

Science, Service, Stewardship



# Sector ACE Carryover: Update for Groundfish Oversight Committee

Michael Ruccio  
Groundfish Policy Analyst  
Greater Atlantic Regional Office



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## *Conservation Law Foundation v. Pritzker, et al.* (Case No. 1:13-CV-0821-JEB)

- Not Counting carryover toward sector ACE or ACL violates Magnuson-Stevens Act if ABC is exceeded
- ‘Total potential catch’ (total of ACL + maximum carryover available) cannot exceed ABC
- Invalidated and vacated FW 50 carryover approach for FY 2013
- Agency developing emergency rulemaking to address Court decision



## *FY 2013 Court Remedy in Development*

- Count FY 2012 carryover used, except *de minimis* amount, against FY 2013 sector ACE and ACL
- Pound-for-pound payback of used carryover, except *de minimis* amount, required by individual sectors *if:*

1. Total stock/species level ACL is exceeded, *and;*
  2. Sector sub-ACL is exceeded.



## *Current Catch Information for FY 2013*

- Most stocks have not exceeded sector sub-ACL (criterion #2 not met)
- Witch flounder catch is roughly 85,000 lb greater than sector sub-ACL (criterion #2 met); remains to be seen if total ACL will be exceeded (criterion #1)
- Gulf of Maine haddock catch is greater than total ACL (criterion #1); sector catch less than sector sub-ACL (criterion #2 not met)
- American Plaice catch is slightly below sector sub-ACL (criterion #2 not met)



## *Current Catch Information for FY 2013*

- If both payback criteria are met, sectors exceeding *de minimis* carryover amount would have FY 2014 ACE reduced by amount of carryover (lb for lb payback)
- Updates to be provided as sector and fishing year catch information is finalized
- Potential payback implications based on other sub-components, irrespective of carryover



## *Carryover in FY 2014 and beyond*

- Clarification in conjunction with FW 50; a revised accounting process for carryover against ACE and ACL
- Also established a *de minimis* amount not subject to AM repayment (final rule published May 30; 79 FR 31050)
- AM triggered if total ACL is exceeded, irrespective of sector catch relative to sector sub-ACL
- Added provision that Council may request amount of carryover issued to be reduced from 10 percent



## *Carryover in FY 2014 and beyond*

- Current process may still allow total potential catch above ABC; inconsistent with Court finding
- Three options:
  - Request, on an annual basis, that NMFS reduce carryover/total potential catch to ABC level
  - If not asked to reduce carryover, Agency must take unilateral action when necessary to reduce carryover/total potential catch using Court interpretation of “up to 10% language”
  - Undertake new Council action to revise carryover accounting and/or process (FW 53?)



**Questions?**