

Flounder Board of the Atlantic States
Marine Fisheries Commission.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200331-0094]

RIN 0648-BI28

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Removal of Regulations Implementing the Closed Area I Hook Gear Haddock Special Access Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: We propose to remove regulations that implement the Closed Area I Hook Gear Haddock Special Access Program. The Omnibus Essential Fish Habitat Amendment 2 eliminated the year-round Closed Area I, rendering the Closed Area I Hook Gear Haddock Special Access Program unnecessary. Eliminating the Closed Area I Hook Gear Haddock Special Access Program would reduce confusion and inconsistency with other regulations.

DATES: Written comments must be received on or before May 6, 2020.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2019-0104, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0026;

2. Click the “Comment Now!” icon and complete the required fields; and
3. Enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Closed Area I Hook Gear Haddock SAP.”

Instructions: All comments received that were timely and properly submitted are a part of the public record and will

generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, phone: (978) 281-9232; email: Spencer.Talmage@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS published an interim final rule (69 FR 67779; November 19, 2004), implementing measures approved under Framework Adjustment 40-A to the Northeast Multispecies Fishery Management Plan (FMP). Among other measures, Framework 40-A created the Closed Area I Hook Gear Haddock Special Access Program (CAI HGH SAP) to provide vessels with additional opportunities in Closed Area I to target healthy stocks. The CAI HGH SAP allowed vessels to access the groundfish year-round Closed Area I if they followed certain gear and other restrictions.

The Omnibus Essential Fish Habitat Amendment 2 (83 FR 15240, April 9, 2018) eliminated the year-round closure of Closed Area I. The area once covered by Closed Area I is now open to vessels fishing with hook gear, with the exception of the Georges Bank Dedicated Habitat Research Area and the seasonal Closed Area I North Closure (February 1—April 15). The CAI HGH SAP does not overlap with either the Georges Bank Dedicated Habitat Research Area or Closed Area I North Closure, and as such does not allow any activity otherwise prohibited by these areas. As a result, the CAI HGH SAP is now unnecessary, redundant, and inconsistent with the changes made by the Omnibus Essential Fish Habitat Amendment 2 because the program provides special access to an area that is already open to the groundfish fleet in the time that the SAP is effective.

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, the Regional Administrator is authorized to make changes to regulations that are necessary to carry out any fishery management plan or amendment. We

are proposing to amend the regulations in § 648.14, § 648.81, § 648.82, and § 648.85 to remove references to the CAI HGH SAP and to make a minor correction to a cross-reference.

This action would not change the allocation to the Incidental Catch Total Allowable Catch (TAC) defined in § 648.85(b)(5)(ii). Such a change would require a substantive change to prior New England Fishery Management Council allocation decisions, and it is more appropriate for the New England Fishery Management Council to consider these changes in a future action. During the biennial specifications process, 2 percent of the Georges Bank (GB) cod sub-Annual Catch Limit for the common pool is designated as the Incidental Catch TAC. The Incidental Catch TAC is split between the Regular B Day-at-Sea Program, the Eastern United States/Canada Haddock SAP, and the CAI HGH SAP. The Incidental Catch TAC is a cap on catch of GB Cod in these programs, and does not affect the overall amount of GB cod available to vessels fishing outside of these programs in the common pool.

Because no changes are being made to this process, 16 percent of the Incidental Catch TAC will continue to be allocated to the CAI HGH SAP during each biennial specifications process. This does not affect the quota available to the common pool groundfish fishery. The New England Fishery Management Council may choose to take further action on the allocation of the Incidental Catch TAC.

On December 17, 2019, NMFS published a final rule (84 FR 68798) prohibiting gillnet fishing in the Nantucket Lightship and Closed Area I Closure Areas, in order to comply with a Federal Court order. That rule only affects vessels fishing with gillnet gear, and vessels fishing with hook gear may still fish in Closed Area I without declaring into the CAI HGH SAP. This action to eliminate the CAI HGH SAP was not affected by the prohibition of gillnet fishing in Closed Area I.

Classification

The National Marine Fisheries Service (NMFS) Assistant Administrator has made a preliminary determination that this proposed rule is consistent with section 305(d) and other provisions of the Magnuson-Stevens Act, and other applicable law. In making the final determination, we will consider the data, views, and comments received during the public comment period, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This proposed rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination follows.

For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available (in this case, from 2016 through 2018).

To participate in the CAI HGH SAP, vessels must possess a limited access multispecies permit (categories A, D, E, or F). Therefore, entities holding one or more limited access multispecies permits are the entities that have the potential to be directly impacted by this action. According to the commercial database, there were 557 entities that had at least one of the relevant limited access permits during 2018, the last year for which affiliation information is available. Of these entities, 81 did not have revenues. There were 476 entities that reported revenues during 2018. Of these, 6 were classified as large and 470 were classified as small businesses.

A vessel that declares into the CAI HGH SAP is subject to additional notification, reporting requirements and gear modification requirements, but with the elimination of Closed Area I on April 19, 2018, the CAI HGH SAP no longer provides special access to any closed areas. There is no longer a beneficial reason to participate in the program, and no vessels participated in fishing year 2018. As a result, the proposed elimination of the CAI HGH SAP would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA. This requirement has been submitted to OMB for approval under Control Number 0648-0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 31, 2020.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14:

- a. Revise paragraphs (k)(6)(ii)(B), (11)(i)(A)(4), (11)(vi), (12)(i)(B), and paragraph (12)(ii);
b. Remove paragraph (k)(12)(vi); and
c. Redesignate paragraph (k)(12)(vii) as (vi).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

- (k) * * *
(6) * * *
(ii) * * *

(B) Hook gear. Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook gear in areas specified in § 648.80(a), (b), or (c).

* * * * *

- (11) * * *
(i) * * *
(A) * * *

(4) If fishing both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (7), under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to abide by the DAS and possession restrictions under § 648.85(b)(7)(v)(A)(2) through (4).

* * * * *

(vi) Closure of the U.S./Canada Area for all persons. If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in

§ 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(7).

(12) * * *
(i) * * *

(B) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(7), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

(ii) General restrictions for vessel and operator permit holders. Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a SAP, as described in §§ 648.85(b)(3)(xi) or 648.85(b)(7)(v)(I).

* * * * *

3. In § 648.81, revise paragraph (a)(5)(ii)(C) to read as follows:

§ 648.81 NE multispecies year-round and seasonal closed areas.

- (a) * * *
(5) * * *
(ii) * * *

(C) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(7)(ii), respectively.

* * * * *

4. In § 648.82, by revise paragraph (e)(3) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(e) * * *

(3) Regular B DAS Program 24-hr clock. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a

vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS

accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(6), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

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§ 648.85 [Amended]

- 5. Amend § 648.85 by:
- a. Remove paragraph (b)(7); and
- b. Redesignate paragraph (b)(8) as (b)(7).

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