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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180220196-8196-01]

RIN 0648-XG051

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2018 Sector Operations Plans and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule determines the quota overages that Northeast Fishery Sector IX is responsible for paying back, allocates annual catch entitlements to Northeast Fishery Sectors VII and IX for the 2018 fishing year, approves a new lease-only operations plan for Northeast Fishery Sector IX, and approves a substantive amendment to Northeast Fishery Sector VII operations plan. Approval of the operations plans and allocation of annual catch entitlements is necessary for the sectors to operate. This action is intended to ensure that these sectors are allocated accurate annual catch entitlements that account for past catch overages, and that the sectors' operations plans can achieve the conservation and management objectives of the Northeast Multispecies Fishery Management Plan.

DATES: Effective [*insert date of publication in the FEDERAL REGISTER*] through April 30, 2019. Comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0069, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0069*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Rulemaking for NEFS 7 and NEFS 9.”

Instructions: 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 NMFS. All comments received 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. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of each sector’s operations plan and contract, as well as the programmatic environmental assessment for sectors operations in fishing years 2015 to 2020, are available from the NMFS Greater Atlantic Regional Fisheries Office (GARFO): Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive,

Gloucester, MA 01930. These documents are also accessible via the GARFO website:

<https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/>.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, (978) 282-8493.

SUPPLEMENTARY INFORMATION:

Background

To help achieve the fishing mortality and conservation objectives of the Northeast Multispecies Fishery Management Plan (FMP), each sector is allocated annual catch entitlements (ACE) and must ensure that these ACEs are not exceeded. The Regional Administrator must approve sector operations plans in order for sectors to operate and be allocated ACE for specific groundfish stocks. A sector's operations plan includes a detailed plan for monitoring and reporting catch and the specific management rules sector participants will abide by in order to avoid exceeding the sector's allocation, as well as a plan for how the sector will operate if an ACE is exceeded. The operations plan also includes internal sector enforcement measures for operations plan breaches and remedies, such as a penalty schedule for operations plan non-compliance or other actions that would jeopardize the sector's continued approval. Penalties under the plan range from a written warning or fine to expulsion from the sector.

On March 30, 2017, Carlos Rafael pleaded guilty to all counts in *United States v. Carlos Rafael* (No. 16-CR10124-WGY). Mr. Rafael is the owner of Carlos Seafood (a Federally permitted dealer) and a fleet of Federally permitted groundfish vessels that are enrolled in Northeast Fishery Sector IX (NEFS 9). Mr. Rafael admitted to falsely reporting catch information on dealer catch reports and vessel trip reports from 2012 through 2015. All of the vessels involved in the misreporting operated under the sector operations plan for NEFS 9 during

the period of known misreporting, were enrolled in NEFS 9 for fishing year 2017, and are now enrolled in Northeast Fishery Sector VII (NEFS 7) for fishing year 2018.

On September 25, 2017, Mr. Rafael was sentenced to serve 46 months in prison and 3 years of supervised release. During his supervised release, he is barred from working in the fishing industry. The Court also ordered Mr. Rafael to pay a fine of \$200,000 and forfeited Mr. Rafael's interests in four fishing vessels used in the criminal violations, including all fishing permits that NMFS issued to the four vessels.

As a result of Mr. Rafael's violations, NEFS 9 was operating without having accurately accounted for its available ACE. Further, the violations revealed a failure of adequate sector oversight and accounting. On November 22, 2017, we published an interim final rule to withdraw approval of the Fishing Years 2017 and 2018 Sector Operations Plan for NEFS 9 (82 FR 55522). This withdrawal was a necessary administrative action because NEFS 9 and its participants failed to uphold the requirements of the sector operations plan and adequately respond to Mr. Rafael's violations. Without accurate catch and ACE accounting, effective monitoring, or internal governance, we determined that continuation of the sector would undermine conservation and management objectives of the FMP. With the disapproval of the sector's operation plan, the members of NEFS 9 are not allowed to fish for groundfish, and the sector cannot transfer quota to or from other sectors.

On February 22, 2018, the NEFS 9 Board of Directors submitted a new sector operations plan for review and approval. The operations plan would allow the sector to operate as a "lease-only" sector. As a lease-only sector, NEFS 9 vessels could not actively fish for groundfish, but the sector would be allowed to transfer groundfish quota to and from other sectors. NEFS 9

vessels could continue to fish for other species not managed under the Northeast Multispecies FMP for which they have permits, such as scallops, summer flounder, and squid.

On March 26, 2018, NEFS 7 and NEFS 9 submitted rosters for the 2018 fishing year, indicating that 55 of the 60 permits previously enrolled into NEFS 9 would move into NEFS 7. Only three permits remain in NEFS 9. Consistent with sector eligibility requirements these permits are issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in the sector. NEFS 7's submitted roster included new members enrolled with the condition that all permits owned by Mr. Rafael would be inactive and unable to fish in the groundfish fishery unless and until the permit was sold to an independent third party. In order to implement and enforce this condition, the sector requested that, until such a sale occurred, we withhold the letters of authorization (LOA). LOAs are issued to all vessel owners or operators participating in a sector and authorize participation in sector operations. Because this permit condition is a substantive change to the operations plan, it requires rulemaking.

On May 1, 2018, we allocated groundfish quota to all sectors except NEFS 7 and NEFS 9. In that rule, we provided a summary of the NEFS 7 and 9 roster changes, but we did not make a determination regarding allocations to those two sectors (83 FR 18965; May 1, 2018). Before making this determination, we needed more information about, and time to evaluate how, NEFS 7 and NEFS 9 would operate and account for the past overages, and notified the public that these issues would be included in a separate rulemaking.

NEFS 9 Overages Due to Misreported Catch

When we withdrew approval of NEFS 9 in November 2017, the interim final rule stated that initial allocations made to the sector at the start of the 2017 fishing year were likely

artificially high, and that it was possible that the sector’s 2017 catch might have already exceeded what should have been allocated. Based on analysis to assess the stock-level apportionment of the misreported catch discovered in the criminal case, NEFS 9 ended the 2016 fishing year with quota overages for witch flounder, American plaice, Georges Bank (GB) cod, and Cape Cod/Gulf of Maine (CC/GOM) yellowtail flounder (Tables 1 and 2). We allocated ACE to NEFS 9 for fishing year 2017 without any adjustments, because, at that time, we had not yet determined the overages caused by the misreported catch. Because NEFS 9 was not permitted to harvest groundfish after the sector operations plan was withdrawn in November, the sector was prevented from creating further overages, and unfished 2017 ACE reduced or eliminated the quota overages determined from admissions in the criminal case. After accounting for NEFS 9’s available 2017 ACE after operations were suspended, we determined that NEFS 9 ended the 2017 fishing year with a single overage of 72,224 lb (32.8 mt) of witch flounder. This interim final rule announces the NEFS 9 fishing year 2017 balances for the stocks affected by the criminal case, as shown in Tables 1 and 2: Witch flounder, American plaice, GB cod, GOM cod, GB yellowtail flounder, Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, and CC/GOM yellowtail flounder.

Table 1. Summary of NEFS 9 Balances (lb) at End of Fishing Years 2016 and 2017

| Stock | Balance at End of Fishing Year 2016 | Balance at End of Fishing Year 2017 |
|----------------------------|--|--|
| Witch flounder | -218,682 | -72,224 |
| American plaice | -115,789 | 12,867 |
| Eastern GB cod | 1,378 | 38,366 |
| Western GB cod | -14,582 | 56,258 |
| GOM cod | 1,176 | 18,322 |
| GB yellowtail flounder | 130,589 | 88,674 |
| SNE/MA yellowtail flounder | 31,238 | 44,053 |
| CC/GOM yellowtail flounder | -23,229 | 40,866 |

*Negative number indicates an overage.

Table 2. Summary of NEFS 9 Balances (mt) at End of Fishing Years 2016 and 2017

| Stock | Balance at End of Fishing Year 2016 | Balance at End of Fishing Year 2017 |
|----------------------------|--|--|
| Witch flounder | -99 | -33 |
| American plaice | -53 | 6 |
| Eastern GB cod | 1 | 17 |
| Western GB cod | -7 | 26 |
| GOM cod | 1 | 8 |
| GB yellowtail flounder | 59 | 40 |
| SNE/MA yellowtail flounder | 14 | 20 |
| CC/GOM yellowtail flounder | -11 | 19 |

*Negative number indicates an overage.

To calculate the overages, we applied the misreported catch to the appropriate fishing year, as if we had known about the catch during or immediately following the end of each fishing year. If the misreported catch caused an overage in a particular fishing year, we deducted the overage from the sector's allocation for the next fishing year. If the sector carried over quota into a fishing year that it should not have, we removed the carryover that would not have been available had we known about the additional catch. Misreported catch occurred in fishing years 2012-2015. We applied the resulting overages from 2015 to 2016 allocations and from 2016 to 2017 allocations. As stated earlier, NEFS 9 ended the 2016 fishing year with multiple overages. Because we withdrew approval of the sector's operations plan, and NEFS 9 vessels have not been able to fish for groundfish since November 20, 2017, NEFS 9 ended fishing year 2017 with an overage for witch flounder only.

Catch Apportionment Calculations

As part of calculating the overages, we first correctly apportioned the misreported catch that was presented in the criminal case at a species level, broken down by calendar year. This required distributing the misreported catch into the appropriate fishing year, based on the landing date for trips associated with the misreported catch. Witch flounder and American plaice are unit

stocks, and therefore, no further analysis was required. However, cod and yellowtail flounder are subdivided into management stock units. For cod, the sub-units are GOM and GB; GB is further divided into eastern and western GB. For yellowtail flounder, the sub-units are CC/GOM, GB, and SNE/MA. Allocating the misreported catch to stock area requires estimating the stock areas where the misreported catch was likely to have been caught.

To apportion the misreported catch to the appropriate stock areas, we used data from the vessel monitoring systems (VMS) used by the vessels that were named in the criminal case to identify the most likely stock area from which that catch originated. We scaled the VMS effort by annual average catch-per-hour from observed groundfish trips by all sector vessels using trawl gear, to account for the different catch rate in different stock areas. The correctly apportioned catch by time and area was then applied to the allocated ACEs for the years in question to determine the overage amounts.

Sector Allocations for Fishing Year 2018 for NEFS 7 and NEFS 9

As stated above, on May 1, 2018, we allocated groundfish quota to all sectors except NEFS 7 and NEFS 9 and did not make a determination regarding allocating to those two sectors (83 FR 18965; May 1, 2018). This rule allocates groundfish quota to NEFS 7 and to NEFS 9, based on the final sector enrollment submitted by the sectors and the fishing year 2018 specifications approved through Framework 57 (83 FR 18985; May 1, 2018). These allocations use updated rosters and are slightly different from the rule that proposed allocations for all sectors (83 FR 12706; March 23, 2018), which used the fishing year 2017 sector rosters as a basis to estimate fishing year 2018 sector allocations.

Consistent with how ACE is allocated to all other sectors, we calculate the sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a

stock and then multiplying that total percentage by the available commercial sub-annual catch limit (sub-ACL) for that stock. Table 3 shows the projected total PSC for each sector by stock for fishing year 2018. Table 4 shows an estimate of the allocations that each sector is allocated, in pounds and metric tons, respectively, for fishing year 2018.

Table 3. Cumulative PSC (percentage) for NEFS 7 and NEFS 9 by stock for fishing year 2018

| Species | NEFS 7 | NEFS 9 |
|----------------------------|-------------------|--------------------|
| GB Cod | 13.20690936349290 | 0.0362859749871986 |
| GOM Cod | 3.01910742037318 | 0.0000000000000000 |
| GB Haddock | 11.2685073680510 | 0.0259765497865176 |
| GOM Haddock | 7.40318927053197 | 0.0000000000000000 |
| GB Yellowtail Flounder | 25.51455362936140 | 0.0275501100708375 |
| SNE/MA Yellowtail Flounder | 8.53317090461840 | 0.0000000000000000 |
| CC/GOM Yellowtail Flounder | 10.56678059758250 | 0.0118856525483093 |
| Plaice | 9.61237900717373 | 0.0013210183240834 |
| Witch Flounder | 9.33559754356342 | 0.0000000000000000 |
| GB Winter Flounder | 33.29143002089540 | 0.0883620482300341 |
| GOM Winter Flounder | 2.94812548603488 | 0.0000000000000000 |
| SNE/MA Winter Flounder | 17.56207969721130 | 0.0107895691382281 |
| Redfish | 9.05128922223861 | 0.0000000000000000 |
| White Hake | 6.37760020543757 | 0.0000000000000000 |
| Pollock | 6.34572003847383 | 0.0007489254483443 |

Table 4. Estimated ACE for NEFS 7 and NEFS 9 (in mt and 1,000 lb) by stock for fishing year 2018

| Species | NEFS 7 | | NEFS 9 | |
|----------------------------|-----------------|-----------------------|-----------------|-----------------------|
| | Sector ACE (mt) | Sector ACE (1,000 lb) | Sector ACE (mt) | Sector ACE (1,000 lb) |
| GB Cod East | 34 | 75 | 0 | 0 |
| GB Cod West | 124 | 273 | 0 | 1 |
| GOM Cod | 11 | 24 | 0 | 0 |
| GB Haddock East | 1,758 | 3,875 | 4 | 9 |
| GB Haddock West | 3,274 | 7,219 | 8 | 17 |
| GOM Haddock | 647 | 1,426 | 0 | 0 |
| GB Yellowtail Flounder | 43 | 95 | 0 | 0 |
| SNE/MA Yellowtail Flounder | 4 | 8 | 0 | 0 |
| CC/GOM Yellowtail Flounder | 42 | 93 | 0 | 0 |
| Plaice | 152 | 335 | 0 | 0 |
| Witch Flounder | 77 | 171 | 0 | 0 |

| | | | | |
|------------------------|-------|-------|---|---|
| GB Winter Flounder | 243 | 536 | 1 | 1 |
| GOM Winter Flounder | 11 | 23 | 0 | 0 |
| SNE/MA Winter Flounder | 91 | 201 | 0 | 0 |
| Redfish | 973 | 2,146 | 0 | 0 |
| White Hake | 174 | 385 | 0 | 0 |
| Pollock | 2,373 | 5,232 | 0 | 1 |

Based on regulations at § 648.87(b)(1)(iii), should an ACE allocated to a sector be exceeded in a given fishing year, the sector’s ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year. If a sector has an overage, but disbands in the year following the overage, the overage follows the permits to the new sector(s) or to the common pool. If the sector does not disband, but does not have sufficient ACE to pay back the overage, the sector’s ACE for that stock is set to zero until the sector can acquire sufficient ACE to cover the remaining overage.

Therefore, if NEFS 9 has remaining overages from fishing year 2017, following any transfers conducted during a 2-week transfer window after all year-end catch accounting is complete (see section on NEFS 9 Operations Plan for more detail), NEFS 9’s 2018 ACE would be reduced by the overage on a pound-for-pound basis. However, because the permits enrolled in NEFS 9 for 2018 have zero PSC for witch flounder, the sector would be allocated zero pounds of witch flounder. Therefore, if the sector has a remaining overage from fishing year 2017, it would begin fishing year 2018 with a negative balance of witch flounder. The Board of NEFS 7 has agreed that if the NEFS 9 overage cannot be reconciled during the post-year transfer window, NEFS 7 will transfer sufficient 2018 witch flounder ACE to NEFS 9 to cover the remaining overage. This commitment is included in the amendment to the NEFS 7 operations plan, as described later in this preamble.

NEFS 9 Sector Operations Plan

In this interim final rule, we are approving NEFS 9's sector operations plan and contract to operate as a lease-only sector. When the Regional Administrator withdrew approval of the NEFS 9 operations plan in November 2017, we cited accurate reporting, internal accountability, and organizational integrity as core principles of the sector system that were lacking in NEFS 9, as evidenced by the systematic and long-term sector and vessel misreporting. The operations plan was withdrawn, in part, because it did not contain measures that would provide accurate information or ensure compliance with the operations plan to prevent and address future misreporting or ACE overages. Restricting the sector to only being able to participate in the groundfish fishery through ACE transfers with other sectors addresses our concerns about the sector's ability to harvest groundfish and monitor and report that activity, consistent with the goals and objectives of the FMP. As a lease-only sector, NEFS 9 vessels cannot actively fish for groundfish, but the sector is allowed to transfer groundfish quota to and from other sectors, which will facilitate the sector's accounting for its ACE and overages. Based on this, we have determined that the lease-only sector operations plan and contract is consistent with the FMP's goals and objectives, and meets sector requirements outlined in the regulations at § 648.87.

The lease-only operations plan is a change from the previous operations plan for NEFS 9, for which the Regional Administrator withdrew approval. However, it is similar to the currently approved operations plan for NEFS 4, which also operates as a lease-only sector. An approved lease-only operations plan provides NEFS 9 with the ability to pay back the quota overage incurred by misreported catch. Without a new operations plan, NEFS 9 has no mechanism for reconciling the overages for which it is responsible. In April 2018, we consulted with the New England Fishery Management Council regarding NEFS 9, and the Council passed a motion to

recommend that NMFS authorize the NEFS 9 lease-only operations plan to ensure the repayment of the NEFS 9 overage, as well as amend the NEFS 7 operations plan as needed and appropriately allocate to the sectors.

Because this interim final rule approves a lease-only sector operations plan for NEFS 9, the sector has the ability to eliminate the overage by transferring quota in from other sectors. We will allow NEFS 9 to transfer fishing year 2017 ACE for 2 weeks upon our completion of year-end catch accounting for all sectors to reduce or eliminate any fishing year 2017 overages. As provided by the regulations, this window of post-year transfers is opened annually. During this time, sectors are only allowed to transfer in quota to reconcile an overage. Quota for stocks that do not have an overage may not be transferred.

NEFS 7 Amendment to Operations Plan

In this interim final rule, we are approving an amendment to the NEFS 7 sector operations plan. As described above, on March 26, 2018, NEFS 7 submitted a roster for the 2018 fishing year, indicating that 55 of the 60 permits previously enrolled into NEFS 9 would move into NEFS 7, in addition to one vessel from NEFS 8. No vessels that had been enrolled in NEFS 7 for the 2017 fishing year remained in NEFS 7 for 2018. All 56 vessels enrolled in NEFS 7 for 2018 are listed as inactive. The NEFS 7 Board of Directors voted, as part of its process to allow vessels to enroll in the sector, to add a permit condition requiring all permits in which Mr. Rafael has an ownership interest to remain inactive and unable to fish in the groundfish fishery unless and until the permit is sold to an independent third party. By approving this permit condition as part of the NEFS 7 operations plan (along with the quota allocations described earlier), NEFS 7 is able to transfer ACE to and from other sectors in the 2018 fishing year, but vessels owned by Mr. Rafael cannot actively fish for groundfish.

All of the vessels that are enrolled in NEFS 7 and in which Mr. Rafael has no ownership interest are currently listed as inactive members of the sector. To become active, the sector Board would have to vote to allow a vessel to harvest sector ACE, consistent with normal sector operations, and notify NMFS of the vessel change in status. In contrast to the vessels owned by Mr. Rafael, these vessels do not need to be sold in order to be active in the groundfish fishery.

To facilitate and enforce the requirement for a vessel owned by Mr. Rafael to be sold to an independent third party before it could become active, the Board initially requested that we withhold LOAs for those permits until a permit is sold to an independent third party, the new member requests in writing that the Board reconsider non-active status, and the NEFS 7 Board grants active status to the new member. However, current regulations at § 648.87(c)(2) state that, if a sector is approved, the Regional Administrator shall issue an LOA to each vessel operator and/or vessel owner participating in the sector, authorizing participation in the sector operations. The regulations allow the Regional Administrator to include requirements and conditions necessary to ensure effective administration and compliance with the sector's operations plan and the sector allocation. Therefore, the NEFS 7 amendment includes clarification that we will issue LOAs to vessels indicating that they are inactive. If the required steps are taken for a vessel to become active, we will issue a new LOA authorizing participation in the groundfish fishery.

NEFS 7's initial proposal did not identify the factors by which the Board would determine the new owner is independent of Mr. Rafael. Historically, NMFS uses several factors to determine whether a transfer or sale of a permit appears to be between separate legal entities. These include, but are not limited to: Whether the transfer appears to be an "arm's length" transaction to an independent person or entity in which the current owner, subsidiary, partner,

officer, director, trustee, shareholder or any of their family members does not have any financial interest or any control; whether the transferor/seller derive any financial benefits from the operations of the vessel after it is transferred; whether the transferor/seller exercises any control over the activities or operation of the vessel after it is transferred; and whether there are any common shareholders, partners, or investors with significant overlapping ownership interests in both the transferor/seller and the transferee/buyer. The NEFS 7 Board of Directors has incorporated these factors into the amendment to the NEFS 7 operations plan as conditions for Board approval of new owners to provide sufficient Board oversight controls and avoid confusion regarding whether a sale meets the requirement of being an independent third party.

As stated earlier in this preamble, the Board of NEFS 7 has committed that if the NEFS 9 overage cannot be reconciled during the 2017 post-year transfer window, NEFS 7 will transfer sufficient 2018 witch flounder ACE to NEFS 9 to cover the overage, and this is included in the amendment to the NEFS 7 operations plan.

The NEFS 7 operations plan amendment addresses the operational issues that required withdrawal of the prior NEFS 9 operations plan. Approval of an operations plan that provides for paying back all of the overages incurred by vessels in NEFS 9 ensures that the sector is operating properly within the sector system and within all ACE that is properly allocated. The vertical integration between Mr. Rafael's vessels, his seafood dealership, and sector governance that facilitated the falsification of landing records would no longer exist with new independent vessel owners.

These changes to the operations plan meet the goals and objectives of the FMP and the sector system. We will evaluate any changes made to NEFS 7 and 9 membership and vessel ownership, using the criteria detailed above, to ensure the sector's operations remain consistent

with its operations plan and the goals and objectives of the FMP. Additional substantive changes to the NEFS 7 operations plan that are requested, or determined to be necessary, would be addressed in a future rulemaking.

Classification

The NMFS Assistant Administrator has preliminarily determined that this interim final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This interim final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations.

This interim final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds good cause to waive prior notice and the opportunity for public comment on approval of the NEFS 9 lease-only operations plan, and approval of the amendment to the NEFS 7 operations plan because it would be contrary to the public interest. Additionally, the AA finds there is good cause, under 5 U.S.C. 553(d)(1) and (3), to waive the 30-day delay in effectiveness for the allocation of annual catch entitlements (ACE) for fishing year 2018 to NEFS 7 and 9, approval of the NEFS 9 lease-only operations plan, and approval of the amendment to the NEFS 7 operations plan so that the purpose of this rule is not undermined.

Approving the NEFS 9 lease-only operations plan relieves the prohibition against operating and provides a mechanism for NEFS 9 to reconcile its witch flounder overage through the 2017 year-end transfer window and address its quota overage for witch flounder. Any overage remaining after this transfer window must be reconciled via an ACE transfer from NEFS

7, in order for NEFS 7 to remain in compliance with the operations plan amendment approved by this rule. As a result, implementing these measures immediately ensures that proper catch and ACE accounting occur. This is fundamental to achieving the goals and objectives of the FMP.

We previously proposed and accepted comment on allocating groundfish quota to NEFS 7 and 9 (83 FR 12706; March 23, 2018). Additionally, before taking this action, we consulted with the New England Council at its April 2018 meeting, at which the Council recommended that we approve the sectors' operations plan requests. This consultation provided the Council and interested members of the public an opportunity to comment on NEFS 7's and 9's potential operations plan changes and an additional opportunity to comment on the allocation of quota to both sectors. At this meeting, the Council recommended that we ensure the repayment of the NEFS 9 overage, approve the NEFS 9 lease-only operations plan, amend the NEFS 7 operations plan as needed, and appropriately allocate to the sectors. The Council also explained the importance of making quota available to the fishery at-large. Some stocks, such as Georges Bank winter flounder, have a significant seasonal component, and therefore there is additional benefit to making this quota available to the fishery as a whole as soon as possible.

The ACEs being allocated to NEFS 7 and 9 represent between 3 percent and 33 percent of the total quota for each allocated stock. Continuing to withhold this amount of quota from the fishery significantly hampers the ability of the fishery as a whole to operate. This quota is particularly important due to recent stock assessments that resulted in reduced overall quotas for several stocks, including Southern New England/Mid-Atlantic yellowtail flounder (75-percent reduction), Gulf of Maine winter flounder (45-percent reduction), and white hake (20-percent reduction). Further delaying allocations to NEFS 7 and NEFS 9 significantly reduces the quota for these stocks available for transfer to other sectors engaged in fishing. This reduces catch of

these as target stocks and also impacts catch of more abundant stocks like haddock and pollock, which catch these limiting stocks as bycatch. This, together with the benefit of ensuring that all quota overages that resulted from Mr. Rafael's criminal misreporting are reconciled, outweigh the benefits of allowing for additional public comment prior to effectiveness, beyond that which we already received on the March 23, 2018, proposed rule (83 FR 12706) and through consultation with the Council.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

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

Dated: July 16, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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