



New England Fishery Management Council

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MEMORANDUM

DATE: January 22, 2014
TO: Groundfish Oversight Committee (OSC)
FROM: Rachel Feeney, Amendment 18 Lead
SUBJECT: Fish tote regulations

This memo is to update the OSC on the discussions that have occurred regarding fish tote regulations, subsequent to its November 18 meeting and to prepare for its meeting on November 23. The PDT has not discussed this issue at its recent meetings and has had only a brief opportunity to review the contents of this memo. Thus, statements therein should not be considered a consensus of the PDT.

The Northeast Hook Fishermen's Association has submitted a proposal for several changes to the regulations for handgear vessels, which the OSC has discussed at several of its meetings in 2013. On November 18, the OSC passed a motion to not include proposed measures as alternatives within Amendment 18. However, there was support expressed for one particular proposal component: removing the requirement that handgear vessels carry a standard fish tote on-board. The OSC agreed by unanimous consent to ask the Council to task the VMS/Enforcement Committee to discuss the matter. In December, the Council agreed to do so. See relevant meeting summaries for details.

Regulatory Background

In 1994, through an Emergency Rule and subsequently in Amendment 5, standard totes were required of all vessels. At the time, it was intended to enforce a haddock trip limit in the groundfish fishery (500 pounds for large-mesh vessels), or in other fisheries, enforce the allowed retention of a small amount of groundfish (e.g., July-December for the scallop fishery). The premise was that the standard totes help keep fish separate and could be used as a volumetric benchmark by the Coast Guard.

In 1996, through Amendment 7, a DAS limit for haddock was created, and NMFS specifically required a standard tote for all multispecies trips, as well as for handgear vessels that were allowed cod, haddock, and/or yellowtail. In other words, totes were required of everyone, not just a specific permit category.

Subsequently, NMFS published possession limits for cod, pollock, winter flounder, etc., but did not specify the tote requirement in each case. NMFS has intended to keep the requirement for all

permit types, but in fact, the requirement now only applies in a few instances, including vessels fishing with a Handgear A multispecies permit. The regulations that currently include a standard tote requirement have been compiled by NERO staff and are listed in Appendix I.

January 17 VMS/Enforcement Committee Meeting

To prepare for the January 17 VMS/Enforcement Committee, staff of the NERO Sustainable Fisheries Division, Office of Law Enforcement, and General Counsel; the Coast Guard; and the Council met via conference call on January 7. The conclusion of the call was that neither NMFS nor the Coast Guard feel that the fish tote is necessary for the handgear vessels and would also support removing a similar requirement for other fisheries (i.e., scallop, black sea bass, summer flounder, red crab). Currently, the USCG does not use totes for at-sea enforcement on handgear vessels. General Counsel would have an extremely difficult time making a case for an overage on a possession limit, based solely on weight estimates made at sea. Weights measured dockside are the only ones considered official. Should OLE/USCG need totes in the future, it could take on the burden of bringing totes when they board vessels.

On January 17, the VMS/Enforcement Committee considered the matter and agreed by unanimous consent to recommend removing the fish tote requirement from all multispecies handgear regulations. NERO staff present indicated that General Counsel is considering whether this change can be accomplished through an administrative rule or whether an amendment or framework is necessary. Because Amendment 5 to the Multispecies FMP created the tote regulation, an amendment may be necessary to remove it. See meeting summary, pending finalization.

January 23 Groundfish OSC Meeting

The Groundfish OSC can expect to hear additional feedback at its meeting on January 23 from NERO on this matter, particularly on the mechanism that would be necessary to accomplish this rule change. If the OSC supports this change, a measure could be included in Amendment 18. Then, if NERO later deems that the change cannot be made through administrative rule-making, a Council action to accomplish this would already be in process.

APPENDIX 1: Relevant Sections of Federal Fishing Regulations, as of December 3, 2013

§648.2 Definitions.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

§648.14 Prohibitions.

(t) *Red crab.* It is unlawful for any person to do any of the following:

(1) *Permit requirement.* Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; any red crab or red crab parts in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid Federal limited access red crab vessel permit or Federal red crab incidental catch permit.

(2) *Possession and landing.* (i) Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; red crab in excess of the limits specified in §648.263.

(ii) *Restriction on female red crabs.* Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; female red crabs in excess of one standard U.S. fish *tote*.

(iii) Fish for, possess, or land red crab, in excess of the incidental limit specified at §648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(4) *Prohibitions on processing and mutilation.* (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish *tote*, if fishing on a red crab trip with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing on a dedicated red crab trip.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing on a dedicated red crab trip.

(iv) Possess or land red crabs that have been fully processed at sea, i.e., engage in any activity that removes meat from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

§648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under §648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in §648.86, and provided the vessel has at least one standard *tote* on board, unless otherwise restricted by §648.86(a)(2).

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

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- (3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.
- (4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by this section (for a particular fishing year).
- (5) The vessel does not enter or transit the EEZ.
- (6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.
- (7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard **tote** on board.
- (8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

§648.82 Effort-control program for NE multispecies limited access vessels.

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in §648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under §648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in §648.86(b)(1) and (2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

- (i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard **tote** on board.
- (ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.
- (iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

§648.86 NE Multispecies possession restrictions.

- (2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.
- (ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.
- (iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under §648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in §648.88(c), provided that the vessel has at least one standard **tote** on board. This restriction does not apply to vessels also issued limited access NE multispecies permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

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§648.88 Multispecies open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (90.7 kg) of cod, and up to the landing and possession limit restrictions for other NE multispecies specified in §648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in §648.86(b)(1) and (2), respectively, is adjusted by NMFS, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)). For example, if the GOM cod trip limit specified at §648.86(b)(1) doubled, then the cod trip limit for the Handgear B category fishing in the GOM Regulated Mesh Area would also double to 150 lb (68 kg).

(2) *Restrictions:* (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard **tote** on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in §648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under §648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under §648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under §648.86, and provided the vessel has at least one standard **tote** on board. A vessel fishing in the Sea Scallop Access Areas as specified in §648.59(b) through (d) is subject to the possession limits specified in §648.60(a)(5)(ii).

§648.106 Summer flounder possession restrictions.

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under §648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with §648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel possesses a valid summer flounder small-mesh exemption LOA and is fishing in the exemption area as specified in §648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) **totes** or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in³ (2.5 ft³ or 70.79 cm³).

§648.145 Black sea bass possession limit.

(d) Owners or operators of otter trawl vessels issued a moratorium permit under §648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in §648.144(a) and that are not stowed in accordance with §648.144(a)(4) may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) **tote**.

§648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits.* (1) [Reserved]

(2) *Conversion to whole crab weight.* (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

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- (3) *Female red crab restriction.* A vessel may not fish for, catch, possess, transport, land, sell, trade, or barter, female red crabs in excess of one standard U.S. fish **tote** of incidentally caught female red crabs per trip when fishing under a red crab DAS.
- (4) *Full-processing prohibition.* No person may fully process at sea, possess, or land, fully-processed red crab.
- (5) *Mutilation restriction.* A vessel may not retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish **tote** per trip when fishing on a dedicated red crab trip.