

Comment (1): Disapproved Measures – Non-Sector Participants in the CA I Hook Gear Haddock SAP

Federal Register Pages: 67786 & 67802

Sections: Preamble- “Disapproved Measures” & CFR Sec. 648.85(b)(7) “CA I Hook Gear Haddock SAP”

Recommendations:

Recommendation 1: Allow participation in this SAP by non-sector vessels subject to the following measures:

- a) In the short term, limit eligibility to limited access NE multispecies DAS permits unless existing measures governing open access (non-DAS) hand gear permits are deemed to be sufficient;
- b) Limit participation to usage of B DAS only, and count all cod catch against the SAP’s incidental Georges Bank (GB) cod TAC;
- c) Require full retention of all legal size cod catch until 16% incidental GB cod TAC is reached at which time SAP should be closed to non-sector participation.
- d) Prohibit non-sector vessels declared into the SAP from fishing outside of the SAP Access Area on the same trip.

Recommendation 2: For Fishing Year 2004 only, extend the SAP season for up to 30 days from the effective date non-sector vessels are made eligible. This extension of the season would be subject to the Regional Administrator’s authority to close the fishery if and when the Regional Administrator—

- a) determines, based on real time observer reports, that haddock in the SAP Access Area have begun to spawn;
- b) projects that the 16% incidental GB cod TAC is reached;
- c) projects that the haddock TAC for this SAP has been reached; or
- d) applies the general authority provisions of section 648.85(b)(7)(v).

Explanation:

“Recommendation 1” set forth above is intended to respond specifically to the concerns and reasons for disapproval of non-sector vessel participation set forth by the Agency in the Preamble section of the Interim Final Rule (IFR). As the Agency indicated, the provisions governing non-sector vessel participation set forth in the Proposed Rule were overly complex and, perhaps, insufficient to achieve the objectives of Amendment 13.

The Proposed Rule would have extended eligibility for participation in this SAP to vessels with open access and limited access (sector) handgear permits as well as limited access NE multispecies DAS permits. The Agency specifically noted in the Preamble of the IFR that it felt it was unclear how open access (“non-DAS”) groundfish vessels would be managed under this SAP and what measures would be applied, as one reason for disapproving non-sector vessel participation.

In response, NSC suggests that perhaps the simplest and most expedient response for the short term would be to limit non-sector vessel eligibility only to those vessels operating with limited access NE multispecies DAS permits (subject to further restrictions specified in Recommendation 1) until sufficient measures governing open access handgear permits can be more fully considered and developed.

Notwithstanding the Agency’s comments, however, it is NSC’s understanding that vessels operating in the SAP with open access (non-DAS) handgear permits would, in fact, be subject to management measures that appear to be sufficient to achieve the objectives of the SAP, FW 40-A and Amendment 13. NSC understands that such permits are restricted to tub trawl gear with a 500 hook limit and that such vessels would be subject to all of the reporting, monitoring, VMS, observer, and possession limit requirements for operating in the SAP.

If NSC’s understanding is correct, then NSC sees no reason for precluding the participation of the open access non-sector vessels and recommends that SAP eligibility be expanded immediately to include these vessels along with the limited access DAS non-sector vessels as the Council intended. However, please note that there may be very limited economic incentive for non-sector vessels operating with open access handgear permits to participate in this SAP because of these numerous restrictions, and so the actual level of participation by these vessels may be very limited in practice.

The Proposed Rule would have allowed non-sector vessels to use Category A and B DAS while fishing in this SAP, and would have allowed such vessels to fish both inside and outside of the SAP Access Area on the same trip. As described in the Proposed Rule and referenced in the IFR Preamble, the Agency believes this presented an overly complex reporting, management and enforcement scenario.

In response, NSC recommends that non-sector vessels be restricted to using B DAS when declared into this SAP, and that these vessels be prohibited from fishing inside and outside of the SAP Access Area on the same trip. Limiting usage by non-sector vessels to B DAS while declared into the SAP should adequately address the Agency’s concerns regarding reporting and accounting difficulties as well as inconsistencies between management measures that otherwise might apply to the usage of A DAS.

As indicated by the Agency in the Preamble of the IFR, due to the authority for non-sector vessels to use multiple types of DAS in this SAP along with other deficiencies mentioned above, the Proposed Rule did not provide adequate controls on GB cod mortality. The Proposed Rule would have required non-sector vessels to count cod catch against the 16%

GB incidental cod TAC only when fishing under B DAS. The Agency emphasized that GB cod mortality must be fully accounted for.

In response, NSC reiterates its recommendation to limit participation by non-sector vessels in this SAP to B DAS and further recommends that non-sector vessels be required to retain all legal size cod catch and apply 100 % of this catch against the 16% GB incidental cod TAC. NSC believes this requirement will provide the Agency with the most precise accounting possible of GB cod mortality associated with non-sector vessel participation in this SAP.

NSC notes that in the reasons for disapproving the participation of non-sector vessels set forth in the IFR Preamble, the Agency asserts that there are a “*relatively low number of non-sector vessels (10) that are expected to participate in this proposed SAP*”. NSC understands that the actual number of vessels may have been substantially higher, and that the disapproval of non-sector vessel participation has caused substantial economic harm to a number of fishermen who had made financial commitments and preparations to participate in this fishery.

Indeed, subsequent to publication of the Proposed Rule on September 14, 2004, these fishermen had no indication that the Agency had concerns about the non-sector vessel provisions or that it was planning to disapprove their participation when the IFR was published on November 19, 2004. Had the Agency expressed such concerns to the Council and/or in the Proposed Rule, there would have been ample opportunity for the Agency to receive comments and to make these relatively simple corrections in a Final Rule so that non-sector vessels could participate prior to the close of the SAP season on December 31, 2004.

The consequence of the IFR is to effectively preclude non-sector fishermen from the fishery altogether in Fishing Year 2004 and thereafter, and to provide an inequitable economic windfall to sector vessels. NSC does not believe the Agency intended to preferentially and inequitably allocate this haddock fishery to one limited sector of the New England groundfish industry. Nevertheless, that is precisely the practical effect of the IFR. Adoption of the measures set forth in NSC’s Recommendation 1 above would provide a solution to this problem.

In order to correct this problem in the short term for Fishing Year 2004, NSC has made an additional recommendation for the Agency to extend the SAP season for up to an additional 30 days subject to several provisions that would trigger closure of the SAP. In addition to the existing authorities for the RA to close this SAP specifically cited in NSC’s Recommendation 2 above, NSC has recommended a measure intended to specifically address concerns regarding the onset of spawning behavior by haddock in the SAP Access Area.

NSC understands that the onset of spawning behavior by haddock in the SAP Access Area may occur sometime in January although conventional wisdom has maintained that the more likely months are February and March for ripe spawning haddock in this area. NSC believes there is adequate coverage and expertise within the observer program to provide

the RA with real time, reliable information on the spawning condition of haddock caught in the SAP Access Area during the month of January. With this real-time observer information in hand, it would seem to be a relatively simple matter for the RA to close the SAP when it is clear that spawning has commenced. NSC recognizes this may place an additional short term burden on the Agency including, especially, the observer program and the RA’s office. Nevertheless, this action would go a long way toward mitigating the immediate economic harm caused by the unanticipated exclusion of non-sector vessels from the SAP as well as the appearance that the Agency’s action was to inequitably allocate access to the resource.

Comment (2): Eastern US/Canada Haddock SAP Pilot Program

Federal Register Pages: 67784 & 67800

Sections: “Comments and Responses—Comment 25” & Sec. 648.85(b)(5)(ii) Special Management Programs / Incidental TACs

Recommendations: Strike the incidental TAC allocation of “.34 percent to the Eastern US/Canada Haddock SAP Pilot Program”. Reallocate this incidental TAC to the Regular B DAS Pilot Program.

Explanation: Please note that NSC made the same recommendations regarding this provision in its comments on the Proposed Rule (see NSC Comment (3) regarding the Proposed Rule).

NSC believes the Agency’s response to NSC original comment on this issue appears to confirm NSC’s point and validate its recommendation to eliminate the allocation of an incidental GB cod TAC to this SAP. As stated in the Agency’s response to Comment 25 at FR67784:

“The incidental GB cod TAC for this SAP is not an allocation of GB cod that NE multispecies vessels may catch in addition to the US share of the GB cod TAC established under the US/Canada Resource Sharing Understanding. The GB cod TAC set pursuant to the Understanding represents the total amount of GB cod that may be caught from the Eastern US/Canada Area.”

This is precisely the reason why NSC believes there is no reason to allocate an additional incidental GB cod TAC to this fishery since it is definitively governed by the hard TAC established pursuant to the Understanding. In effect, there is no “incidental catch” of GB cod in this SAP because all of the catch is considered to be part of the hard TAC.

FW40-A establishes US incidental TACs for certain stocks of concern under section 648.85(b)(5)(ii) for the purpose of ensuring that all mortality of these stocks is accounted for under the Amendment 13 rebuilding measures; specifically, in B DAS fisheries targeting healthy stocks in which there is expected to be an incidental catch of such stocks of concern but for which there is no hard TAC governing the total harvest for all fisheries.

Such incidental TACs are clearly intended to be in addition to, not part of, the mortality expected to occur in A DAS fisheries and in fisheries governed by a hard TAC such as those that are subject to the US/Canada Understanding.

In this instance, the entire GB cod catch taken in this SAP will be limited to and fully accounted for under the hard TAC established pursuant to the Understanding. There is no additional “incidental catch” of GB cod in this SAP for which an incidental TAC might be needed to account for this mortality. In fact, establishing an incidental TAC for this SAP effectively double-counts the GB cod mortality in this SAP.

NSC calls the Agency’s attention to the fact that the Agency used this same rationale in the IFR for not allocating the 16% GB cod TAC to Sector vessels in the CAI Hook Gear Haddock SAP, and for proposing to reallocate this incidental TAC to the B Regular DAS Pilot Program as a consequence of disapproving non-sector vessel participation in the SAP (see FR 87786-87787 Disapproved Measures/Non-Sector Participants in the CAI Hook Gear Haddock SAP).

Indeed, as the Agency indicates on FR 67786;

“...all cod caught by Sector vessels would count toward the Sector’s allocation of the GB cod; therefore, the fishing mortality on GB cod would be fully accounted for.”

If one simply applies the same logic to the Eastern US/Canada Haddock SAP, it becomes clear that in this case the sentence could be re-written to state; *... all cod caught by Eastern US/Canada Haddock SAP vessels would count toward the US allocation of GB cod under the US/Can Understanding; therefore, the fishing mortality on GB cod would be fully accounted for.*

At FR 67787, the Agency goes on to explain that there is no need to allocate the 16% incidental GB cod TAC to the CAI Hook Gear Haddock SAP because of the disapproval of the non-Sector participation (and, as above, because all cod caught by sector vessels are already accounted for under their sector allocation, ie. hard TAC). Further, the Agency correctly explains in detail the rationale for reallocating this unusable incidental TAC to the Regular B DAS Pilot Program.

NSC submits that the substantive reasons presented by the Agency in the IFR for not allocating an incidental GB cod TAC to sector vessels participating in the CAI Hook Gear Haddock SAP are conceptually identical to those for not allocating the 34% incidental GB cod TAC to the Eastern US/Canada Haddock SAP Pilot Program. In each case, all of the GB cod mortality is already fully accounted for under a separate hard TAC.

Further, the rationale presented by the Agency in the IFR for reallocating the 16% GB cod incidental TAC from the CAI Hook Gear Haddock SAP to the B Regular DAS Pilot Program is also identical to the rationale for reallocating the 34% GB cod incidental TAC from the Eastern US/Canada Haddock SAP Pilot Program to the B Regular DAS Pilot

Program. In each case, such reallocation correctly reflects the intent of the Council in Amendment 13 and FW40-A.

Finally, as explained in Comment (1) above, NSC has strongly recommended that the Agency modify the terms of the CAI Hook Gear Haddock SAP to provide for non-sector vessel participation. Therefore, the references in this Comment (2) to the Agency's proposal to transfer the 16% GB cod incidental TAC from the CAI Hook Gear Haddock SAP to the B Regular DAS Pilot Program is not intended to suggest NSC supports that transfer. NSC's references to the Agency's proposed transfer were made only to draw attention to the Agency's rationale for the transfer and how that closely relates to the circumstances in the Eastern US/Canada Haddock SAP Pilot Program described above. Again, NSC strongly supports opening the CAI Hook Gear Haddock SAP to non-sector vessels and retaining the 16% GB cod incidental TAC in that SAP so that all of the non-sector GB cod catch will be fully accounted for.