

Dated: April 23, 2008.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0401120010-4114-02]

RIN 0648-XH45

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; reduction of landing limit.

SUMMARY: NMFS announces a decrease in the Georges Bank (GB) yellowtail flounder trip limit to 5,000 lb (2,268 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan and is intended to prevent over-harvesting of the total allowable catch (TAC) for GB yellowtail flounder during the 2008 fishing year. This action is being taken to maintain opportunities for vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective May 1, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid 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 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 1,950 mt (73 FR 16572, March 28, 2008), a 217-percent increase from the TAC for the 2007 fishing year.

The regulations at § 648.85(b)(3)(iv)(C) specify the initial GB yellowtail flounder for each fishing year at 10,000 lb (4,536 kg) per trip. The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. Despite the substantially larger 2008 TAC for GB yellowtail flounder, projections of harvest rates in the fishery indicate that the current trip limit of 10,000 lb (4,536 kg) per trip could still result in the over-harvest of the GB yellowtail flounder TAC before the end of the 2008 fishing year. The regulations at § 648.85(a)(3)(iv)(C)(3) state that when 100 percent of the GB yellowtail flounder TAC is projected to be harvested, NMFS shall close the Eastern U.S./Canada Area to NE multispecies DAS vessels and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area. Therefore, any closure resulting from exceeding the GB yellowtail flounder TAC would unnecessarily reduce opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area. Based upon this information, NMFS is decreasing the current 10,000-lb (4,536 kg) trip limit in the U.S./Canada Management Area to 5,000 lb (2,268 kg), effective May 1, 2008, through April 30, 2009. This will allow for the fishery in the Eastern U.S./Canada Area to remain open longer and increase the opportunities to target Eastern GB cod and haddock during the 2008 fishing year. Any NE multispecies DAS vessels that have declared into the U.S./Canada Management Area, departed on a trip, and crossed the VMS demarcation line to start their trip prior to 12:01 AM on May 1, 2008, may possess and land up to 10,000 lb (4,536 kg) of GB yellowtail flounder on that trip only.

GB yellowtail flounder landings will be closely monitored through the Vessel Monitoring System (VMS) and other available information. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, the Eastern U.S./Canada Area will close to all limited access NE multispecies DAS vessels, and all vessels will be prohibited from harvesting, possessing, or landing

yellowtail flounder from the entire U.S./Canada Management Area for the remainder of the fishing year.

Conversely, if the TAC is projected to be under-harvested by the end of the fishing year, in-season adjustments to increase the trip limit may be considered.

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)(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 notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. The regulations under § 648.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. Based upon recent projections, even though the 2008 GB yellowtail flounder TAC is substantially larger than the 2007 TAC, a trip limit of 10,000 lb (4,536 kg) would likely cause the 2008 GB yellowtail flounder TAC to be exceeded before August. These projections were not completed in sufficient time to allow for a proposed rule. Therefore, during the time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action, vessels would be able to land GB yellowtail flounder at a rate which would likely result in the full harvest of the 2008 GB yellowtail flounder TAC prior to the end of the 2008 fishing year. This would necessitate the premature closure of the Eastern U.S./Canada Area and a prohibition on the retention of GB yellowtail flounder in the entire U.S./Canada Management Area, thereby preventing the Agency from meeting its obligation to ensure that full opportunity is provided to harvest the 2008 U.S./Canada Management Area TACs for GB cod, haddock, and yellowtail flounder at a level that approaches optimum yield. Further, over-harvesting the GB yellowtail TAC would result in an overage deduction in fishing year 2009, and increase economic impacts to the industry and social impacts beyond those analyzed for Amendment 13. Exceeding the 2008 TAC for GB yellowtail flounder would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13 and Framework Adjustment 42, resulting in decreased revenue for the NE multispecies fishery, increased negative

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 rate of harvest of the GB yellowtail flounder TAC in the U.S./Canada Management Area is updated weekly on the internet at <http://www.nero.noaa.gov>. Accordingly, the public is able to obtain information that

would provide some advanced notice of a potential action to provide additional opportunities to the NE multispecies industry to fully harvest the TAC for GB yellowtail flounder, as well as Eastern GB cod and haddock, during the 2008 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and Framework 42 to the NE Multispecies 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: April 24, 2008.

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