



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
 55 Great Republic Drive  
 Gloucester, MA 01930

June 3, 2020

Dr. John Quinn  
 Chairman  
 New England Fishery Management Council  
 50 Water Street Mill 2  
 Newburyport, MA 01950

Dear John:

On April 15, 2020, the Council discussed the effects of the COVID-19 pandemic on the Northeast multispecies fishery and requested guidance from NOAA's National Marine Fisheries Service (NMFS) regarding mechanisms that could be used to increase carryover of annual catch entitlement (ACE) for sector vessels and days-at-sea (DAS) carryover for common pool vessels. In response, this letter summarizes the current carryover regulations, mechanisms for making changes to carryover, and potential risks associated with increasing carryover that the Council should consider. My staff has shared preliminary 2019 catch data and additional detailed carryover information directly with the Groundfish Plan Development Team.

### **ACE Carryover**

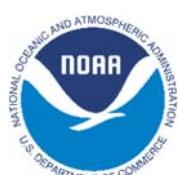
#### Maximum ACE Carryover

Each sector will be allowed to carry over unused ACE, up to the maximum 10 percent of its 2019 allocation, from fishing year 2019 to 2020 for four stocks: Georges Bank (GB) haddock; Gulf of Maine (GOM) haddock; American plaice; and witch flounder. Sectors may not carry over GB yellowtail flounder. All other allocated stocks will have the maximum carryover reduced below 10 percent to prevent 2020 catch from exceeding the 2020 acceptable biological catch (ABC).

For the four stocks that would not require a reduction in carryover to stay below the ABC, it would be possible to increase each sector's carryover limit above 10 percent without the new potential catch limit exceeding the ABC (see Table 1). These estimates are based on preliminary 2019 catch data and account for the prohibition of carryover by permit banks.

**Table 1: Potential Sector ACE Carryover from 2019 to 2020.**

Stock	Potential revised max carryover (%)	Current max carryover (mt)	Potential increase in max carryover (mt)
GB haddock	12.6	5,240.8	1,357
GOM haddock	13.7	811.9	304
American plaice	11.0	141.2	14
Witch flounder	11.3	64.2	5



Mechanism: An increase to the maximum permissible ACE carryover would require either a Council action or an emergency action, if justified. There is no existing regulatory authority for NMFS to increase ACE carryover. The implementing regulations at 50 CFR 648.87(b)(1)(i)(C)(1) require NMFS to adjust the maximum ACE carryover *down* from 10 percent to an amount that prevents total potential catch from exceeding the ABC, but do not authorize any increase.

Timing: Increased ACE carryover could provide benefits to industry through the potential for increased catch, revenue, and flexibility. There could be an immediate benefit for vessels or stocks that have high effort before the worsening winter weather, and for any sector that transferred in ACE during 2019 that it was not able to harvest.

Risk: Allowing additional carryover could increase the risks of an ACL overage or that overfishing may occur, especially in stocks that are stable or declining in stock size, or if the target fishing mortality is low relative to natural mortality. If an ACL overage occurs and sectors have caught above the sector sub-ACL (which does not include carryover), sectors are responsible for a pound-for-pound payback, minus the *de minimis* amount of carryover. GB haddock, GOM haddock, and American plaice are healthy stocks, but witch flounder is overfished and currently in a rebuilding program.

#### *De Minimis* ACE Carryover

*De minimis* ACE carryover is the amount that sectors are not required to payback should the sector sub-ACL and the total ACL be exceeded. The *de minimis* amount is 1 percent of the 2020 sector sub-ACL. NMFS has the authority to change the *de minimis* amount for any fishing year. The regulations do not specify an upper limit for the *de minimis* amount, but the default level of 1 percent was set because it falls within the management uncertainty buffer established for sectors. The uncertainty buffer for groundfish stocks ranges between 3 and 7 percent. For the four stocks that do not require a reduction in carryover, the management uncertainty buffer is 5 percent.

Mechanism: NMFS could change the *de minimis* carryover through notice consistent with the Administrative Procedure Act using the authority granted to the Regional Administrator in 50 CFR 648.87(b)(1)(i)(C)(2)(ii).

Timing: *De minimis* carryover is triggered only if Year-2 catch of a stock exceeds both the sector sub-ACL and the total ACL. We will not know if *de minimis* carryover is triggered until after the conclusion of the 2020 fishing year and reconciliation of sector catch data.

Risk: For each stock, management uncertainty is estimated using the following criteria: Enforceability and precision of management measures; adequacy of catch monitoring; latent effort; and catch of groundfish in non-groundfish fisheries. The management uncertainty buffer is set at 5 percent for the four stocks that do not require a reduction in carryover. That buffer has not changed since 2013, but the Groundfish Plan Development Team has recently documented that data generated on observed trips are not representative of the whole fleet and reflects differences in discarding of legal-sized fish on unobserved trips relative to observed trips. Thus, it is possible the existing uncertainty buffer is not sufficient to account for true uncertainty. GB

haddock, GOM haddock, and American plaice are healthy stocks, but witch flounder is overfished and currently in a rebuilding program.

### DAS Carryover

Sector and common pool vessels may carry over up to 10 unused DAS into the next fishing year. Vessels may only carry over allocated DAS and may not carry over DAS leased in from other permits. Category A DAS are carried over first, then Regular B DAS, and finally Reserve B DAS. Vessels may not carry over Category C DAS.

Several permit categories that are more prevalent in the common pool (Handgear A and B, small-vessel category) do not use DAS and would not benefit from increased DAS carryover. Sector vessels are not required to use DAS to harvest groundfish and are generally not DAS-limited. Thus, only Category A, D, and F permits in the common pool are likely to benefit. The Regular B DAS Program is not open in 2020 and zero B DAS have been used in the other special access programs since 2015. Allowing leased-in DAS to carry over would potentially have greater effect for vessels that leased in DAS and subsequently did not use them, but this is likely to be a smaller segment of the industry.

Mechanism: A change to the maximum permissible DAS carryover or the types of DAS (e.g., leased) that may be carried over would require either a Council action or an emergency action, if justified. There is no existing regulatory authority for NMFS to increase DAS carryover.

Timing: Increased DAS carryover could provide benefits to industry through the potential for increased catch, revenue, and flexibility. There could be an immediate benefit for vessels or stocks that have high effort before the worsening winter weather, and for any vessel that leased in DAS during 2019 that it was not able to use.

Risk: An increase in the number of DAS available for use by the common pool without an increase to the trimester quotas could increase the rate at which the common pool harvests stocks beyond what was planned in setting possession limits. This could potentially lead to trimester closures.

My staff will continue to work on these issues with the Groundfish Plan Development Team ahead of the June meetings of the Groundfish Advisory Panel, Groundfish Oversight Committee, and the Council. If you have further questions about carryover, please contact Sarah Bland, Assistant Regional Administrator for Sustainable Fisheries, at (978) 281-9257.

Sincerely,



Michael Pentony  
Regional Administrator