

Emergency Action to Increase Fishing Year 2019 Carryover in the Northeast Multispecies Fishery Management Plan

Supplemental Information Report



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Table of Contents

1.0	Introduction.....	3
1.1	Fishery Background	3
1.2	Established ACE Carryover Provisions	3
1.3	Established DAS Carryover Provisions	3
1.4	Council Requested Actions	3
2.0	Purpose of the Supplemental Information Report.....	4
3.0	Emergency Action Criteria and Justification	4
4.0	Proposed Emergency Action.....	6
4.1	Explanation for Changes to the Council’s Request	6
5.0	Background of Original Action.....	7
6.0	Changes from Original Action.....	7
6.1	Sector ACE Carryover	7
6.2	Carryover of Unused Leased-in DAS by Common Pool Vessels	7
7.0	NEPA Compliance and Supporting Analyses.....	8
8.0	Economic Analysis.....	9
8.1	Carryover provisions.....	10
8.2	DAS leasing provisions.....	10
8.3	Summary of Economic Analysis	10
9.0	Summary of Public Involvement.....	11
10.0	Conclusion	11
11.0	Preparers and Persons Consulted	11
12.0	References.....	11

1.0 Introduction

1.1 Fishery Background

NOAA's National Marine Fisheries Service (NMFS) is proposing a temporary rule to implement emergency measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to extend portions of the fishing year 2019 carryover provisions in the Northeast Multispecies Fishery Management Plan (FMP) to reduce economic harm to the groundfish industry as a result of disruptions to the national and global supply chain, health mandates and travel restrictions that began at the end of fishing year 2019. This action will allow groundfish sectors to carry over extra fishing year 2019 Annual Catch Entitlement (ACE) for Georges Bank haddock, Gulf of Maine haddock, and American Plaice into fishing year 2020. It will additionally allow common pool vessels to carryover any unused leased-in Days-at-Sea (DAS) from fishing year 2019 into fishing year 2020. This action is necessary to provide the groundfish fleet with the opportunity to use ACE or leased-in DAS that otherwise would have been lost at the end of fishing year 2019 due to market disruptions, health mandates and travel restrictions.

The Northeast Multispecies FMP is managed by the New England Fishery Management Council. Under the FMP, each year, ACE is allocated to groundfish sectors. Additionally, DAS are allocated to each vessel issued a limited access Northeast Multispecies permit.

1.2 Established ACE Carryover Provisions

Current ACE carryover provisions allow for groundfish sectors to carryover an amount of ACE equal to 10 percent of each sector's original ACE for each stock that is unused at the end of the one fishing year into the following fishing year. However, the total unused sector ACE being carried over plus the overall Annual Catch Limit (ACL) for the following year cannot exceed the Acceptable Biological Catch (ABC) for the following year. If this occurs, sector carryover provisions require us to adjust the maximum ACE carryover down from 10 percent to an amount that prevents total potential catch from exceeding the ABC. In this case, the final adjustment to the maximum carryover possible for each sector is based on final fishing year catch for the sectors and each sector's total unused allocation; and is proportional to the cumulative Percent Sector Contributions of permits participating in the sector.

1.3 Established DAS Carryover Provisions

Current DAS carryover provisions allow limited access vessels that have unused DAS available at the end of a fishing year to carry over a maximum of 10 DAS into the following fishing year. These measures are intended to promote safety by reducing risk and increasing planning flexibility while not compromising the conservation impact of the DAS program.

Under the DAS carryover provisions, a vessel's unused leased-in DAS at the end of a fishing year may not be carried over into the following year.

1.4 Council Requested Actions

At its June meeting, the Council passed a motion requesting an Emergency Action to:

- *Allow sectors to carry over more than 10 percent of their unused fishing year 2019 ACE into fishing year 2020 for GOM haddock, GB haddock, American plaice, and witch flounder;*
- *Allow de minimis carryover of fishing year 2019 ACE to be more than one percent of the fishing year 2020 sector sub-ACL for all stocks with carryover;*
- *Reopen the post-year sector ACE trading window for fishing year 2019; and*
- *Allow common pool vessels to carryover unused leased-in DAS from fishing year 2019 to fishing year 2020.*

The Council intends for the measures recommended in its motion to provide economic relief and flexibility to the commercial groundfish fishery in response to the impact of state health mandate and a general disruption of the industry. The Council forwarded its June motions to us in a letter on July 2, 2020, which cited a loss of revenue at the end of fishing year 2019 due to low ex-vessel prices below production costs and lost investment in quota that could not be landed by the end of the 2019 fishing year.

2.0 Purpose of the Supplemental Information Report

The purpose of a Supplemental Information Report (SIR) is to determine if the new measures will require further analysis other than those prepared previously.

In making a determination on the need for additional analysis under the National Environmental Policy Act (NEPA), we have considered and have been guided by the Council on Environmental Quality (CEQ) NEPA regulations and applicable case law. The CEQ's regulations state that "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 Code of Federal Regulations (C.F.R.) § 1502.09(d)(1) (emphasis added). Consistent with 40 C.F.R. 1502.9(d)(4) and 1501.3(b) we have determined that any changes to the proposed action or new circumstances or information relevant to environmental concerns are not significant and therefore do not require a supplement.

This document describes changes to the ACE carryover measures established through Amendment 16 to the Northeast Multispecies FMP (NMFS) and the DAS carryover measures established through Framework Adjustment 24 to the Northeast Multispecies FMP. This document compares the current management measures and the proposed modifications in the context of the environmental assessment (EA) completed for Framework Adjustment 59 to the Northeast Multispecies FMP (NMFS 2020) that considered the impacts of fishing in fishing year 2020. We then consider whether there are any significant new circumstances or information that are relevant to environmental concerns and that have a bearing on this action or its impacts.

3.0 Emergency Action Criteria and Justification

If the Secretary finds that an emergency exists, Section 305(c) of the Magnuson-Stevens Act authorizes him to promulgate emergency regulations to address the emergency for any fishery.

NMFS issued policy guidelines in determining whether the use of an emergency rule is justified on August 21, 1997 (62 FR 44421). The guidelines state that the preparation of management actions under the emergency provisions of the Magnuson-Stevens Act should be limited to special circumstances where substantial harm or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. The emergency criteria of the policy guidelines define the existence of an emergency as a situation that: “(1) results from recent, unforeseen events or recently discovered circumstances; and (2) presents serious conservation or management problems in the fishery; and (3) 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.” The justifications described in these guidelines and subsequent clarifications specify that emergency rules can be implemented to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone, and the prevention of significant community impacts.

Towards the end of the 2019 fishing year (March 2020), state health mandates and travel restrictions were implemented in response to the COVID-19 pandemic. These caused market and supply chain disruptions while also making it difficult for vessels to make fishing trips. These impacts were unforeseen during the development of Framework 59 that included measures for the 2020 fishing year that began on May 1, 2020.

The unforeseen health mandates and travel restrictions during the last months of fishing year 2019 (March and April 2020) disrupted vessel business plans, fishing practices and markets. This caused revenues for the groundfish fishery to decline due to abnormally low ex-vessel prices that fell below production costs and lost investment in quota that could not be landed by the end of the 2019 fishing year. Health mandates and travel restrictions additionally prevented common pool vessels from using leased-in DAS, which resulted in lost revenue when the vessels were unable to carry them over into fishing year 2020. Increasing ACE carryover of certain stocks into fishing year 2020 and allowing common pool vessels to carryover unused leased-in DAS would mitigate negative impacts to the industry, prevent additional economic loss to industry participants, shoreside businesses, and fishing communities and help offset lost fishing opportunities at the end of fishing year 2019.

Although the Council has the authority to develop a management action to increase the maximum of 2019 carryover and allow carryover of unused leased-in DAS, an emergency action can be developed and implemented by NMFS more swiftly than a Council action that is subject to procedural and other requirements not applicable to the Secretary. If the normal regulatory process is used to revise the carryover provisions, it would take substantially longer for the revised provisions to be implemented, likely preventing these measures from being implemented in time for full utilization by fishery participants. If not implemented in a timely way before this fishing year ends, this could prevent vessels from harvesting any lost carryover at an opportune time.

Based on the above, NMFS has determined that the current situation meets the guidelines and criteria for emergency action.

4.0 Proposed Emergency Action

This emergency action would:

- Increase the maximum amount of northeast multispecies sector carryover of 2019 ACE of GOM haddock, GB haddock, and American Plaice above 10 percent, to an amount not to exceed the 2020 ABC for each stock; and
- Allow common pool vessels with unused leased-in DAS from fishing year 2019 to carry those DAS over into fishing year 2020 in addition to the maximum 10 DAS normally allowed to be carried over.

4.1 Explanation for Changes to the Council's Request

In addition to the measures that we are proposing in this emergency action, the emergency action requested by the Council would have:

- Allowed sectors to carry over more than 10 percent of their unused fishing year 2019 ACE for witch flounder into fishing year 2020;
- Allowed *de minimis* carryover of fishing year 2019 ACE to be more than one percent of the fishing year 2020 sector sub-ACL for all stocks with carryover; and
- Reopen the post-year sector ACE trading window for fishing year 2019.

Witch flounder is overfished, in a rebuilding plan, and has an unknown overfishing status and Overfishing Limit (OFL). The July 2020 *National Standard 1 Technical Guidance for Designing, Evaluating, and Implementing Carry-over and Phase-in Provisions* does not recommend applying carryover or phase-in provisions for stocks that have an unspecified OFL. Though carryover of ACE for witch flounder is already permitted by the sector implementing regulations, increasing the maximum amount of carryover for the stock above 10 percent would increase risk of overfishing.

Increasing *de minimis* carryover for sectors would not be consistent with the criteria for an emergency action published in the *Federal Register* on August 21, 1997, 62 FR 44421, as well as subsequent guidance. *De minimis* carryover is only triggered by an overage of the overall ACL for a stock, which, for the purposes of this action, would occur in fishing year 2020. No such overage has occurred to trigger *de minimis* carryover, and we do not currently anticipate any overages. As a result, a change to *de minimis* carryover would not be the result of a recent, unforeseen event, or recently discovered circumstance. Further, there are no immediate benefits from such a change at this time that would outweigh the value of advance notice, public comment and deliberative consideration of the impacts. The Council could determine whether a *de minimis* change would be necessary next year and discuss the appropriate and necessary course of action at that time.

The Council requested that we consider reopening the post-year sector ACE trading window in order to allow sectors to optimize individual sector carryover amounts for fishing year 2020. However, we have already calculated the maximum amount of overall carryover by stock that

could be allowed, and calculated an increased percentage per sector that would effectively carry-over from fishing year 2019 to fishing year 2020 without requiring any trading. Though reopening the post-year trading window could potentially result in increases in individual sector carryover amounts, it would not result in an increase in the overall amount of carryover that could occur, and could potentially result in a decrease in the overall amount of carryover, depending on how sectors choose to trade ACE. Any ACE carried over from fishing year 2019 to fishing year 2020 could be traded without limitation in fishing year 2020, without requiring a reopening of the fishing year 2019 trading window. The added operational challenges that would result from reopening the post-year trading window would complicate and delay implementation of this emergency action, without significant benefit to sectors as a whole.

5.0 Background of Original Action

On July 28, 2020, we implemented Framework Adjustment 59 to the Northeast Multispecies FMP, which set specifications for 19 of the 20 groundfish stocks for fishing year 2020. The Framework 59 environmental assessment (EA) developed by the New England Fishery Management Council analyzed the biological effects of the 2020 specifications. Framework 59 specifications are expected to result in a slight increase in overall fishing mortality relative to what was established under the specifications in Framework Adjustment 58 to the Northeast Multispecies FMP, with low overall negative impacts on regulated groundfish species.

6.0 Changes from Original Action

6.1 Sector ACE Carryover

This action would allow an amount of additional GB haddock, GOM haddock, and American plaice to be landed in fishing year 2020 by allowing increased carryover of fishing year 2019 ACE into fishing year 2020.

There are 16 sectors eligible to carry over an increased amount of fishing year 2019 ACE into fishing year 2020 under this action for at least one of the three affected stocks. On average, each eligible sector would be allowed to carry over 85 mt of GB haddock, 19 mt of GOM haddock, and 1 mt of American plaice. Two sectors do not have sufficient unused ACE for American plaice to increase their fishing year 2019 carryover for that stock through this action.

The new maximum amount of unused fishing year 2019 ACE for each stock to be carried over into fishing year 2020 would not allow potential 2020 catch to exceed the ABC for each stock.

6.2 Carryover of Unused Leased-in DAS by Common Pool Vessels

This action would also allow common pool vessels with unused leased-in fishing year 2019 DAS to carry those DAS into fishing year 2020. Vessels would be allowed to carry over unused fishing year 2019 leased-in DAS even if the total amount of DAS they have carried over into fishing year 2020 exceeds the maximum of 10 DAS normally allowed to be carried over into each fishing year. There are three vessels that would be eligible to carry over at least one unused leased-in fishing year 2019 DAS into fishing year 2020. A total of 9.3 unused leased-in DAS are eligible to be carried over by these vessels.

7.0 NEPA Compliance and Supporting Analyses

The Framework 59 EA analyzed the biological effects of the fishing year 2020 specifications. This included biological impacts, impacts on essential fish habitat, impacts on endangered and other protected species, the economic impacts, the social impacts, and the cumulative effects. As required by NEPA, the Preferred Alternatives were compared to the No Action option and other options.

The conclusions reached in the Framework 59 EA are that the preferred measures, which include harvesting the ACLs and ABCs for the stocks with new specifications would not significantly impact the quality of the human environment. Biological impacts on regulated groundfish species and other species were determined to be mixed, when compared to the No Action alternative and fishing year 2019. Protected species and physical environment (essential fish habitat) impacts were also projected to be mixed when compared to the No Action alternative and fishing year 2019. Social impacts were determined to be mostly positive, and the economic impacts were determined to be mixed based on revisions to allocations for commercial and recreational groundfish fisheries and other fisheries. No additional significant cumulative impacts are expected from Framework 59.

The impacts of this action would not go beyond what was already considered in Framework 59.

This action would allow for additional carryover for the three stocks affected, equaling 1,357.2 metric tons (mt) of GB haddock, 304.1 mt of GOM haddock, and 17.9 mt of American Plaice. This additional carryover represents quota that was left uncaught during fishing year 2019, at least partially due to the disruptions caused by the COVID 19 pandemic/health and travel restrictions, and is a small amount of quota relative to the fishing year 2020 allocations (Table 1).

Table 1. Additional Carryover Compared to Fishing Year 2020 ACLs and ABCs

Stock	Additional Carryover (mt)	2020 Sector sub-ACL (mt)	Additional Carryover (% of Sector Sub-ACL)	2020 U.S. ABC (mt)	Additional Carryover (% of 2020 U.S. ABC)
GB haddock	1357.2	119,410	1.14	131,567	1.03
GOM haddock	304.1	11,754	2.59	19,696	1.54
American Plaice	17.9	2,859	0.63	3,155	0.57

Though the additional carryover of fishing year 2019 ACE into fishing year 2020 is an increase in the amount of quota that can be harvested in fishing year 2020, this additional quota would not result in catch which would exceed the fishing year 2020 ABC for these stocks. (Table 2).

Table 2. Total Carryover plus Fishing Year 2020 ACLs Compared to Fishing Year 2020 ABCs

Stock	2020 Total ACL (mt)	2020 ACLs plus Carryover (mt)	2020 U.S. ABC (mt)
GB haddock	124,969	131,567	131,567

GOM haddock	18,580	19,696	19,696
American Plaice	3,000	3,155	3,155

Additionally, this action essentially only extends the amount of time that a small proportion of the overall ACLs may be harvested. It does not increase the total harvest across the two year period from 2019 to 2020, since the additional carryover consists of ACE that was unfished in fishing year 2019.

This action would also allow for an additional 9.3 leased-in DAS to be carried over from fishing year 2019 into fishing year 2020 by common pool vessels. Common Pool vessels are subject to trip limits for regulated multispecies which limit landings of each stock per DAS or on a trip basis. Additionally, common pool vessels are subject to Trimester Total Allowable Catch (TAC) Accountability Measures, which apportion the sub-ACLs specified for common pool vessels to 4-month Trimesters. During these trimesters, if the Regional Administrator projects that 90 percent of a specified Trimester TAC has been caught, then the relevant stock area is closed for the duration of the trimester to vessels fishing with gear capable of catching that particular stock.

The carryover of leased-in DAS will allow vessels the flexibility to carry out additional commercial groundfish trips in fishing year 2020, but it does not alter the fundamental structure of the common pool fishery. Vessels will still be restricted to possession and trip limits, and there will be no change to the Trimester TAC AMs. These measures ensure that catch in the common pool reaches, but does not exceed the common pool sub-ACL or the ABCs for each stock.

This action does not place limits on when affected vessels and sectors may use carried over fishing year 2019 ACE or leased-in DAS. Usage of the additional carryover therefore is dictated by a number of factors unaffected by this action. This includes weather, market value of catch, opportunity cost, and availability of target species. These factors are not significantly different from the factors that impact decision-making by the industry under the previously analyzed Framework 59. Further, the impacts of fishing activity under this action do not significantly differ from those analyzed in Framework 59. This action is likely to have negligible impacts on non-target species or essential fish habitat, as was determined in the Framework 59 EA.

This action would likely have positive economic and social impacts. It would allow for the groundfish industry to recover investments in ACE and DAS that were lost at the end of fishing year 2019. It would additionally allow for the flexibility for the industry to make use of those investments at an opportune time, perhaps when markets are more stable and ex-vessel prices have recovered.

8.0 Economic Analysis

The Framework 59 EA analyzed the economic impacts stemming from the fishing year 2020 specifications. The impacts of this action would not go beyond those considered in Framework 59.

8.1 Carryover provisions

This action would allow for additional carryover for three stocks: 1,357.2 metric tons (mt) of GB haddock, 304.1 mt of GOM haddock, and 17.9 mt of American plaice. As a proportion of the total ABC for these three stocks, these amounts represent between one half of one percent (0.5%) for plaice at the low end, and 1.5% at the high end for GOM haddock.

In FY2019 the sector component of the fishery caught 10.1% of its GB haddock, 43.1% of GOM haddock and 58.2% of American plaice. For FY2020, the Framework 59 EA predicts utilization rates for these three stocks to be approximately 4%, 23% and 38%, respectively. Catch reporting for FY2020 through November 27, 2020 indicates that, with approximately 40% of the fishing year remaining, the fishery has achieved approximately 3.8%, 17% and 14% of the sector allocations for these three stocks.

The additional carryover allocations proposed in this action are unlikely to affect overall catch, and therefore unlikely to have a discernible effect on aggregate revenues for this fishery. However, in a multi-species fishery with tradeable allocations of quota-like shares (ACE leases), increases in net allocations do increase individual sector's allocations and, to the extent it is relevant, the shares available to each sector's members. This implies that, because some sectors may have use for ACE beyond their allocation, increases in carryover may decrease costs for active fishermen by reducing, by some small amount, the need for sectors to lease additional ACE. This could, at least in theory, increase operating profits for active fishermen. Because there are two sides to every ACE lease, this also implies that inactive fishermen and those fishermen with more allocation than is needed to achieve their desired catch may see reductions in profit due to lost leasing revenue. The reduction in intra-fishery transfers through leasing are likely to be well within the margins of error implied by the framework 59 analysis, if they materialize at all.

8.2 DAS leasing provisions

This action also allows for an additional 9.3 leased-in DAS to be carried over from fishing year 2019 into fishing year 2020 by common pool vessels. Common pool vessels are regulated primarily through trimester-based TACs. This action will not affect those TACs, and therefore will not affect the aggregate amount of catch and revenue achieved by the fishery. It may allow for a small and uncertain amount of additional flexibility for the vessels involved in those 9.3 leased days, and therefore may provide some small positive benefit to those vessels.

8.3 Summary of Economic Analysis

Overall, this action provides a small amount of additional flexibility for the common pool vessels involved in the carryover DAS considered here. Some presumably small number of sector-enrolled vessels may see lower ACE lease costs due to the small increase in their FY2020 sector allocations for these three stocks, while other sectors may see small reductions in revenues from leases.

9.0 Summary of Public Involvement

The public had the opportunity to comment on the Framework 59 EA throughout its development at Council meetings and during the proposed rule for this action. In addition, the Council heard public comment during its discussions on the potential for secretarial emergency action in response to the impacts of the ongoing health mandates and travel restrictions during both the April and June 2020 meetings.

10.0 Conclusion

After considering the proposed action, new information and new circumstances, NMFS has determined that it is not necessary to supplement the Framework 59 EA and FONSI because: (1) the proposed action and its impacts are not substantially different from what was originally considered and analyzed; and (2) no new information or circumstances exist that are significantly different from when the Framework 59 FONSI that was signed on July 20, 2020. The Framework 59 EA and FONSI remain valid to support the proposed action.

11.0 Preparers and Persons Consulted

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12.0 References

NMFS, 2020. Framework Adjustment 59 to the Northeast Multispecies Fishery Management Plan.