

(viii) A description of any variances from the test method.

(4) *Excess Emissions Report.* (i) For excess emissions (except in the case of saturated stack conditions), the owner or operator shall notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day (initial notification). A complete written report of the incident shall be submitted to the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator within ten (10) working days of the initial notification. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: r9.aeo@epa.gov. The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20 percent for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements. For this reporting requirement, excess opacity due to saturated stack conditions is exempted.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode

are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070227048-7091-02; I.D. 020807C]

RIN 0648-AU63

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2007

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; specifications.

SUMMARY: The following Total Allowable Catches (TACs) in the United States (U.S.)/Canada Management Area are implemented for the 2007 fishing year (FY): 494 mt of Georges Bank (GB) cod, 6,270 mt of GB haddock, and 900 mt of yellowtail flounder. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act. These TACs may be adjusted during FY

2007, if NMFS determines that the harvest of these stocks in FY 2006 exceeded the TACs specified for FY 2006.

DATES: This rule is effective May 3, 2007, through April 30, 2008.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2006 Guidance Document and copies of the Environmental Assessment (EA) of the 2007 TACs (including the Regulatory Impact Review and Final Regulatory Flexibility Analysis (FRFA)) may be obtained from NMFS at One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281-9315. NMFS prepared a summary of the FRFA, which is contained in the Classification section of this rule.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, (978) 281-9273, fax (978) 281-9135, e-mail Tobey.Curtis@NOAA.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on March 12, 2007, (72 FR 10967) with public comments accepted through April 11, 2006. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,900 mt. The U.S. is entitled to 26 percent and Canada to 74 percent, resulting in a national quota of 494 mt of cod for the U.S. and 1,406 mt of cod for Canada. For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 19,000 mt. The U.S. is entitled to 33 percent and Canada to 67 percent, resulting in a national quota of 6,270 mt of haddock for the U.S. and 12,730 mt of haddock for Canada. For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2007 is 1,250 mt. The U.S. is entitled to 72 percent and Canada to 28 percent, resulting in a national quota of 900 mt of yellowtail flounder for the U.S. and 350 mt of yellowtail flounder for Canada. On November 16, 2006, the New England Fishery Management Council (Council) approved, consistent with the 2006 Guidance Document, the following U.S. TACs recommended by the TMGC and recommended their adoption to NMFS: 494 mt of GB cod, 6,270 mt of GB haddock, and 900 mt of GB yellowtail flounder (Table 1). The 2007 haddock and yellowtail flounder TACs represent a decrease from 2006 TAC levels, and the 2007 cod TAC represents an increase from the 2006 TAC (Tables 1 and 2).

TABLE 1: 2007 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,900	19,000	1,250
U.S. TAC	494 (26)	6,270 (33)	900 (72)
Canada TAC	1,406 (74)	12,730 (67)	350 (28)

TABLE 2: 2006 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

The 2007 TACs are based upon stock assessments conducted in July 2006 by the Transboundary Resource Assessment Committee (TRAC). The TACs are consistent with the results of the TRAC and the TMGC's harvest strategy.

The regulations for the U.S./Canada Management Understanding, implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: "Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur

in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2006, the pertinent TAC will be adjusted downward in order to be consistent with the regulations. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2007 TACs for

cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

Comments and Responses

No comments relevant to the proposed rule were received by the close of business on April 11, 2007.

Classification

NMFS has determined that this final rule is consistent with the FMP and is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. No comments on the economic impacts of the TACs were received.

The specification of hard TACs for the U.S./Canada shared stocks of Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder is necessary in order to ensure that the fishing mortality levels for these shared stocks are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A full description of the objectives and legal basis for the TACs is contained in the preamble of the proposed rule. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The specification of hard TACs is necessary in order to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area. A description of the objectives and legal basis for these TACs is contained in the SUMMARY of the proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities (\$3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no differential impacts between large and small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the TACs is approximately 1,000 vessels, i.e., those with limited access NE multispecies days-at-sea (DAS) permits that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

From May 2005 through April 2006 (i.e., FY 2005), 184 individual NE multispecies DAS vessels fished in the

U.S./Canada Management Area. Because the regulatory regime in FY 2007 will be similar to that in place in FY 2005, it is likely that the number of vessels that choose to fish in the area during FY 2007 will be similar to the number of vessels that fished in the area during FY 2005.

The economic impacts of these TACs are difficult to predict due to several factors, but are based on the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the relative newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there are relatively few historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Management Area and the rate at which cod is caught in the Eastern U.S./Canada Area will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught. During the 2004 and 2005 fishing years, the TACs were not fully utilized, and inseason changes to the regulations impacted the fishery. Two of the three specified TACs are being reduced (haddock and yellowtail flounder), and could, under certain circumstances, constrain fishing opportunity on cod (for which the TAC is increasing).

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the proposed 2007 U.S./Canada TACs will likely be different from the economic impacts of the 2006 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the 2007 cod TAC represents an increase from 2006, the 2007 haddock and yellowtail flounder TACs represent decreases from 2006. For yellowtail flounder, the decrease is substantial. Based on the estimates in the EA, revenues from cod caught in the Eastern U.S./Canada Area may increase from 2006 to 2007 by approximately 32 percent, and revenue from haddock and yellowtail flounder in the U.S./Canada Management Area may decline by 16

percent and 57 percent, respectively. According to the analysis, the overall change in revenue from 2006 to 2007 for the 3 species combined could amount to a 33-percent decline (or approximately \$ 3.5 million), although it is difficult to predict future fishing patterns, and there are factors that may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern Area may be open for a longer period of time, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the TACs specified for FY 2007 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2006 fishing year exceeded the relevant TACs specified for FY 2006. The economic effects of this downward adjustment would likely result in a short term loss of revenue proportional to the magnitude of the adjustment.

Three alternatives were considered for FY 2007: The proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs are proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. Accordingly, NMFS chooses to either accept or reject the recommendation of the Council. The TACs implemented through this action would have a similar economic impact as the FY 2006 TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information incorporated from the most recent TRAC. The status quo TACs are based on stock assessments conducted in 2005, and are therefore outdated and do not reflect the most recent status of the stocks determined during the 2006 assessments. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. On the short term, the no action alternative would not prevent overfishing, and in the long term, the no action alternative would not rebuild the stocks and consistently attain optimum yield for the fishery.

The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the preferred alternative.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date because doing otherwise may compromise full and effective management of the FMP. If the 30-day delay in effectiveness is not waived, the hard TACs would not be in effect at the beginning of the fishing year (May 1, 2007). Such a delay in implementation could impact the fishery in several different ways.

Implementation of the hard TAC after the beginning of the fishing year would prevent NMFS from being able to prevent the possible overharvest of some or all of the stocks managed by a hard TAC. Most notably, in the case of Eastern GB cod and GB yellowtail flounder, because the size of the TACs are relatively small, and the possibility that the catch rate of cod and yellowtail flounder could be high during the month of May, it is likely that the TACs could be reached and exceeded during the 30-day delay in effectiveness period. If no TACs are in place, the

Regional Administrator would be unable to take action to stop fishing on these stocks. Failure to stop fishing on the stocks when the TAC is caught would undermine the GB cod and yellowtail flounder rebuilding schedules of the FMP. Furthermore, any resulting TAC overages must be deducted from the following year's TAC, which would result in a negative economic impact to the fishery for FY 2007. Due to the fact that the TAC specifications originally recommended by the TMGC were remanded by the Council, there was a delay of over two months in the Council's final recommendation to NMFS for the FY 2007 TACs on November 16, 2006. This caused subsequent delays in the TAC specification process by NMFS, which includes comprehensive environmental and socioeconomic analyses, internal review, and rule-making, thereby resulting in later than normal publication of the proposed rule for this action.

The specified TACs do not modify any collection of information, reporting, or recordkeeping requirements. The specified TACs do not duplicate, overlap, or conflict with any other Federal rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of

1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office web site at <http://www.nero.noaa.gov> and will also be available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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