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Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010-4114-02]

RIN 0648-XA92

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels. Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that 100 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area would be harvested by July 12, 2007, if current catch rates continue. This action is being taken to prevent the 2007 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2007 fishing year, and to minimize the impacts of discards of undersized haddock, in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act. This area will be reopened at a later date during the 2007 fishing year to provide access to the shared U.S./Canada Stocks of cod, haddock, and yellowtail flounder, if NMFS determines that the area can be reopened without exceeding the GB cod TAC for the 2007 fishing year.

DATES: The temporary closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr June 20, 2007, through 2400 hr local time, April 30, 2008.

FOR FURTHER INFORMATION CONTACT:

Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The final GB cod TAC allocation for the 2007 fishing year was specified at 494 mt (May 7, 2007; 72 FR 25709). The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to close access to the Eastern U.S./Canada Area for all limited access NE multispecies DAS vessels to prevent over-harvesting the TAC allocations for the U.S./Canada Management Area.

Based upon VMS daily catch reports and other available information, to date, 52 percent of the 2007 GB cod TAC of 494 mt has been harvested. Assuming this catch rate continues, it is estimated that 100 percent of the 2007 GB cod TAC will be caught by July 12, 2007. Recent observer data show discards of GB cod have exceeded kept GB cod, with a discard-to-kept ratio for GB cod of approximately 2:1. Additionally, due to the recent slow growth rate observed for GB haddock, the catch of undersized GB haddock has increased discards of this species, as well. Data indicate that haddock should be fully recruited to legal size by late summer 2007. Therefore, based on the available information described above, to slow the catch rate of GB cod in the Eastern U.S./Canada Area and to ensure that the TAC for GB cod will not be exceeded, as well as to minimize discards of undersized GB haddock, the Eastern U.S./Canada Area, including the August through December Eastern U.S./Canada Haddock SAP Pilot Program, should the closure extend into the SAP season, is temporarily closed to all limited access NE multispecies DAS vessels, effective 0001 hr June 20, 2007, pursuant to § 648.85(a)(3)(iv)(D). This area will be reopened at a later date during the 2007 fishing year to provide access to the shared U.S./Canada cod, haddock, and yellowtail flounder stocks, pursuant to the regulations at § 648.85(a)(3)(iv)(D), if NMFS determines that the area can be reopened without exceeding the GB cod TAC for the 2007 fishing year.

Vessel owners that have made a correct VMS declaration indicating their intention to fish in the Eastern U.S./Canada Area, and crossed the demarcation line prior to 0001 hr June

20, 2007 may continue their trip and fish in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area and have already "flexed out" or "flexed west," may not reenter the Eastern U.S./Canada Area after 0001 hr June 20, 2007. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hr June 20, 2007 is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year, unless otherwise notified.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. This action will temporarily close the Eastern U.S./Canada Area to NE multispecies DAS vessels. This action is necessary to slow the catch rate of GB cod in the Eastern U.S./Canada Area and prevent the Eastern U.S./Canada Area GB cod TAC from being exceeded during the 2007 fishing year. Because of the rapidly increasing GB cod harvest rate, the small GB cod TAC, and the substantial increase of fishing activity in the Eastern U.S./Canada Area beginning June 1, 2007, it is projected that 100 percent of the GB cod TAC will be harvested by July 12, 2007. This projection was not available until June 14, 2007.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to prevent over-harvesting, or to facilitate achieving, the U.S./Canada Management Area TACs. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action to slow the catch rate of GB cod in the Eastern U.S./Canada Area and prevent the Eastern U.S./Canada Area GB cod TAC from being exceeded prior to the end of the 2007 fishing year. Such a delay would allow the observed high catch rate of GB cod to continue and would result in excessive discards of GB cod. Similarly, the recent high rates of GB haddock discard would likely also continue, resulting in a high level of GB haddock mortality with neither corresponding landings, nor value, accruing to participating vessels. To allow vessels to continue directed fishing effort on GB

cod and GB haddock during the period necessary to publish and receive comments on a proposed rule could allow the GB cod harvest to exceed the GB cod TAC for the 2007 fishing year and allow excessive amounts of small haddock to continue to be discarded. Exceeding the 2007 TAC for GB cod would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased negative economic impacts to vessels operating in the Eastern U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the

rebuilding of this overfished stock. Exceeding the 2007 GB cod TAC would also necessitate that any overages of the GB cod TAC during the 2007 fishing year be deducted from the GB cod TAC for the 2008 fishing year. Reducing the 2008 TAC due to exceeding the 2007 TAC caused by delaying this action, therefore, would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The public is able to obtain information on the rate of harvest of the GB cod TAC via the Northeast Regional Office website (<http://www.nero.noaa.gov>), which provided some advanced notice of a potential

action to prevent the TAC for GB cod from being exceeded during the 2007 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and FW 42 to the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: June 18, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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