

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 120109034-2153-02]

RIN 0648-BB62

Revisions to Framework Adjustment 47 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2012

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

ACTION: Temporary final rule; adjustment to specifications.

SUMMARY: Based on the final Northeast multispecies sector rosters submitted as of May 1, 2012, NMFS is adjusting the fishing year 2012 specification of annual catch limits for commercial groundfish vessels as well as sector annual catch entitlements for groundfish stocks. This revision to fishing year 2012 catch levels is necessary to account for changes in the number of participants electing to fish in either sectors or the common pool fishery.

DATES: Effective June 22, 2012, through April 30, 2013.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281-9182.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (the Council) developed Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to establish a process for setting groundfish annual catch limits (also referred to as ACLs or catch limits) and accountability measures. The Council has a biennial review process to develop catch limits and revise management measures. Framework Adjustment (FW) 47 set annual catch limits for nine groundfish stocks and three jointly managed U.S./Canada stocks for FY 2012-2014. We recently approved FW

47, which became effective on May 1, 2012 (77 FR 26104).

While the Council was working on FW 47, a new benchmark stock assessment for Gulf of Maine (GOM) cod was finalized in January 2012. The perception of the stock biomass changed dramatically as a result of this assessment. The Council initially intended to include catch limit alternatives based on these updated results in FW 47. However, after the results were finalized, the Council elected not to recommend final measures for GOM cod and requested that NMFS, acting on behalf of the Secretary of Commerce, use the interim rulemaking authority provided at section 305(c) of the Magnuson-Stevens Act to implement measures designed to reduce, but not end, overfishing in fishing year (FY) 2012. We published an emergency action for GOM cod on May 1, 2012 (77 FR 25623), consistent with the Council's request. The common pool and sector GOM cod catch limits are based on this emergency action.

Along with FW 47 and the emergency GOM cod rule, we recently approved FY 2012 sector operations plans and allocations (77 FR 26129, May 2, 2012) (the "sector rule"). A sector receives an allocation of each stock, or annual catch entitlement (referred to as ACE, or allocation), based on its members' catch histories. State-operated permit banks also receive an allocation that can be transferred to qualifying sector vessels (for more information, see Amendment 17, 77 FR 16942, March 23, 2012). The sum of all sector and state-operated permit bank allocations is referred to as the sector sub-ACL in the management plan. Whatever groundfish allocation remains after sectors and state-operated permit banks receive their allocations is then provided to vessels not enrolled in a sector (referred to as the common pool). This allocation is also referred to as the common pool sub-ACL.

Changes in sector membership require ACL and ACE adjustments. This rule adjusts the FY 2012 sector and common pool allocations based on final sector membership as of May 1, 2012. Permitted vessels that wish to fish in a sector must enroll by December 1 of each year, with the fishing year

beginning the following May 1 and lasting until April 30 of the next year. However, due to concern over the reduced GOM cod allocation (see the emergency action cited above), we provided additional flexibility to NE multispecies permitted vessels by allowing vessels to enroll in a sector for fishing year 2012 up through April 30, 2012. In addition, vessels had until April 30 (the day before the beginning of the fishing year) to drop out of a sector and fish in the common pool. If the sector allocation increases as a result of sector membership changes, the common pool allocation decreases—the opposite is true as well. Because sector membership has changed since the December 1, 2011, date used in the FW 47 and sector proposed and final rules, we need to update the allocations to all sectors and to the common pool.

The final number of permits enrolled in a sector or state-operated permit bank for FY 2012 is 850 (an increase of 5 permits since the December 1, 2011, roster submission). All sector allocations assume that each NE multispecies vessel enrolled in a sector has a valid permit for FY 2012. Tables 1, 2, and 3 (below) explain the revised FY 2012 allocations as a percentage and absolute amount (in metric tons and pounds).

Table 4 compares the preliminary FY 2012 allocations published in the FW 47 final rule, with the revised allocations based on the final sector and state-operated permit bank rosters as of May 1, 2012. The table shows that changes in sector allocations due to updated rosters range from a decrease of 0.14 percent of GOM winter flounder, to an increase of 2.53 percent of Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder. Common pool allocation adjustments range between a 43.18-percent decrease in Georges Bank (GB) haddock, to a 4.17-percent increase in GOM winter flounder. The changes in the common-pool allocations are greater because the common-pool has a significantly lower allocation for all stocks, so even small changes appear large when viewed as a percentage increase or decrease.

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Table 1. FINAL PERCENTAGE (%) OF ACE FOR EACH SECTOR BY STOCK FOR FY 2012¹

Sector Name (Defined Below)	Number of Permits	Georges Bank (GB) Cod	Gulf of Maine (GOM) Cod ²	GB Haddock	GOM Haddock	GB Yellowtail Flounder	Southern New England (SNE) / Mid-Atlantic (MA) Yellowtail Flounder	Cape Cod (CC)/GOM Yellowtail Flounder	American plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	105	28.26	2.26	6.36	1.35	0.01	0.30	1.92	0.55	0.84	0.03	2.02	2.90	5.86	7.86
Maine	11	0.13	1.17	0.04	1.12	0.01	0.03	0.32	1.16	0.73	0.00	0.43	0.82	1.65	1.69
NH	4	0.00	1.16	0.00	0.03	0.00	0.00	0.02	0.03	0.01	0.00	0.06	0.02	0.08	0.11
NCCS	27	0.17	0.74	0.12	0.34	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.44	0.86	0.45
NEFS II	81	6.02	18.61	11.84	16.50	1.91	1.41	19.09	8.02	12.88	3.28	18.23	15.97	6.30	12.15
NEFS III	81	1.27	15.53	0.15	9.80	0.01	0.36	9.14	4.21	2.94	0.03	10.61	1.38	4.79	7.03
NEFS IV	49	4.12	9.10	5.31	8.29	2.16	2.27	5.06	9.26	8.48	0.69	5.11	6.63	8.01	5.87
NEFS V	30	1.78	0.09	3.46	0.30	6.18	23.40	0.64	1.13	1.29	1.85	0.09	0.24	0.19	0.25
NEFS VI	19	2.85	2.53	2.92	3.81	2.70	5.17	2.87	3.80	5.09	1.42	3.69	5.31	3.91	3.29
NEFS VII	21	4.48	0.43	3.75	0.56	9.34	4.08	2.67	3.46	3.14	11.41	0.85	0.54	0.75	0.70
NEFS VIII	20	6.14	0.51	5.72	0.21	10.94	5.60	6.43	1.65	2.55	14.57	3.38	0.54	0.51	0.60
NEFS IX	61	14.58	1.77	11.84	4.80	27.91	8.23	10.58	8.33	8.31	42.70	2.44	5.83	4.15	4.23
NEFS X	54	1.18	6.10	0.31	2.61	0.02	0.55	14.54	2.09	3.70	0.02	29.36	0.57	0.98	1.52
NEFS XI	42	0.39	11.44	0.04	2.36	0.00	0.02	2.11	1.35	1.47	0.00	1.94	0.94	2.34	6.46
NEFS XII	11	0.02	2.47	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	1.06	2.50	2.96
NEFS XIII	40	6.86	0.81	13.82	0.90	16.65	14.83	3.68	3.77	4.82	5.39	1.77	3.88	1.71	2.17
PCCGS	45	0.21	4.68	0.04	2.53	0.00	0.66	1.05	7.52	5.03	0.01	1.96	2.49	4.26	3.76
SHS 1	112	18.67	19.65	32.19	42.19	12.49	7.94	12.70	39.37	34.33	15.88	9.51	49.83	50.10	38.15
SHS 3	19	0.43	0.57	0.37	0.28	0.44	2.89	2.31	0.80	1.20	0.17	2.50	0.22	0.23	0.07
TSS	18	0.68	0.37	1.45	0.44	7.24	1.35	1.33	0.93	0.85	1.92	1.40	0.00	0.02	0.03
All Sectors Combined	850	98.23	100.00	99.73	99.29	98.85	79.82	97.57	98.33	98.47	99.42	96.56	99.59	99.20	99.35

¹All ACE values for sectors outlined in Table 1 assume that each sector permit is valid for FY 2012.

²Because FY 2011 carryover was included in the FY 2012 GOM cod ACE, GOM cod was allocated differently than the other stocks. For more information see the GOM cod emergency action discussed above.

Abbreviations: FGS-Georges Bank Cod Fixed Gear Sector, Maine-Maine Permit Bank (Maine), NCCS-Northeast Coastal Communities Sector, NH-New Hampshire Permit Bank, NEFS-Northeast Fishery Sectors, PCCGS-Port Clyde Community Groundfish Sector, SHS-Sustainable Harvest Sector, TSS-Tri-State Sector

Table 2. FINAL ACE FOR EACH SECTOR BY STOCK FOR FY 2012 (mt)¹

Sector Name	GB Cod East	GB Cod West	GOM Cod ²	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	45.78	1255.53	81.83	437.49	1307.24	8.84	0.03	2.30	20.08	18.12	12.12	0.94	14.41	241.34	192.35	991.18
Maine	0.22	5.93	42.41	3.05	9.11	7.31	0.03	0.24	3.33	38.18	10.53	0.01	3.04	68.40	54.24	212.89
NH	0.00	0.09	41.96	0.02	0.05	0.20	0.00	0.00	0.23	0.93	0.09	0.00	0.43	1.61	2.67	13.99
NCCS	0.28	7.60	26.81	8.34	24.92	2.22	1.83	5.52	6.39	4.86	3.14	2.32	6.46	36.63	28.14	56.75
NEFS II	9.75	267.31	673.59	814.93	2435.07	107.78	4.16	10.72	199.69	262.82	186.51	110.97	130.36	1329.68	206.95	1532.46
NEFS III	2.05	56.26	562.05	10.07	30.08	63.99	0.02	2.71	95.59	137.91	42.60	0.90	75.83	114.57	157.39	886.83
NEFS IV	6.67	182.90	329.28	365.59	1092.40	54.12	4.71	17.27	52.95	303.60	122.83	23.52	36.57	552.01	262.86	740.18
NEFS V	2.89	79.14	3.18	238.24	711.87	1.97	13.48	177.82	6.66	37.07	18.72	62.67	0.61	19.60	6.32	31.93
NEFS VI	4.62	126.80	91.54	200.97	600.52	24.89	5.88	39.32	29.97	124.71	73.64	48.09	26.38	441.89	128.40	414.64
NEFS VII	7.25	198.96	15.74	257.79	770.30	3.67	20.37	30.97	27.96	113.31	45.43	386.29	6.11	45.03	24.67	88.52
NEFS VIII	9.95	272.91	18.37	393.33	1175.31	1.40	23.85	42.55	67.25	54.14	36.95	493.45	24.20	44.56	16.60	75.37
NEFS IX	23.61	647.57	64.07	814.56	2433.96	31.32	60.84	62.55	110.71	272.99	120.31	1446.25	17.46	485.45	136.32	533.46
NEFS X	1.92	52.65	220.91	21.49	64.22	17.03	0.04	4.18	152.08	68.62	53.60	0.52	209.90	47.37	32.05	191.28
NEFS XI	0.64	17.48	413.97	2.45	7.33	15.38	0.00	0.13	22.05	44.35	21.25	0.03	13.84	77.97	76.96	814.92
NEFS XII	0.02	0.69	89.48	0.18	0.54	5.61	0.00	0.02	5.06	24.55	8.80	0.08	2.26	88.19	81.94	373.37
NEFS XIII	11.12	304.85	29.46	950.54	2840.29	5.90	36.29	112.72	38.48	123.56	69.77	182.43	12.65	323.13	56.17	274.01
PCCGS	0.34	9.24	169.33	2.58	7.72	16.52	0.01	5.04	11.02	246.57	72.80	0.22	14.04	207.23	139.93	473.84
SHS 1	30.24	829.43	711.20	2214.69	6617.66	275.48	27.23	60.32	132.88	1290.42	497.05	537.79	67.97	4148.06	1644.83	4811.08
SHS 3	0.70	19.10	20.47	25.25	75.45	1.86	0.95	21.97	24.21	26.08	17.34	5.76	17.85	18.17	7.40	9.34
TSS	1.09	30.01	13.32	99.59	297.59	2.88	15.79	10.28	13.94	30.43	12.36	65.06	10.01	0.31	0.57	4.17
All Sectors Combined	159.14	4364.45	3618.98	6861.14	20501.63	648.37	215.50	606.64	1020.55	3223.22	1425.86	3367.31	690.38	8291.22	3256.74	12530.21
Common Pool	2.86	78.55	80.02	18.86	56.37	4.63	2.50	153.36	25.45	54.78	22.14	19.69	24.62	33.78	26.26	81.79

¹All ACE values for sectors outlined in Table 2 assume that each sector permit is valid for FY 2012.

²With the exception of GOM cod, these values do not include any potential ACE carryover or deductions from FY 2011 sector ACE underages or overages. The GOM cod includes carryover from FY 2011. Adjustments for any carryover or deductions will be made in a future action following reconciliation.

Table 3. FINAL ACE FOR EACH SECTOR BY STOCK FOR FY 2012 (1,000 lb)¹

Sector Name	GB Cod East	GB Cod West	GOM Cod ²	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	101	2768	180	964	2882	19	0	5	44	40	27	2	32	532	424	2185
Maine	0	13	93	7	20	16	0	1	7	84	23	0	7	151	120	469
NH	0	0	93	0	0	0	0	0	1	2	0	0	1	4	6	31
NCCS	1	17	59	18	55	5	4	12	14	11	7	5	14	81	62	125
NEFS II	21	589	1485	1797	5368	238	9	24	440	579	411	245	287	2931	456	3378
NEFS III	5	124	1239	22	66	141	0	6	211	304	94	2	167	253	347	1955
NEFS IV	15	403	726	806	2408	119	10	38	117	669	271	52	81	1217	580	1632
NEFS V	6	174	7	525	1569	4	30	392	15	82	41	138	1	43	14	70
NEFS VI	10	280	202	443	1324	55	13	87	66	275	162	106	58	974	283	914
NEFS VII	16	439	35	568	1698	8	45	68	62	250	100	852	13	99	54	195
NEFS VIII	22	602	40	867	2591	3	53	94	148	119	81	1088	53	98	37	166
NEFS IX	52	1428	141	1796	5366	69	134	138	244	602	265	3188	38	1070	301	1176
NEFS X	4	116	487	47	142	38	0	9	335	151	118	1	463	104	71	422
NEFS XI	1	39	913	5	16	34	0	0	49	98	47	0	31	172	170	1797
NEFS XII	0	2	197	0	1	12	0	0	11	54	19	0	5	194	181	823
NEFS XIII	25	672	65	2096	6262	13	80	248	85	272	154	402	28	712	124	604
PCCGS	1	20	373	6	17	36	0	11	24	544	161	0	31	457	308	1045
SHS 1	67	1829	1568	4883	14589	607	60	133	293	2845	1096	1186	150	9145	3626	10607
SHS 3	2	42	45	56	166	4	2	48	53	57	38	13	39	40	16	21
TSS	2	66	29	220	656	6	35	23	31	67	27	143	22	1	1	9
All Sectors Combined	351	9622	7978	15126	45198	1429	475	1337	2250	7106	3143	7424	1522	18279	7180	27624
Common Pool	6	173	176	42	124	10	6	338	56	121	49	43	54	74	58	180

¹All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2012.

² With the exception of GOM cod, these values do not include any potential ACE carryover or deductions from FY 2011 sector ACE underages or overages. The GOM cod includes carryover from FY 2011. Adjustments for any carryover or deductions will be made in a future action following reconciliation.

Table 4. COMPARISON OF ALLOCATIONS BETWEEN DECEMBER 1, 2011, AND MAY 1, 2012, SECTOR ROSTERS (mt)¹

	GB Cod	GOM Cod ²	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Total Commercial Allocation	4605	4170	27438	653	217.7	760	1046	3278	1448	3387	715	8325	3283	12612
Preliminary Common Pool Allocation	82	81	132	5	3	168	27	57	24	22	24	34	27	82
Adjusted Common Pool Allocation	81	80	75	5	2	153	25	55	22	20	25	34	26	82
% Change	-1.22%	-1.23%	-43.18%	0.00%	-33.33%	-8.93%	-7.41%	-3.51%	-8.33%	-9.09%	4.17%	0.00%	-3.70%	0.00%
Preliminary Sector Allocation	4523	3618	27306	648	215	592	1019	3221	1424	3365	691	8291	3256	12530
Adjusted Sector Allocation	4524	3619	27363	648	216	607	1021	3223	1426	3367	690	8291	3257	12530
% Change	0.02%	0.03%	0.21%	0.00%	0.47%	2.53%	0.20%	0.06%	0.14%	0.06%	-0.14%	0.00%	0.03%	0.00%

¹ All values for sectors outlined in Table 4 assume that each sector permit is valid for FY 2012.

² Includes carryover from FY 2011

It is important to point out that this is only a temporary final rule. After we finish reconciling differences in catch accounting between our data and each sector manager's data, each sector will have 2 weeks to trade FY 2011 ACE to account for any overharvesting during that period. After that 2-week trading window, a sector that still has exceeded its FY 2011 allocation will have its FY 2012 allocation reduced. Because data reconciliation and the 2-week trading window take place after the new fishing year has begun, we reserve 20 percent of each sector's FY 2012 allocation until

FY 2011 catch data are reconciled. This reserve is held to ensure that each sector has sufficient ACE to balance any overages from the previous fishing year. Sectors are also able to carry over up to 10 percent of their initial allocation of most stocks to the next fishing year. We will publish a final follow-up rule detailing any carryover of FY 2011 sector allocation or reduction in FY 2012 allocation resulting from sectors under or overharvesting their allocations.

FW 47 also specifies incidental catch limits (or incidental total allowable

catches, "TACs") applicable to the NE multispecies Special Management Programs for FY 2012–2014. Special Management Programs are designed to allow fishing for healthy stocks that can support additional fishing effort without undermining the other goals of the management plan. Incidental catch limits are specified to limit catch of certain stocks of concern for common pool vessels fishing in the Special Management Programs. Because these incidental catch limits are based on the changed common pool allocation, they also must be revised (Tables 5 and 6).

TABLE 5—INCIDENTAL CATCH TACS BY STOCK FOR FY 2012 (MT)

Stock	Percentage of Sub-ACL	Final rule 2012 incidental catch TAC	Revised 2012 incidental catch TAC
GB cod	2	1.6	1.6
GOM cod	1	0.81	0.8
GB yellowtail flounder	2	0.1	0.05
CC/GOM yellowtail flounder	1	0.3	0.3
SNE/MA yellowtail flounder	1	1.7	1.5
American plaice	5	2.9	2.7
Witch flounder	5	1.4	1.1
GB winter flounder	1	0.4	0.4
SNE/MA winter flounder	2	3.0	3.0
White hake	2	0.9	0.5

TABLE 6—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2012 (MT)

Stock	Regular B DAS program		Closed Area I hook gear haddock SAP		Eastern U.S./Canada haddock SAP	
	Final rule 2012	Revised 2012	Final rule 2012	Revised 2012	Final rule 2012	Revised 2012
GB cod	0.8	0.8	0.3	0.3	0.5	0.6
GOM cod	0.81	0.8				
GB yellowtail flounder	0.03	0.025			0.03	0.025
CC/GOM yellowtail flounder	0.3	0.3				
SNE/MA yellowtail flounder	1.7	1.5				
American plaice	2.9	2.7				
Witch flounder	1.2	1.1				
GB winter flounder	0.2	0.2			0.2	0.2
SNE/MA winter flounder	3.0	3.0				
White hake	0.5	0.5				

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Orders 12866.

Pursuant to 5 U.S.C. 553(b) and (d)(3), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because notice, comment, and a delayed effectiveness is impracticable and contrary to the public interest. Also, for the same reasons, we

find good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective upon filing.

Notice and comment are impracticable and contrary to the public interest. We explained the need to adjust sector and common pool allocations based on final sector rosters in the proposed and final rules for fishing year 2012 sector operations plans and contracts. We receive no comments on this issue. These adjustments provide a more accurate accounting of a sector's or common pool's allocation. If this rule is not effective immediately, the public and the fishery will have incorrect information on the catch limits for each

stock for sectors and the common pool. Accurate allocations will prevent potential adverse economic consequences that would result from vessels unknowingly fishing in excess of one's allocation. For the same reasons, we find good cause to waive the 30-day delay period of this rule's effectiveness.

Delaying this rule's effectiveness to allow for public comment or delaying its effectiveness for 30 days could cause negative economic impacts to both sectors and the common pool. A delay keeps management measures in place that are not based on the best available information. If the sector and common pool allocations are not adjusted immediately, groundfish vessels will operate under incorrect catch limits and

allocations until the adjustments are implemented. This could adversely affect fishermen, depending on the size of the allocation, the degree of change in the allocation, and the catch rate of a particular stock. Further, a delay—either to allow comments or pursuant to 5 U.S.C. 553(d)—would potentially impair achieving the management plan's objectives of preventing overfishing and achieving optimum yield by staying within staying within ACLs or allocations.

Making this regulatory change effective immediately allows harvesting in a manner that prevents catch limits of species from being exceeded in fisheries that are important to coastal communities. Until the final stock

allocations are made, the affected fishing entities will not know how many fish of a particular stock they can catch without going over their ultimate limits. Fishermen may make both short- and long-term business decisions based on the catch limits in a given sector or the common pool. Any delays in adjusting these limits may cause the affected fishing entities to slow down, or speed up, their fishing activities during the interim period before this rule becomes effective. Both of these reactions could negatively affect the fishery and the businesses and communities that depend on them. The fishing industry and the communities it supports could be affected by potentially reducing harvests and delaying profits. Lastly, the

catch limit and allocation adjustments are not controversial. Therefore, it is important to implement adjusted catch limits and allocations as soon as possible. For these reasons, we are waiving the public comment period and delay in effectiveness for this rule, pursuant to 5 U.S.C. 553(b) and (d).

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

Dated: June 20, 2012.

Samuel D. Rauch III,

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

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