



Greater Atlantic Region Bulletin

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Northeast Groundfish Sector Fishermen Court Ordered Change to Fishing Year 2013 Carryover Amounts

Rule to be issued as quickly as possible

In response to a recent court order, we are notifying all groundfish sector fishermen and the public that using carryover catch from fishing year 2012 in the current fishing year (2013) may now be subject to a pound-for-pound accountability payback if the overall annual catch limit (ACL) for a stock is exceeded. This is a fundamental change from current regulations that state that carryover catch in fishing year 2013 is not counted against a sector's annual catch entitlement (ACE) or used to determine accountability measures if the overall ACL is exceeded.

This change in the current carryover measures results from a decision of the U.S. District Court for the District of Columbia issued on April 4, 2014. The case is *Conservation Law Foundation v. Pritzker et al.* which challenged the Framework Adjustment 50 rule for 2013 carryover accounting. The Court determined that the Framework Adjustment 50 approach for accounting for carryover in the 2013 fishing year violates the Magnuson-Stevens Act. Based on this decision, the Court ordered NMFS to delete the 2013 carryover measures and implement new ones that incorporate accountability for any overages of the overall 2013 ACLs resulting from carryover catch. The court ruling can be found on the U.S. District Court for the District of Columbia web site: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0821-29

To comply with the Court's order, we are developing a rule that deletes the 2013 carryover provisions and replaces them with the revised carryover system scheduled to begin for fishing year 2014, that was implemented in Framework Adjustment 50 and can be found at 50 CFR §648.87(b)(1)(i)(G)(2). The 2014 carryover measures, which were subject to public comment, will be applied to the 2013 fishing year.

Under the 2014 carryover accountability measure (which will now be applied to the 2013 fishing year), carryover catch would not count against a sector's 2013 ACE for a groundfish stock for accountability purposes, but it would count against the overall 2013 ACL for determining whether accountability measures are triggered. The accountability measure is a pound-for-pound reduction in the sector's 2014 ACE for that stock. The accountability measure would be triggered only for sectors that exceed their 2013 ACE, and only if the overall ACL for the stock is exceeded.

The following provides an example of how carryover would be accounted for in the 2013 fishing year. The example refers to a hypothetical "Sector Alpha" to emphasize that accountability is at

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the individual sector level. This example does not contemplate leasing, which may affect the amount of ACE available to a sector.

- The 2013 ACE for Sector Alpha is 100 metric tons (mt).
- The available 2012 carryover for Sector Alpha is 10 metric tons.
- If the fishing year 2013 final Sector Alpha total catch is less than or equal to the 2013 ACE (i.e., 100 mt), there would be no carryover related accountability payback under any circumstances, even if the overall ACL for the stock is exceeded (because ACE has not been exceeded).
- If Sector Alpha caught the full ACE and caught any additional fish based on its 10 mt carryover, *and* the total fishery ACL is exceeded, the sector's 2014 ACE for that stock will be reduced by the amount of carryover used.

Current Catch Status Relative to Total ACLs

The Gulf of Maine haddock overall ACL has already been exceeded based on recreational catch. Therefore, any use of carryover catch for this stock by a sector will result in a pound-for-pound reduction in that sector's 2014 ACE for Gulf of Maine haddock. The current known total catch of Gulf of Maine cod is 95 percent of the overall ACL and thus could be exceeded.

Data through April 9, 2014, indicates that sectors combined have caught 99.3 percent of the available witch flounder ACE and 95.9 percent of the available American plaice ACE meaning there is a possibility that the overall ACL for these stocks may be exceeded because the sector fishery has the largest share of these stocks' allocations.

The final tally for determining overages of most of these overall ACLs may not be known until early fall because of the need to account for catch in state waters and in other fishery sub-components.

We are in the process of evaluating which sectors, if any, have made use of carryover. We will communicate that information as quickly as possible to sector managers. We anticipate providing modifications on the Sector ACE Comparison Report so that sectors may evaluate their potential carryover use for fishing year 2013.

We expect to provide additional information as quickly as possible to update progress on complying with the Court's order.