



## New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

### MEMORANDUM

**DATE:** April 8, 2020  
**TO:** Council Members  
**FROM:** Tom Nies, Executive Director  
**SUBJECT:** **COVID-19 Emergency Action Request - Commercial Groundfish Fishery**

#### Emergency Action Request

Several organizations - Associated Fisheries of Maine, Northeast Seafood Coalition, Maine Coast Fishermen's Association, and Maine Coast Community Sector - representing the commercial groundfish fishery request an emergency action by the National Marine Fisheries Service to allow for relief from certain provisions in the sector program, specifically increasing the maximum allowable carryover from fishing year 2019 to fishing year 2020. Their request is due to the drastic reduction in fishing activity under the COVID-19 National Emergency, in which fishing businesses are being directly and negatively impacted by:

- Losing money due to low ex-vessel prices as recent sales have plummeted to levels below production costs as a result of the national and global disruption in the food supply chain and,
- Facing losses from earlier investments in quota that cannot be landed by the end of the season.

#### Current Carryover Provisions

- Groundfish sectors can carry forward up to 10% of unused annual catch entitlement (ACE) provided that the total unused sector ACE carried forward for all sectors from the previous fishing year plus the total annual catch limit (ACL) does not exceed the acceptable biological catch (ABC) for the fishing year in which the carryover would be harvested, e.g., from FY2019 to FY2020.
- If the total exceeds the ABC, NMFS adjusts the maximum amount of unused carryover, down from 10%, to an amount equal to or less than the ABC of the following fishing year.
- Sectors are required to pay back carried over amounts that are caught, only when both the sector sub-ACL and total ACL are exceeded.

- See the 2019 fishing year to date catch information for sectors for in-season catch information by stock:  
[https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports//Sectors/Sector\\_Summary\\_2019.html](https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports//Sectors/Sector_Summary_2019.html)

### Emergency Criteria

The NMFS' Policy Guidelines for the Use of Emergency Rule (1997) outline the criteria and justifications for an emergency action (<https://www.govinfo.gov/content/pkg/FR-1997-08-21/pdf/97-22094.pdf>).

An emergency action may be justified as a situation that 1) results from recent, unforeseen even 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.

Emergency Justification: If the time it would take to complete notice-and-comment rulemaking or complete a fishery management plan or amendment would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse impacts to the public health, emergency action might be justified under one or more of the following situations:

1. Ecological- (A) to prevent overfishing as defined in a Fishery Management Plan (FMP), or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
2. Economic- to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone; or
3. Social- to prevent significant community impacts or conflict between user groups; or
4. Public Health- to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.