

On February 23, 2009, the Court issued a third Order, extending the suspension of differential DAS counting through April 10, 2009, to allow the Council time to review NMFS analysis of the mixed-stock exception, as submitted to the Court on February 19, 2009, as submitted to the Council during its regularly scheduled April 2009 meeting.

In response to the February 17, 2009, and February 23, 2009, Court Orders, NMFS, through this final interim rule, is issuing a temporary suspension of the FW 42 differential DAS counting regulations through April 10, 2009, and extending the fishing year 2008 March 1 deadline for submission of DAS leasing applications to March 31.

#### Classification

It has been determined that this rule is "not significant" for purposes of E.O. 12866.

The Administrator, Northeast Region, NMFS, determined that the temporary suspension of differential DAS counting implemented through this final interim rule is necessary in order to comply with the Court Order. Therefore, this action represents a non-discretionary modification to the FMP, as required by a Court Order.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment are impracticable, as NMFS is required by court order to immediately implement these changes, and has no discretion in making these modifications to the rule. For the same reason, the AA finds good cause to waive the 30-day delay in the effective date under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

It has been determined that the Environmental Assessment/Finding of No Significant Impact statement prepared for FW 42 remains applicable and that the scope of this action falls within the range of measures previously analyzed. This final interim rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This final interim rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. This final interim rule does not contain any new recordkeeping or reporting requirements.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 5, 2009.

**Samuel D. Rauch III,**

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.82, paragraph (e)(2) is stayed effective March 6, 2009, through April 10, 2009, and paragraph (k)(3) introductory text is revised to read as follows:

#### § 648.82 Effort-control program for NE multispecies limited access vessels.

\* \* \* \* \*

(k) \* \* \*

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1, unless otherwise specified in the this paragraph (k)(3). For the 2009 fishing year, applications may be submitted up until the close of business on March 31. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

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[FR Doc. E9-5191 Filed 3-6-09; 4:15 pm]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0401120010-4114-02]

RIN 0648-XN66

#### 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; increase of landing limit.

**SUMMARY:** This action increases 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 (FMP) and is intended to increase the likelihood of harvesting the total allowable catch (TAC) for GB yellowtail flounder without exceeding it during the 2008 fishing year. This action is being taken to allow 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 0001 hours March 9, 2009, through April 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Fishery Management Specialist, (978) 281-9122, 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(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (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. On April 29, 2008 (73 FR 23130), based upon the 2008 TAC for GB yellowtail flounder and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was set at 5,000 lb (2,268 kg) for the 2008 fishing year. On October 22, 2008 (73 FR 63652) the trip limit for GB yellowtail flounder was reduced to 2,500 lb (1,134 kg) to slow the rate of harvest and to prevent a premature closure of the Eastern U.S./Canada Management Area and, therefore, reduced opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch is approximately 67.2 percent of the TAC as of February 25, 2009. Increasing the GB yellowtail flounder trip limit to 5,000 lb (2,268 kg) from 2,500 lb (1,134 kg) is expected to increase landings of GB yellowtail flounder, reduce discards, and result in the achievement of the TAC during the fishing year, without exceeding it. Based on this information, the Regional Administrator is increasing the current 2,500-lb (1,134-kg) yellowtail flounder trip limit in the U.S./Canada Management Area to 5,000 lb (2,268 kg) per trip, effective 0001 hours local time March 9, 2009, through April 30, 2009.

GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustments to

increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, all vessels would be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area, and the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

#### 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. The regulations under § 658.85(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. This action would relieve a restriction by increasing the GB yellowtail flounder trip limit for all NE multispecies DAS vessels fishing in the U.S./Canada Management Area through April 30, 2009, to facilitate the harvest of the TAC while ensuring that the TAC will not be exceeded during the 2008 fishing year. This will result in decreased regulatory discards of GB yellowtail flounder, increase revenue for the NE multispecies fishery, and increase the chances of achieving optimum yield in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Management Area TACs. It is important to take this action immediately because the current restrictive GB yellowtail flounder trip limit has prevented the NE multispecies fishery from harvesting the TAC at a rate that will result in complete harvest by the end of the 2008 fishing year. Delay in the implementation of this action could result in further wasteful discards of GB yellowtail flounder and decrease the opportunity available for vessels to fully harvest the 2008 GB yellowtail flounder TAC.

The information necessary to take this action became available only recently. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting GB yellowtail flounder in the U.S./Canada Management Area. The Regional Administrator's authority to increase trip limits for GB yellowtail flounder in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 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: March 5, 2009.

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

[FR Doc. E9-5171 Filed 3-6-09; 4:15 pm]

**BILLING CODE 3510-22-S**