

(21) Any other measures contained in the FMP.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070227048-7091-02]

RIN 0648-XF04

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Prohibition on the Possession of Yellowtail Flounder in the U.S./Canada Management Area

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

**ACTION:** Temporary rule; possession prohibition.

**SUMMARY:** NMFS announces that 100 percent of the Georges Bank (GB) yellowtail flounder Total Allowable Catch (TAC) has been harvested, and that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), is prohibiting the harvest, possession, and landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area, and maintaining the Eastern U.S./Canada Area closure to limited access NE multispecies days-at-sea (DAS) vessels for the remainder of the 2007 fishing year (through April 30, 2008). This action is being taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), is required by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP), and is intended to prevent over-harvest of the TAC for GB yellowtail flounder during the 2007 fishing year.

**DATES:** Effective 0001 hours local time January 24, 2008, through April 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at

§ 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid Federal limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2007 fishing year is 900 mt. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limit in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. The regulations at § 648.85(a)(3)(iv)(C)(3) require the Regional Administrator to prohibit the harvesting, possession, and the landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area and close the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year when 100 percent of the GB yellowtail flounder TAC is projected to be caught.

Based upon the reduced 2007 TAC for GB yellowtail flounder (a 43-percent reduction from 2006), the GB yellowtail flounder trip limit was initially set at 3,000 lb (1,361 kg) per trip to prevent over-harvest during the 2007 fishing year, and to prevent a premature closure of the Eastern U.S./Canada Area, which could result in reduced opportunities to fish for GB cod and GB haddock in the Eastern U.S./Canada Area. On November 27, 2007, the GB yellowtail flounder trip limit was increased to 7,500 lb (3,402 kg) because the 3,000-lb trip (1,361-kg) limit was projected to result in under-harvest of the TAC. The 7,500-lb (3,402-kg) trip limit resulted in an unpredicted high rate of GB yellowtail flounder landings, markedly different from the historical fishing patterns that formed the basis of the projection. On January 10, 2008, the GB yellowtail flounder trip limit was decreased to 1,500 lb (680 kg) from 7,500 lb (3,402 kg) because the rapid catch rate observed since implementing the 7,500-lb (3,402-kg) GB yellowtail flounder trip limit (33 percent of the TAC was caught between December 6, 2007, and January 3, 2008) was projected to result in the TAC being achieved on January 23, 2008.

Based on Vessel Monitoring System data and other available information, as of January 17, 2008, 100 percent of the GB yellowtail flounder TAC has been caught. Based on this information, the Regional Administrator, in accordance with the regulations at § 648.85(a)(3)(iv)(C)(3), is prohibiting the harvesting, possession, and the

landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area, and closes the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year effective 0001 hours local time January 24, 2008, through April 30, 2008.

#### Classification

This action is authorized 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), there is 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 prohibits the harvest, possession, and landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area and closes the Eastern U.S./Canada Area to limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year (through April 30, 2008). This action is being taken to prevent the GB yellowtail flounder TAC from being exceeded during the 2007 fishing year. This action is required by the regulations at 50 CFR 648.85(a)(3)(iv)(C)(3) and is non-discretionary. Since 100 percent of the GB yellowtail flounder TAC is projected to have been harvested as of January 17, 2008, there is insufficient time to allow for public notice, comment, and delayed effectiveness before the TAC will be exceeded.

It was not possible to take this action earlier to provide more time for public comment because of the rapidly increasing GB yellowtail flounder harvest rate, the reduced GB yellowtail flounder TAC, and the ability of NMFS to monitor the harvest (the estimate that 100 percent of the GB yellowtail flounder TAC had been harvested was not available until January 17, 2008). Exceeding the 2007 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13 to the FMP, resulting in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the U.S./Canada Management Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

The potential of prohibiting the harvest, possession, and landing of GB yellowtail flounder by all federally

permitted vessels within the entire U.S./Canada Management Area, and closure of the Eastern U.S./Canada Area to limited access NE multispecies DAS vessels, for the remainder of the 2007 fishing year was announced to the public when the 1,500-lb (680-kg) trip limit was implemented on January 10, 2008. The public is able to obtain information on the rate of harvest of the GB yellowtail flounder TAC via the Northeast Regional Office website (<http://www.nero.noaa.gov>), which provides at least some advanced notice of a potential action to prevent the TAC for GB yellowtail flounder from being exceeded during the 2007 fishing year. Further, the Regional Administrator's authority to prohibit the harvest, possession, and landing of GB yellowtail flounder by all federally permitted vessels within the entire U.S./Canada Management Area, and close the Eastern U.S./Canada Area to limited access NE multispecies DAS vessels for the remainder of the 2007 fishing year, to ensure the shared U.S./Canada stocks of fish are not exceeded was considered and open to public comment during the development of Amendment 13 and Framework 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: January 23, 2008.

**Emily H. Menashes,**

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

[FR Doc. 08-343 Filed 1-23-08; 2:50 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 070703215-7530-02]

RIN 0648-AU08

#### Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Vessel Monitoring System; Open Access Fishery; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule that was published in the **Federal Register** on December 7, 2007, and which becomes effective February 4,

2008. The final rule requires all vessels fishing pursuant to the harvest guidelines, quotas, and other management measures governing the open access groundfish fishery, and all non-groundfish trawl vessels to provide declaration reports and to activate and use a vessel monitoring system (VMS) transceiver unit while fishing off the coasts of Washington, Oregon and California. This action corrects an incorrect cross reference in the final rule which allows vessels that leave the open access fishery to obtain an exemption from the VMS reporting requirements.

**DATES:** Effective February 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko at 206-526-6110.

**SUPPLEMENTARY INFORMATION:** This final rule is accessible via the Internet at the Office of the **Federal Register's** Website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's (Council's) website at <http://www.pcouncil.org/>.

A final rule to expand the Pacific Coast groundfish fishery vessel monitoring system (VMS) program to include the open access and non-groundfish trawl fisheries was published in the **Federal Register** on December 7, 2007 (72 FR 69162). The final rule contained an error that needs to be corrected. The final rule, which becomes effective on February 4, 2008, requires all vessels fishing pursuant to the harvest guidelines, quotas, and other management measures governing the open access groundfish fishery and all non-groundfish trawl vessels to provide declaration reports and to activate and use a VMS transceiver while fishing in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon and California.

In the drafting of the rule language an incorrect cross reference at § 660.312 (d)(4)(iv) to § 660.312 (b)(2) results in a substantive change in the regulatory requirements. The inclusion of the incorrect cross reference would allow vessels using non-groundfish trawl gear to request and receive an exemption to the VMS program hourly reporting requirements if they do not retain groundfish from the EEZ. This exemption is inconsistent with the structure and purpose of the VMS program. The VMS program requires vessels using non-groundfish trawl gear to have and use VMS if they fish in the EEZ whether or not groundfish are retained. The VMS program is intended to provide for monitoring of compliance with essential fish habitat conservation (EFH) areas where the use of bottom

trawl gear is prohibited regardless of whether groundfish are retained in order to protect the bottom habitat. The attached correction is needed so the regulatory language implements the action recommended by the Council and analyzed in the environmental assessment.

#### Classification

The Assistant Administrator (AA) for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable and contrary to the public interest. NMFS had mis-published this exemption allowance in its final rule (72 FR 69162, December 7, 2008). If this correction were not made promptly, some non-groundfish trawl vessels may operate in the EEZ without VMS and NMFS would be unable to monitor fishing relative to Essential Fish Habitat (EFH) conservation areas where trawling is prohibited in order to protect groundfish habitat. Because a notice and comment rulemaking may take several months to implement it would likely not be effective until after the start of the pink shrimp trawl fishery, a major non-groundfish trawl fishery. In addition, several smaller non-groundfish trawl fisheries may also be currently operating. If purchase of a VMS unit is delayed, reimbursement funds for the purchase of a VMS unit may be unavailable. If reimbursement funds are not available, individual vessel owners would incur the cost of purchasing VMS units. Therefore, it is impracticable and contrary to the public interest to provide prior notice and an opportunity for public comment on this correction.

Dated: January 23, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is corrected by making the following correcting amendments:

#### PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.312, paragraph (d)(4)(iv) is revised to read as follows: