review.

The emergency presents serious conservation and management problems because the low catch limits for pollock could result in substantially reduced fishing effort and decreased catch and revenue especially in light of the multiple species included in the fishery. When the projected catch of the ACL for a single stock such as pollock triggers a reduction or cessation of fishing effort (as required by the FMP for common pool and sector vessels, respectively), numerous other stocks that are caught concurrently with pollock may also be reduced.

NMFS has determined that the current situation meets the criteria for emergency action. Because this is a Secretarial emergency action, not a Council action, the involvement of the SSC in the specification of ABC is not specifically required, although the emergency rule must still be consistent with the best scientific information available. Although NMFS could wait for the SSC to consider the new assessment, the time necessary to complete such a process would unduly delay the possibility of meeting the emergency exigencies of this matter. Due to the urgency of this issue, NMFS has relied upon the Amendment 16 control rule for ABC established by the SSC to ensure consistency with the SSC's most recent advice concerning the appropriate level of ABC. Specifically, the control rule states that for most stocks, including pollock, the ABC should be determined as the catch associated with 75 percent of  $F_{msy}$ , or

the catch associated with fishing mortality that meets the rebuilding requirements (whichever is lower). The duration of this action is limited by the Magnuson-Stevens Act to 180 days, however NMFS will re-evaluate the status of the fishery at the end of the 180 days and may extend this action in order to make the catch limits effective for the duration of the fishing year (through April 30, 2011), consistent with the authority in the Magnuson-Stevens Act to extend emergency actions for up to an additional 186 days.

Based upon the stock assessment results, NMFS is revising the stock Status Determination Criteria for pollock. The revised biomass target parameter ( $B_{msy}$  proxy) is SSB  $msy$  (40 percent Maximum Spawning Potential (MSP)) (91,000 mt); and the maximum fishing mortality threshold is the  $F_{msy}$  proxy (F 40 percent MSP) (0.25).

The revised pollock catch limits are contained in Tables 1 and 2 below. Consistent with the FMP, the incidental catch TAC is divided between the Regular B DAS Program (84 percent) and the Closed Area I Hook Gear Haddock Special Access Program (14 percent).

TABLE 1. REVISED POLLOCK CATCH LEVELS FOR FY 2010

Pollock Catch Limit	Current Specification (mt) FW 44 Adjustment	Revised Specification (mt)
OFL of Catch	5,084	25,200
ABC	3,293	19,800
State Waters ACL subcomponent	200	1,188
Other ACL subcomponent	200	1,188
Groundfish sub-ACL	2,748	16,553
Sector sub-ACL	2,686	16,178
Common Pool sub-ACL	62	375
Incidental Catch TAC	1.24	7.5

TABLE 2. POLLOCK ACE BY SECTOR (MT)

Sector	Current ACE (mt) FW 44 Adjustment	Revised ACE (mt)
Fixed Gear	214	1,290

TABLE 2. POLLOCK ACE BY SECTOR (MT)—Continued

Sector	Current ACE (mt) FW 44 Adjustment	Revised ACE (mt)
NCCS	12	73
NEFS 2	338	2,034
NEFS 3	202	1,218
NEFS 4	155	934
NEFS 5	11	68
NEFS 6	88	529
NEFS 7	21	124
NEFS 8	18	106
NEFS 9	105	632
NEFS 10	40	239
NEFS 11	255	1,533
NEFS 12	1	9
NEFS 13	61	364
Port Clyde Community	117	707
Sustainable Harvest	1,047	6,309
Tri-State	2	9
Total	2,686	16,178

All ACE values for sectors assume that each sector member has a valid permit for FY 2010.

NCCS: Northeast Coastal Communities Sector; NEFS: Northeast Fishery Sectors

An environmental assessment (EA) was prepared that analyzes the impact of the revised pollock catch limits for the duration of a year, and compares the impact to the current catch limits specified for FY 2010 (i.e., the No Action Alternative). The revised level of pollock catch is consistent with sustaining the pollock biomass over the long-term at the level associated with maximum sustainable yield ( $B_{msy}$ ) and fishing at a sustainable level of mortality ( $F_{msy}$ ). Both scientific and management uncertainty are accounted for in this catch level, so the risks of negative biological impacts have been minimized. The revision to the FY 2010 pollock catch limits contained in this rule may result in the catch of a substantially greater amount of pollock than under the No Action Alternative. The larger catch limit for pollock may result in greater fishing effort and greater catch of other stocks in addition to pollock, as compared to the current pollock catch limits, because it is not

likely that pollock will serve as a constraining stock. The increased pollock catch limit is specified in the context of the FMP, which currently authorizes the NMFS NE Regional Administrator to adjust trip limits in-season to prevent the ACL from being exceeded or to facilitate additional catch.

Due to the increased amount of pollock catch allowed under this emergency action, the increased pollock ACL represents an increase of potential revenue of \$15 million, assuming recent average prices for pollock, and assuming that the full ACL for pollock will be harvested. This estimate of pollock revenue is likely high, given the level of recent pollock landings. The primary economic benefit of the revised ACL is expected to be associated with reducing the likelihood that an accountability measure would be triggered for the common pool and for sectors. The triggering of accountability measures would have reduced or precluded access to other stocks and the associated revenue.

Even with a total increase in the revised sector specifications of 13,492 mt of pollock, two sectors, NEFS 2 and NEFS 11, will still be left with less pollock ACE than the amount landed by the collective sector membership during FY 2008. That is, even though the revised aggregate pollock ACE is higher than the FY 2008 landings, the ACE for these sectors is still lower than the sector members' FY 2008 combined pollock landings. However, the deficit for the NEFS 2 sector may be readily overcome, since the operations plan for NEFS 4, which would receive an ACE of over 2 million lb (934 mt), states that NEFS 4 will be a lease-only sector in order to provide additional ACE to NEFS 2 and NEFS 3. The regulations would also allow NEFS 11 to lease additional ACE. With respect to the impact of the revised pollock catch limit on individual members of sectors, approximately 16 percent of permits that joined a sector and that had a non-zero pollock Potential Sector Contribution, will still have less pollock than they landed during FY 2008.

The Council is considering revising pollock catch limits for FY 2011 and 2012 through a future rulemaking.

#### Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds it impracticable and contrary to the public interest to

provide for prior notice and opportunity for the public to comment, or to delay for 30 days the effective date of this emergency regulation, under the provisions of section 553(b) and (d) of the Administrative Procedure Act. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment or a delay in effectiveness contrary to the public interest. This action would result in the benefit of the revenues associated with larger pollock catch limits. This action could not allow for prior public comment because the scientific review process and determination could not have been completed any earlier due to the inherent time constraints associated with such process.

If this rulemaking was delayed to allow for notice and comment and a 30-day delay in effectiveness, the current quota for some sectors could be exceeded, which could result in triggering restrictive and economically harmful management actions that otherwise could have been avoided. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action may prevent some vessels from targeting pollock, or could severely curtail fishing operations if the current ACL is reached prior to implementation of the increased catch limit. In the interest of receiving public input on this action, the revised assessment upon which this action was based is made available to the public, and this action requests public comments on that document and the provisions in this rule.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

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

Dated: July 14, 2010

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 2010-17693 Filed 7-15-10; 4:15 pm]

**BILLING CODE 3510-22-S**